

Compliance Policy and Procedures Manual

Chapter 7

Collections



Business Tax and Fee 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.

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COMPLIANCE POLICY AND PROCEDURES MANUAL

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COLLECTIONS**700.000****GENERAL STATEMENT ON COLLECTIONS****702.000****IMPORTANCE OF COLLECTION ACTIVITY****702.010**

One of the main responsibilities of the Board of Equalization (BOE) is to collect all amounts due under the tax and fee programs it administers. To accomplish that task, it is necessary to have an efficient and effective collection program. The primary objective is to maximize the collection of unpaid tax and fee liabilities while minimizing effort, cost, and time.

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

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

The BOE uses the Automated Compliance Management System (ACMS) to control all collection assignments. In addition to other functions, ACMS prioritizes collection cases into separate work lists starting with the cases most likely to require collector intervention to resolve (the ACCES A work list) and descending to the least likely (the ACCES E work list). New collectors learn about the ACMS system through the ACMS Computer Based Training Module.

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

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

Tax/Fee Payers Facing Financial Difficulties

While continuing to follow existing policies and procedures, staff should be flexible when working with tax/fee payers facing financial difficulties, particularly businesses that, until recently, were in good standing with the BOE. While staff should continue to objectively evaluate a tax/fee payer's request for a payment plan, they should also allow some flexibility and employ reasonableness when determining the terms of the agreement. For example, if a tax/fee payer requests to temporarily make reduced payments or post third party collateral to support those reduced payments, such a request should be reviewed and considered and not automatically denied.

BOE collection policies are designed to deal with all collection situations including those where tax/fee payers are experiencing financial difficulties. Several payment or resolution options are available to tax/fee payers with a liability, including payment plans, Offer in Compromise, and Innocent Spouse Relief programs. When a tax/fee payer is unable to pay their liability in full immediately, staff should inform the tax/fee payer of all payment or resolution options that may apply to their situation. In addition, the tax/fee payer should be informed of their option to apply for a payment plan online prior to beginning negotiations with collection staff (see CPPM 770.010). Staff should evaluate each tax/fee payer's unique circumstances and payment history while concurrently following existing BOE policies and making decisions that are in the State's best interest.

COLLECTION ASSIGNMENT CONTROL**702.020**

Control of collection assignments is the responsibility of each compliance supervisor, branch office supervisor, and district administrator. However, it is also the responsibility of each collector to ensure that all assignments are given appropriate attention in a timely manner.

SOURCES OF LIABILITY AND WHEN TO PROCEED**703.000****SOURCES OF LIABILITY****703.010**

All sales and use tax liabilities are either self-assessed or BOE-assessed.

1. **SELF-ASSESSED.** A self-assessed liability is an amount that the taxpayer declares is owed to the BOE. This type of liability occurs when the taxpayer files:
 - a. A sales and use tax return without payment (“no remittance” or “NR” return),
 - b. Return(s) accompanied by a payment that is subsequently dishonored by the bank or other type of financial institution,
 - c. A return without full payment (“partial remittance” or “PR” return), or
 - d. A return after the due date with payment for tax but not penalty or interest.
2. **BOE-ASSESSED.** A BOE-assessed liability is an amount that staff determines is due from the taxpayer. The source of the amount determined to be due may be any of the following:
 - a. Audit,
 - b. Examination of taxpayer records from which a compliance assessment (CAS) or a field billing order (FBO) is prepared,
 - c. Computation errors in a return filed by a taxpayer showing an underpayment of tax due, or
 - d. Information received from other sources such as county Assessor’s offices, the Department of Motor Vehicles, Federal Aviation Administration, United States Coast Guard, vehicle dealers or Information Use Tax returns disclosing a liability.

WHEN TO PROCEED ON SELF-ASSESSED LIABILITIES**703.020**

Full collection efforts may commence immediately for tax liabilities resulting from “no remittance” or “partial remittance” returns, provided the due date for filing the return has passed. As indicated in section 702.010, in most cases it is preferable to locate and contact the taxpayer prior to taking active collection actions. All penalty and interest charges resulting from the late filing of a return or the late payment of amounts shown to be due on a return are also subject to collection effort at the time the return becomes delinquent. The fact that a return was filed after the due date, or was filed but not fully paid, creates a delinquent — pay immediately” situation and collection action should begin without delay. It is not necessary for Headquarters to issue a demand notice to the taxpayer before initiating collection efforts or actions.

WHEN TO PROCEED ON BOE-ASSESSED LIABILITIES**703.030**

Tax/fee payers are formally notified of a BOE-assessed liability with Form BOE-1210, *Notice of Determination*. RTC section 6486, and similar statutes for the BOE's special taxes programs, state that "the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the BOE." If a notice is served personally by delivering it to the person to be served, service is complete at the time of delivery.

All BOE-administered tax and fee program determinations, except for determinations made for the payment of cigarette tax stamps and Jeopardy Determinations, become final 30 days after service of the Notice of Determination upon the taxpayer. Under Cigarette and Tobacco Products Tax Law (RTC section 30174), a determination for failure to pay for cigarette tax stamps becomes final 10 days after service of a Notice of Determination upon the distributor, unless the distributor files a timely petition for redetermination and posts a security deposit within the 10-day period. Jeopardy determinations have the same requirements.

As in the case of self-assessed liabilities, a demand notice does not need to be issued prior to taking collection action. Passive collection efforts may commence before the finality date. Active collection action may be initiated immediately after a determination becomes final and passive efforts have not been successful in resolving the matter. A "finality" penalty, which is an additional penalty of 10 percent of the unpaid tax, is added to the liability if payment is made after the "finality" date stated on the Notice of Determination, unless the tax/fee payer files a timely petition for redetermination.

For sales and use tax determinations and most special taxes determinations, a person against whom a determination is made, or any person directly interested, may file a petition for redetermination within 30 days after service of a Notice of Determination. (See Publication 17). The filing of a petition must be in writing and state the specific reasons why the tax/fee payer believes the amount determined to be due is incorrect. Receipt of a timely petition for redetermination begins the appeal process and, as provided by RTC section 6561, prevents the deficiency determination, as provided by RTC sections 6481 or 6511, from becoming final within the initial 30-day period.

When a tax/fee payer files a timely petition for redetermination, the original Notice of Determination is superseded by a Notice of Redetermination at the conclusion of the Appeal process. Only passive collection efforts should be taken until the Notice of Redetermination becomes final. The general policy is that no active actions should be taken on determinations not yet final since approximately three-fourths of these determinations are paid before any action becomes necessary. Except as noted in the following paragraphs, active collection action, e.g., mailing levies, filing liens, serving a Notice to Withhold, etc., may not be taken until after the finality date of a determination.

In cases where all of the tax is paid and a claim for refund has been filed, accounts with billed, final amounts are placed in an appeal status and the IRIS DIF DI Stop Demand field is populated by the Audit Determination and Refund Section (ADRS) or the Appeals and Data Analysis Branch (ADAB). This action prevents demand billings from being issued and removes the account from ACMS. No action to collect the remaining interest and penalty is to be taken until the account is removed from Stop Demand status. If the claim for refund is denied, the stop demand flag will not be removed for at least 90 days pending verification that a suit for refund of tax has not been filed by the taxpayer.

Following the removal of the stop demand flag from the account, when the new period representing the denied claim for refund enters ACMS, the collector must contact the tax/fee payer and ask for voluntary payment of the penalty and interest. If the tax/fee payer fails to comply, or if the collector's attempts to contact the tax/fee payer are unsuccessful, summary collection action to collect the penalty and interest should resume, unless the collector has information which indicates the tax/fee payer has requested relief of penalty and/or interest. If the tax/fee payer or their attorney of record indicates that a suit for refund has been filed and provides proof of the filing, or if BOE receives notice of a suit for refund, the collector must suspend collection of the affected liability. Any legal documents received pertaining to the suit must be forwarded to Special Operations Branch (SOB) for review in accordance with CPPM section 722.080.

SOB will enter a comment on the account in IRIS and in ACMS (if the account is active in ACMS) regarding the filing of the suit and verify if a stop demand in IRIS is in place on the remaining penalty and interest. If a stop demand is not in place, SOB will promptly place a stop demand on the affected liability. No action to collect the penalty and interest will be taken during the duration of the legal proceedings. Upon resolution of the court case, the Litigation Division will notify SOB regarding the outcome of the case. If BOE prevails in the lawsuit and the tax/fee payer's legal remedies are exhausted, SOB will remove the stop demand flag from the unpaid liability and enter a comment in IRIS and in ACMS (if the account is active in ACMS) regarding the outcome of the court case. Collection of the liability will resume if the tax/fee payer's suit is unsuccessful and the liability remains unpaid.

In the majority of cases, collection efforts before a determination becomes final are restricted to passive activities. However, when a jeopardy determination is issued, the statutes governing the BOE's collection program allow active collection action to be taken, on the tax portion only, before the finality date. Therefore, use of active collection action, prior to the finality date of a determination, is limited to cases where immediate action is necessary to protect the interest of the state, i.e., where a determination has been converted to a jeopardy determination or a jeopardy determination has been issued. Note: For jeopardy determinations, if the principal is not paid within ten days of the billing date, the delinquency penalty and interest attach to the tax amount determined after the finality date (ten days) has expired.

A person against whom a jeopardy determination is made may file a petition for redetermination within 10 days if they post adequate security as required by the BOE. (See CPPM 445.000). The person against whom a jeopardy determination is made may request an administrative hearing within 30 days to:

1. Establish that the determination is excessive,
2. Establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person,
3. Request release of all or a part of property to the person, or
4. Request a stay of collection activities.

TEMPORARY TRANSFER OF COMPLIANCE ASSIGNMENTS 704.000**GENERAL 704.010**

Form BOE-142, *District Request for Investigation*, is used when a field investigation is desired and the location of the taxpayer falls outside the jurisdiction of the district responsible for the account. Since district offices can change the responsible collector for their own assignments in the Automated Compliance Management System (ACMS), this form is only used for inter-district requests for field investigation. The office requesting the field investigation is the “requesting” district and the office that will conduct the investigation is the “receiving” district. Form BOE-142 is only available through ACMS.

Changing the responsible collector in ACMS does not replace the use of Form BOE-142 to request a field investigation for an assignment. In addition, requesting a field investigation by phone or email does not replace the use of Form BOE-142.

PROCEDURES FOR USING FORM BOE-142 704.020

If an account is not currently active in ACMS, the supervisor or collector must establish one using the “Manual Case Set-up” button in ACMS before making a request for investigation. In all cases, the collector must also create an ACMS note to explain why a Form BOE-142 was sent because the ACMS history line does not contain a reason for the request.

Once the account exists in ACMS, the requesting district should do the following when temporarily transferring an assignment for the purpose of having the receiving office conduct a field investigation:

1. Open the account in ACMS.
2. Click on the “Send Letter” button.
3. Click on Form BOE-142, “Request for District Investigation.”
4. When the template appears, complete the form.
5. Click on the “Send,” button and the form will print.
6. Mail the form to the receiving district or branch office that will conduct the investigation. Any additional information such as hardcopy notes, copies of correspondence, billings, or other documents that would assist the receiving office to complete the investigation should also be sent with Form BOE-142. If, after transferring the account, the requesting office receives information that may be helpful to the receiving office, the information should be forwarded promptly.
7. Mail only the original Form BOE-142 to the receiving office. It is not necessary to send multiple copies.

CONTROL OF ASSIGNMENT BY REQUESTING DISTRICT 704.030

Appropriate with the urgency, complexity or difficulty of the investigation, the requesting office should periodically follow up on the status of the BOE-142 request. The requesting office remains responsible for completing the assignment although the receiving office is responsible for working assignments transferred via Form BOE-142.

CLEARANCE OF ASSIGNMENT BY REQUESTING DISTRICT**704.040**

When a requesting office clears a referred case after sending a Form BOE-142 to a receiving office, it is imperative to notify the receiving office that the case is resolved and request the return of the BOE-142 assignment. Failure to notify the receiving office of account activity could result in continued collection activity against a taxpayer who has paid down the amount due, arranged to make payments, or paid the liability in full. Although ACMS notes regarding account activity are required for documentation purposes, the requesting office must also notify the receiving office by phone or e-mail of the activity.

If a partial payment is received, a copy of the Payment Application Document (in IRIS: PAY BA or DIF DA) or Form BOE-424, *Advice of Payment*, serves to notify the receiving office that a payment was received.

RESPONSIBILITY OF RECEIVING OFFICE**704.050**

Form BOE-142 investigations are tracked using IRIS Assignment Control (ASC) to assign and monitor the request. In ASC, use "INVINQY" (Investigate Inquiry), as the Business Reason.

Progress reports **will** be sent to the requesting office within 30 days from the date the request is first received, and every 30 days thereafter. Although the receiving office must enter investigation notes in ACMS, Form BOE-142 is to be used as a progress report to advise the requesting office of the status of the assignment. Form BOE-142 provides a reply section that must be completed when a progress report or completed assignment is returned to the requesting office. Photocopies of the original assignment may be used for this purpose, or another Form BOE-142 can be printed from the account's history line in ACMS using the "View Letter" function.

Note: Because the online BOE-142 is password protected, print a copy of the letter and manually enter the information. Then create an ACMS note as well.

COLLECTIONS — IN THE FIELD**705.000****GENERAL****705.001****Payments Received in Field Offices – No-Cash Policy**

The BOE no longer accepts cash payments. Staff should first encourage taxpayers to pay online using their bank account information or credit card as listed on the BOE website. Alternatively, staff should provide taxpayers with a list of nearby businesses that can convert their cash to a money order or cashier's check. Note that taxpayers required to pay by Electronic Funds Transfer (EFT) will incur a penalty if they pay their return payment or prepayment using any other method than EFT.

Hardship Policy

The no-cash policy may pose an undue hardship to certain taxpayers with cash-based businesses that are unable to open a bank account. To accommodate these taxpayers, exemption form BOE-245-NC, *No Cash Exemption Request*, has been created. Taxpayers requesting an exemption from the no-cash policy must explain the reason why they are unable to pay using the methods provided and list the reason why they are unable to establish a bank account. The BOE-245-NC, must be signed by the owner, partner, or corporate officer. The request must be reviewed and signed by a District Administrator, or their designee, with comments entered in IRIS regarding the approval or denial of the request. If the request is approved, staff must review the EFT EI screen in IRIS to determine if the taxpayer is required to pay by mandatory EFT. If the account is on mandatory EFT, staff will mark the EFT box and submit the BOE-245-NC and any documentation to the Return Analysis Unit E-Services mailbox at RAUE-Services@boe.ca.gov with the subject line identified as "EFT Account - No-Cash Exemption Request."

Once the district office reviews the exemption request, a decision letter will be provided to the taxpayer, BOE-245-NCA, *No Cash Approval*, or BOE-245-NCD, *No Cash Denial*. If granted, the district office will coordinate with the taxpayer the date and time for their cash payments. When setting the date and time, districts should attempt to schedule the payment earlier in the day to ensure cashiers have adequate time to process the funds. If the exemption request is denied, the taxpayer may request the case to be referred to the Deputy Director of the Field Operations Department for further review.

In addition, a tax representative or specialist (collector) will often collect money from tax and fee payers during field calls (see CPPM section 749.000). A field receipt must be issued to the taxpayer to document these transactions. The money collected, receipts, and other supporting documents must be submitted to the cashier along with form BOE-609, *Tax Representative's Daily Report*, upon return to the office for inclusion in the deposit and transmittal process.

FIELD RECEIPT — FORM BOE-602**705.005**

There are 25 field receipts (Form BOE-602) in each receipt book. There are three copies to each receipt, the original and two copies. The original (white) is the taxpayer's copy. The canary copy is retained by the Receipts Custodian, after review by the cashier's supervisor. The person writing the receipt will secure the goldenrod copy for 90 days.

Every person assigned a receipt book is personally responsible for the book and all its receipts until they are transferred to the cashier or the book and any remaining receipts are surrendered to the Receipts Custodian. Each receipt must be used in numerical sequence.

Collectors must use Form BOE-602 when collecting money from a taxpayer in either the field or office. While collectors normally do not accept remittances or issue receipts when in the office, exceptions to this rule occasionally occur. For example, if the district office cashier is attending a staff meeting and a collector is needed as a backup cashier, or during rush periods.

Whenever a payment is taken and Form BOE-602 is issued, Form BOE-609, Tax Representative's Daily Report, serves as the document transferring the payment to the cashier from the person who collected it. If a collector issues a receipt(s) in the office, Form BOE-609, must be prepared listing all the receipts issued (including any voided receipts). For monies collected in the field, all payments, receipt copies and supporting documents must be submitted to the cashier along with Form BOE-609, upon return to the office. Collectors may attach the goldenrod copy to their Form BOE-609.

PREPARING FORM BOE-602**705.010**

Receipts are prepared in triplicate with the original (white) copy delivered to the taxpayer. The Board of Equalization (BOE) retains the canary and goldenrod copies. Use a ballpoint pen when writing a receipt to ensure that all the receipt copies are legible. The person accepting the payment and preparing the receipt must sign the receipt.

Collectors are to use extra care and be certain each Form BOE-602 is prepared properly. The following sections set forth certain types of errors which may be corrected and how such corrections are to be accomplished.

Payments for more than one account number can be written on one receipt when payment for multiple liabilities is included in the same remittance. When a taxpayer pays with multiple remittances, a separate Form BOE-602 must be issued for each remittance type (i.e., check, cash, money order, cashiers check) received. For example, if a taxpayer pays with two money orders, two receipts must be written.

Form BOE-602 only allows for the entry of four payment applications. If a taxpayer has a remittance that covers more than four payment applications, write "A/R" once in the PERIOD box for that account. In addition, if one remittance is being applied to more than four accounts, enter the payor's TIN for the person making the payment in the ACCOUNT/TIN/TAT NUMBER box, if available.

PREPARING FORM BOE-602

(CONT.) 705.010

Below are instructions for completing each line of Form BOE-602:

1. LOCATION — The name of the city or community where the receipt is written.
2. “Check” boxes for remittance types — Cash, Check, Cashier’s Checks, and Money Orders. The “Other” check box would include Postal Money Orders.
3. ABA NUMBER — Do not complete this line.
4. CHECK NUMBER — Enter the check number on this line.
5. CHECKING ACCOUNT NUMBER — Do not complete this line.
6. NAME — This line should contain the name of the taxpayer. If payment is made by a third party (e.g., a payment received in the field from a levy), enter the name of the person making the payment. If payment is made on behalf of the taxpayer, such as from an employee or delivered by messenger, the name printed on the check should be entered. If cash payment is made, the name of the taxpayer should be entered.
7. REMIT ID — Do not complete this line. The cashier will enter the Remittance ID obtained from IRIS onto this line.
8. ACCOUNT/TIN/TAT NUMBER — This line must be completed. Multiple account numbers, TIN or TAT numbers may be entered provided all payments are from the same remittance. When a TIN number is used, circle the TIN at the top of the column.
9. FO/DIF/NOTICE + NUMBER — FO, DIF, or Notice ID numbers will not be used.
10. PERIOD — This line must be completed. Enter the period code and/or appropriate application type (i.e., A/R, PP1 or PP2, S/D, AUD, R/F, W/F). For prepayments, reinstatement fees, and audits, enter PP1 or PP2, R/F, or AUD respectively to the right side of the period code. For security deposits, enter the account number with S/D in the PERIOD box.
11. AMOUNT — Amounts need to be entered with dollars and cents written out (e.g., \$595.00). Do not use a dash to indicate zero cents.

ERRORS NOT REQUIRING A REPLACEMENT RECEIPT**705.020**

The following errors may be corrected without issuing a replacement receipt:

1. An error in the date that does not affect penalty and/or interest. Correcting the receipt date requires a supervisor's signature beside the correction.
2. A misspelled name.
3. An incorrect period code.
4. An incorrect account number.

Using correction fluid or tape on a field receipt is not allowed. These types of errors are corrected by lining out the incorrect entry, while still leaving it legible, and making a correcting entry.

If the error is found after delivery of the receipt to the taxpayer, the error may be corrected on the BOE's receipt copies. When a correction of this type is made, it is not necessary to recover or correct the taxpayer's receipt copy.

VOIDING FIELD RECEIPTS**705.025**

Field receipts will be voided when any of the following errors are discovered before delivery of the receipt to the taxpayer:

1. An error in the amount (i.e., the dollar amount entered on the face of the field receipt).
2. An error in the date that affects the incidence of penalty and/or interest.
3. Extensive errors that make the validity of the field receipt questionable.

A voided field receipt will be clearly marked by:

1. Stamping or writing the word "VOID" or "CANCELED" on all copies of the receipt.
2. Showing the reason for voiding the receipt.
3. Signing in ink across the face of all copies.

Every voided field receipt must be approved with the signature of a supervisor on the voided receipt and reference made to the replacement field receipt number, or to the Remittance ID from the MICR receipt, if applicable.

If a receipt must be voided, and all three copies are available, the issuing employee should take all three copies of the field receipt to their supervisor for signature. The white and canary copies should be returned to the cashier and the goldenrod copy should be retained by the issuing employee.

If the taxpayer has the original field receipt to be voided, the canary copy will be forwarded to the Receipts Custodian, after review of the cashier's supervisor. The goldenrod copy will be held by the issuing employee and a letter will be sent to the taxpayer along with the MICR receipt. The Remittance ID number, on the MICR receipt, must be written on the voided field receipt.

ERROR IN AMOUNT SHOWN ON FORM BOE-602**705.030**

When the amount of cash collected is more than shown on Form BOE-602, *Field Receipt*, the error will be brought to the attention of the supervisor. A supplemental receipt will be prepared for the difference and a copy mailed to the taxpayer with a letter of explanation. If the original remittance is a check, the field receipt must be voided and a new field receipt issued for the correct amount or an accurate MICR receipt replacement with a letter of explanation. If a MICR replacement receipt is issued, the Remittance ID from the MICR receipt will be written on the voided receipt. It is not necessary to retrieve the erroneous field receipt from the taxpayer.

The supervisor will send a letter to the taxpayer explaining that the incorrect amount or date was written on the original field receipt. The letter shall contain the following information:

1. The original Form BOE-602 receipt number and remittance ID number if available.
2. Date of Original Receipt.
3. Original Amount.
4. Revised Amount.
5. Brief Explanation for revision.
6. Request for the taxpayer to contact the supervisor with any questions about the revised receipt.

If the taxpayer claims that the cash amount shown on the receipt is correct, no letter will be sent, but the matter must be brought to the attention of the supervisor and the District Administrator.

ERROR IN DATE SHOWN ON FORM BOE-602**705.035**

If an erroneous date affecting penalty and interest is not discovered until after delivery of the taxpayer's copy, it will promptly be brought to the attention of the supervisor. The taxpayer will be informed in writing of the error and the Board's copies of the field receipt will be corrected and approved with the signature of the supervisor placed near the correction.

SECURITY OF ISSUED RECEIPT BOOKS**705.040**

When receipt books are issued to staff by the Receipts Custodian, the recipient is responsible for security of the receipt book. An employee issued a receipt book must keep the book locked in their work area, or a compartment in the safe to which only they have access. Receipt books must never be left on top of desks or counters, or placed into desks that do not lock. It is incumbent upon employees to use the same level of care to protect the receipt books outside the workplace as within. If a receipt book or an individual receipt is missing, the supervisor is to be notified immediately.

LOST OR STOLEN RECEIPT BOOKS**705.045**

If a receipt book is lost or stolen, the collector must notify his or her supervisor immediately. The supervisor will follow established procedures relating to lost or stolen receipt books.

MONTHLY RECEIPT REPORT**705.050**

On the morning of the first working day of each month, all persons issued receipt books will complete a Form BOE-18, *Unused Receipts*. Form BOE-18 should be completed immediately and turned in to their supervisor together with receipt books for the supervisor's verification of unused receipts and signature. The original of the Form BOE-18 is given to the Receipts Custodian for additional verification and retention.

ENDORSEMENT OF CHECKS**705.055**

When a check, money order, cashier's check, or other non-cash instrument (hereinafter "check") is collected in the field, the collector will immediately endorse the check by writing on the back "For deposit only to State Board of Equalization" along with the receipt number within the top half-inch of the endorsement area.

If the maker does not complete the "payee" line on the front of the check, the collector will enter "Board of Equalization" in that space immediately upon acceptance of the check. The BOE account number will also be written on the face of the check.

CASH COLLECTIONS — OVERNIGHT RETENTION OF FUNDS**705.060**

When a collector deems it necessary to collect cash, all bills in denominations of \$20 or greater must be tested with a counterfeit detector pen in the presence of the taxpayer. The bills must be segregated in individual envelopes together with the BOE copies of the BOE-602, *Field Receipt*.

All cash collected must be converted to a cashier's check or money order payable to the BOE before staff returns to the office. The cost of the cashier's check or money order will not be deducted from either the cashier's check or the money order but will be paid from the collector's own funds. The collector will then claim reimbursement on his or her travel expense claim. Note that in many instances, there will be no charge for a cashier's check purchased from a Bank of America branch.

The overnight retention for cash collected is not to exceed \$500. All funds should be kept segregated (by receipt number) until exchanged for a cashier's check or money order. Separate cashier's check(s) or money order(s) must be obtained for each cash remittance.

In any instance not covered by the above items, the collector will take whatever action is necessary to protect the cash collected. In all circumstances, the collector will exercise good judgment and use every precaution to prevent loss or theft.

TAX REPRESENTATIVE'S DAILY REPORT — FORM BOE-609

705.065

Collectors are required to write receipts for all field collections and record the receipt numbers and their totals on Form BOE-609, *Tax Representative's Daily Report*.

If a cashier is not available and it becomes necessary for a collector to issue a Form BOE-602, *Field Receipt* in the office, Form BOE-609 must be prepared listing all the receipts issued (including any voided receipts). Form BOE-609 will be used as the transfer document between the collector and the cashier.

Collectors should turn in remittances, completed receipts, supporting documents, and Form BOE-609 to the cashier either the same day or by 9:00 a.m. for field receipts covering the previous day's field work.

The following guidelines must be followed when completing Form BOE-609:

1. Receipts are to be written on the Form BOE-609 in consecutive numerical order. The receipt number, including voided receipts and the amount of the receipt must be listed in sequence to show the taxpayer to whom it was written.
2. Any receipts that were written for **cash** should have the amounts circled on the Form BOE-609. **When cash is converted to certified funds, the receipt numbers representing those amounts must be shown under "Remarks."** Each exchanged remittance must have a separate cashier's check or money order when the total cash to be held overnight exceeds \$500.00.
3. The collector must pay any charges for the cashier's check or money order and indicate the expense incurred on Form BOE-609. These charges may not be deducted from the taxpayer's remittance.
4. At the time the collector submits the funds and related documents to the cashier, the total collected is to be shown in the space provided on Form BOE-609. When the receipts are received, the cashier must count the funds, date and initial Form BOE-609 **in the presence of the collector**, make three copies and return one copy and the original to the collector.
5. All entries for receipt numbers, amounts, cashier's initials, and date must be written in ink.

The collector will provide a copy of Form BOE-609 to their supervisor. The collector retains the original BOE-609 for a minimum of 90 days when funds have been transferred to the cashier.

COUNTERFEIT BILLS IDENTIFIED**705.070**

The following procedures should be followed when a field collector identifies a counterfeit bill(s):

1. Inform the taxpayer of the counterfeit bill(s).
2. Confiscate the counterfeit bill(s).
3. Notify your supervisor of the counterfeit bill(s).
4. Prepare a separate BOE-602, Field Receipt for the counterfeit currency as instructed in the CPPM 705.010, *Preparing Form BOE-602*. However, specified fields should be completed as follows:
 - a. Check the box marked "Other" and write in "Counterfeit Currency,"
 - b. Enter the serial numbers of the bills in the Account/TIN column next to the account number,
 - c. Enter the currency amount in the column titled "Amount."
5. Provide the taxpayer with a copy of the receipt.
6. Segregate the quantity and denomination of the bills received in individual envelopes with copies of the BOE-602.
7. Inform the taxpayer that credit for payment will not be given.
8. Notify the taxpayer that a letter will be forthcoming confirming the conversation, describing the counterfeit bill(s), indicating that the counterfeit bill(s) will be sent to U.S. Secret Service, and informing that a copy of the U.S. Secret Service results will be sent to the taxpayer.
9. Prepare and mail the BOE-469, *Notification of Counterfeit Bills*, to the taxpayer after returning to the office.
10. Retain a copy of the BOE-469.
11. Transfer the counterfeit bill(s) and a completed BOE-602 as instructed in the CPPM 705.005, to the Headquarters (HQ) or District Office (DO) cashier to verify that the bill(s) are counterfeit.

The responsibility of the field collector(s) ends after the suspected counterfeit bills are transferred, with the proper receipts, to the HQ or DO cashier. The cashier unit will verify with the U.S. Department of Homeland Security/U.S. Secret Service that the bills are counterfeit.

ACCOUNTS RECEIVABLE — SPECIAL MAILING**706.000****GENERAL****706.010**

Semiannually, the Board of Equalization (BOE) mails a Statement of Account to Consumer Use Tax accounts, most Special Taxes and Fees program accounts and all Sales and Use tax accounts (active and closed-out) that owe a “final” liability. The United States Postal Service will return incorrectly addressed statements to BOE headquarters who, in turn, will forward them to the responsible district office, Centralized Collection Section (CCS) or Special Taxes division to investigate for a current valid address.

DISTRICT RESPONSIBILITY AND PROCEDURES**706.020**

The district offices, CCS, and the Special Taxes divisions are responsible for making online changes to clients/accounts when valid addresses are located. When making an online address change, comments should be made on the client TIN (CTS CM) or TAR AM (account).

Upon finding a current valid address, line out the old address on the envelope, write in the new address and re-issue the statement of account to the taxpayer at the new address. If the account is active and an investigation does not disclose a better address, a field call should be performed to determine if the business has closed or has moved and the case notes updated with the results of the investigation.

CPPM 635.010 allows a closed out account to be reinstated within 18 months after the closeout is processed (sublocations may be reinstated up to 6 months after the close out date). An account cannot be reinstated until the taxpayer files all delinquent tax returns, pays the tax, penalty, and interest owing along with the appropriate reinstatement fee, and posts an appropriate security deposit if deemed necessary.

In general, an account closed for more than 18 months (or 6 months for sublocations) may not be reinstated. The taxpayer must file and pay all delinquent tax returns, pay all amounts due, and meet any other requirements necessary to complete the close out. The taxpayer must then complete an application for a new seller’s permit or special taxes account. The start date of the new permit will be backdated to the closeout date of the previous permit. In addition, the office in control of the account may require the taxpayer to post a security deposit under the new permit.

PAYMENT APPLICATION**707.000****STANDARD RULES FOR APPLYING A PAYMENT****707.020**

The standard rules for the application of a remittance or payment should be made as follows:

1. As directed by the taxpayer at the time of voluntary payment.
2. Collection costs (billed, unbilled) if the payment is a warrant payment. In the case of a warrant, advance fees are identified as a difference from inception. Advance fees and collection costs are not billed until the BOE receives the warrant fee invoice and writ of execution.
3. Billed collection costs if the payment is not a warrant payment.
4. Self-assessed tax liabilities, which have been established but are not yet due.
5. Tax liabilities on non-final determinations for which a dual determination has not been issued, excluding petitioned liabilities.
6. Tax liabilities on non-final determinations for which a dual determination has been issued, excluding petitioned liabilities.
7. Most current delinquent tax liability (by billing date) for which a dual determination or successor billing has not been issued.
8. Delinquent tax liability for which a dual determination has been issued.
9. Delinquent tax liability for which a successor billing has been issued.
10. Self-assessed lumber assessment liabilities, which have been established but are not yet due.
11. Lumber assessment liabilities on non-final determinations for which a dual determination has been issued, excluding petitioned liabilities.
12. Most current delinquent lumber assessment liability (by billing date) for which a dual determination or successor billing has not been issued.
13. Most current collection cost recovery fee (by billing date).
14. Most current delinquent interest liability (by billing date) for which the taxpayer is primary.
15. Delinquent interest liability for which a dual determination has been issued.
16. Delinquent interest liability for which a successor billing has been issued.
17. Most current delinquent penalty liability (by billing date) for which the taxpayer is primary.
18. Most current penalty liability for which a dual determination has been issued.
19. Most current penalty liability for which a successor liability has been issued.
20. Non-final petitioned liabilities.
21. As directed by the district office or CCS.

The Special Operations Branch (SOB) may, in accordance with BOE policy and Civil Code section 1479, change the payment application order of numbers 2 through 21.

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

Payments received from warrants can only be applied to the specific periods covered by the warrant.

APPLICATION OF PAYMENTS — PRIMARY AND SECONDARY ACCOUNTS. 707.030

All differences originate in a “primary” account. A “secondary” account is based on the difference in the primary account. There can be multiple secondary accounts linked to a primary account. For example:

1. A primary account is a corporate account and the secondary account is a dual determination on the corporate officer. If dual determinations are issued to multiple corporate officers, then each one of the billed officer’s accounts constitutes a secondary account.
2. A predecessor account is the primary account. A billing for successor’s liability is a secondary account.
3. A partnership account is the primary account. Secondary accounts can be established for, and a billing notice sent to, any partners, even those not named on the original application.

When a payment is received for a difference where primary and secondary accounts exist, the payment should be applied to the account that made the payment. For example, if a payment is made by a successor (secondary account), the money should be applied to the difference existing under the successor’s account, not to the difference on the predecessor’s (primary) account. Improper application of the money could result in the taxpayer not receiving proper credit.

REFUNDS OF EXCESS OR ERRONEOUS AMOUNTS RECEIVED 707.040

The BOE may receive funds from an enforced collection action that are in excess of the liability due because the funds are determined to be remitted in error or otherwise not due. Such instances include, but are not limited to:

1. Funds from an escrow for an account where the liability was paid, but a release of lien was not recorded.
2. Amounts billed, such as a successor or predecessor liability, innocent partner or spouse, which are determined not to be due.
3. Funds not subject to or exempt from levy, such as amounts over the maximum allowed by law for a wage garnishment.

In such cases, collection staff should offer to assist taxpayers in obtaining and completing the necessary forms to file a written claim for refund. When a taxpayer files a claim for refund with the district office or headquarters office for funds that have been paid to the BOE with regards to a sales and use tax account, the taxpayer’s written refund request must be sent to the Audit Determination and Refund Section in Headquarters. The request must be accompanied by the District Principal Compliance Supervisor’s recommendation to either approve or deny the refund claim. A claim for refund involving Property and Special Taxes Department-administered programs should be sent to the Audit section of the appropriate division.

PAYMENT APPLICATION DOCUMENTS**707.050**

There may be an occasional need to create a document when applying a payment in a manner that does not follow the standard payment application rules. The following options may be used to specify how a payment is to be applied to a taxpayer's liability in such a situation:

Using PAY BD Printouts

This procedure can be used to apply payments to all billed differences existing on an account and for payment(s) that are to be applied to a previously created Fixtures and Equipment assessment with a difference already on the system.

Placing a "T" next to a selected difference in DIF DA will highlight the liability and the "Differences Selected for Payment" field will display the total number of differences selected. Pressing F17 will return the user to the PAY BD screen and display all the differences that were selected at the DIF DA screen.

1. In IRIS, type PAY BD and press "Enter."
2. Type DIF DA and the account number to obtain the list of liabilities owed on the account.
3. Type "T" next to the liability where a payment will be applied and press "Enter."
4. Press F17 to "Take" (this will return you to the PAY BD screen).
5. Confirm the effective date of payment.
6. Input the remittance amount and the payment amount(s) and press "Enter."
7. Print and submit the document to the cashier.

Using DIF DA Printouts

The DIF DA screen is used when a payment is to be applied to a specific difference that has not yet been created. For example, where payment is received from a person who is paying against a customs program liability in advance of being billed.

1. In IRIS, type DIF DA and account number, and press "Enter."
2. Print the DIF DA screen.
3. Write the remittance amount, effective date, and either the FO ID number, if available, or the words "Apply to A/R" on the printout if no difference exists (this will be an unapplied payment). If a difference does exist, a FO must be created to avoid application of payment to existing differences.
4. Submit the document to the cashier.

Using Notices

Payment(s) may also be applied to a specified difference using the billing notice itself.

1. In IRIS, print the notice.
2. Write the effective date and the amount of payment in the appropriate boxes.
3. Submit the notice to the cashier.

Automated Cost of Collection Report

District staff must apply payments to the Cost of Collections (COC) differences in IRIS when reconciling outstanding warrants and ABC renewal fees. IRIS produces an automated report to capture information about the payments applied to COC differences in IRIS. This automated report is provided electronically to the Headquarters' Cashier Unit and Accounting Section with the necessary information to reimburse the General Revolving Fund. The GA-904, *Advice of Miscellaneous Receipts* that had been used is no longer necessary.

In addition, the report provides information about payments that have been moved or changed. For example, the automated report will reflect the change to the COC difference if staff applies a payment to a COC difference in IRIS and subsequently moves the payment to another difference in IRIS. This data is necessary since the Accounting Section is responsible for transferring funds from the retail sales tax account to the general revolving fund.

DELINQUENCIES**708.000****GENERAL****708.010**

The Board of Equalization (BOE) relies upon the voluntary cooperation of tax and fee payers to file and pay taxes and fees when due. Most tax and fee payers file their tax return timely and pay in full. Those who do not are “delinquent.” Explaining the proper tax and fee filing procedures to a new applicant during the registration process, updating accounts timely when new information is received, and promptly investigating returned mail helps to eliminate a majority of delinquencies. However, returns are sometimes filed after the due date and payments are occasionally late. When this occurs, establishing a delinquency allows staff to begin taking appropriate collection action(s).

A delinquency occurs when:

1. A tax or fee return is not filed.
2. Taxes or fees are not paid.
3. The tax or fee payer fails to comply with the law or BOE requirements.

There are two types of delinquencies, “periodic” and “cause.” A periodic delinquency results when a taxpayer does not file a tax or fee return. A cause delinquency occurs when staff determines that a taxpayer has not paid the BOE, or has otherwise failed to comply with the law or BOE requirements. Periodic delinquencies are established automatically in IRIS, while cause delinquencies are initiated by staff.

THE DELINQUENCY PROCESS**708.020****Periodic Delinquencies**

Failure to file a tax return, even a tax return representing a partial period, constitutes a “periodic” delinquency. In sales and use tax programs, the failure to file a prepayment form appears in the delinquency subsystem in IRIS and automatically generates notices for delinquent sales and use tax prepayments. (Exceptions to this are found in some special taxes programs). A delinquent prepayment does not result in a citation or revocation notice being generated. However, a delinquency assignment for staff to work is created in the Automated Compliance Management System (ACMS).

Through the use of an automated process called the “delinquency control cycle” (see CPPM 550.020), IRIS identifies taxpayers who have not filed tax or fee returns and controls the preparation of delinquency notices and various reports pertaining to these accounts. The table below provides a summary of the new delinquency and revocation process.

Action	Approximate Days
First late notice	Day 14 (via email or mail) after return due date
Second late notice	Day 40 after return due date
Enters collector’s ACMS work list	Day 50 after return due date
Revocation notice	Day 100 after first late notice
Referral to Investigations Division	Day 220 after first late notice

Generally accounts should remain in revoked status for at least 120 days before being referred to the Investigations Division. Accounts may be referred earlier depending on the account’s compliance history, size of liability, or concern for the safety of district staff. The 120 days waiting period will remain in effect to provide the taxpayer an opportunity to clear the account before proceeding toward criminal prosecution.

Cause Delinquencies

When a taxpayer has failed to comply with a BOE requirement for other than a periodic filing, a delinquency for “cause” may be established. Unlike a periodic delinquency, staff must manually create a delinquency for cause. A delinquency for cause may be established for any of the following reasons:

1. Failure to pay a balance due.
2. Failure to file a required schedule.
3. Failure to post a security deposit.
4. Failure to post additional security.
5. Failure to post a replacement security deposit.
6. Failure to comply (this usually involves the taxpayer not producing requested documentation).
7. Failure to comply with the requirements of the Prepayment of Sales Tax on Purchases of Gasoline (SG) program.
8. Failure to affix stamps to packages with altered labels.
9. Failure to affix stamps to packages labeled “export-only”.
10. Failure to affix stamps to packages with non-compliant labels.
11. Failure to affix stamps to packages violating trademark.
12. Failure to affix stamps to packages imported after January 1, 2000.
13. Failure to comply with AB-71 (Cigarette and Tobacco Products Tax Act of 2003) requirements.

When a delinquency for cause is established, the taxpayer does not receive a delinquency notice. Instead, a *Notice to Appear — Revocation Proceeding* is mailed to the taxpayer during the next citation addressing cycle.

ACMS imports delinquency information from IRIS nightly. The delinquencies are identified to specific categories labeled Category 1 accounts, Category 3 accounts, Category 99 accounts (SG accounts, SC accounts, SU accounts, and special taxes accounts), Temporary accounts, and Closed Out accounts. Tax Technicians may be assigned to work these delinquent accounts. If efforts by the Tax Technicians to resolve the situation are unsuccessful, the account may be transferred to a Business Taxes Representative.

Category 1 Accounts

Delinquent full-time regular seller (SR) accounts are designated as Category 1 delinquencies (Del Cat 1). This category includes accounts identified with codes SR, SRS, SRX, SRY and SRZ.

Category 3 Accounts

A delinquent part-time account, prefix “SR” that also has an Account Characteristic Code 002, is designated as a Category 3 account (Del Cat 3). Category 3 accounts are not subject to revocation and IRIS automatically places a system withhold on these accounts to prevent the account from entering into a revocation cycle.

When a part-time seller does not file a tax return, IRIS automatically sends a *Notice of Possible Cancellation of Seller’s Permit* to inform the taxpayer of the following:

1. The delinquent period(s).
2. That staff may estimate the amount of tax due for the delinquent period(s).
3. That the account may be closed out.

The following guidelines provide suggested actions for working Del Cat 3 accounts. As with all collection accounts, complete documentation of the collection action(s) taken is essential.

1. Review ACMS history for any previous delinquencies or actions on the account.
2. Review the REV FZ screen in IRIS to:
 - a. Determine if the taxpayer has filed a duplicate tax return for another period.
 1. Same period filings occur when a taxpayer uses the same return form that was filed for a prior period. For example, the system may show 2 filings for 2nd Quarter 2006 and a delinquency for the 3rd Quarter 2006, if the taxpayer reused the 2nd quarter tax return. In all instances where it appears that a duplicate tax return was filed, the taxpayer must verify the duplicate filing.
 2. Once verified, a Form BOE-523, *Tax Return and/or Account Adjustment Notice*, is prepared to transfer the return to the appropriate period.
 - b. Determine if a partial return was filed using REV RN. Partial returns occur when a taxpayer files a tax return designated as only part of the FO period. For example, the taxpayer timely submits a tax return form and indicates that it represents a return period for April through May only, instead of the full 2nd Quarter. The account is now delinquent for the partial period of June. To resolve this problem and remove the delinquency for the partial period, the taxpayer should provide an amended tax return reporting the total gross receipts for the entire quarter and pay any additional money owed.
3. Review the PAY BU screen. This screen will show any unapplied credits on the account. The monies in PAY BU may be for the delinquent return period. This occurs when:
 - a. A taxpayer has sent in the tax due for the return period but failed to send along the return, or
 - b. The taxpayer has sent in both the return and the payment, but the return has not shown up on IRIS.

In both instances, the taxpayer must provide either the original return or a copy of the one previously filed but not showing in IRIS. Once the tax return is processed by HQ, the payment will match the return and clear the delinquency.
4. Review COM BA for any comments. The taxpayer may have recently contacted the BOE with changes to their business or mailing address and did not receive the returns or hearing notices. The contact may have been noted in the IRIS comments screen.
5. Review the TAR AI or TAR AM screens for business locations. The F10 "information" key provides information on the type of business and estimated monthly taxable sales.
6. If the account still has a delinquency after reviewing the screens above, contact the taxpayer by phone (business, personal) and/or by mail.
7. When the taxpayer is contacted, ask questions such as:
 - a. Has the tax return been filed? When was it filed?
 - b. Was any tax due?
 - c. Did you keep a copy of the return? If no monies were due, the taxpayer can fax over a copy to be re-submitted.
 - d. Do you have a copy of a cancelled check? (A trace can be done on-line for the payment).

THE DELINQUENCY PROCESS

(CONT. 3) 708.020

- e. Did the business open? If not, what is the anticipated start date?
 - f. Has the business closed? As of what date? Was it sold, to whom, and for how much? Was an escrow involved?
 - g. If the business is active, have sales been made and in what amount?
 - h. Do you need assistance in filing the return?
 - i. If the return has not been filed, when will it be filed? Explain to the taxpayer that failure to file the delinquent return after the promised date may initiate further action by the BOE. For example, closing the account or billing the taxpayer for the estimated amount of tax due. (*In ACMS, the promised filing date should be noted in the "Take Promise" field.*)
 - j. If you are unable to communicate with the taxpayer due to a language barrier, every effort should be made to provide the taxpayer with a certified bilingual, or multilingual, employee who can gather accurate information and explain to the taxpayer the consequences for failing to file.
8. If the taxpayer cannot be contacted, the taxpayer's references (noted under each TIN number) might have forwarding information.
 9. Check phone books, including on-line phone listings, for any additional phone numbers for the taxpayer.
 - 10 Use an Internet search engine to see if taxpayer has a website.
 - 11.If mail has been returned by the post office, investigate for a current address by checking FTB and DMV records.
 - 12.Check the TAR AI screen for an email address or website through which the taxpayer may be contacted.
 - 13.If the taxpayer is selling out of a swap meet location, contact the swap meet operator to see if the taxpayer is actively selling there. If so, inform the swap meet operator that the taxpayer must contact the BOE or the permit will be closed and the taxpayer can no longer sell at the specified location. Do not inform the swap meet of the delinquencies.

The remaining three delinquency categories are also not subject to automatic revocation and a process similar to the one above can be used when working these types of accounts.

Category 99 Accounts

Accounts not designated with the "SR" prefix, i.e., SG accounts, SC accounts, SU accounts, and special taxes accounts are designated as category 99 accounts in IRIS, however in ACMS they are denoted as Del Cat 9, not 99. These accounts do not receive the *Notice to Appear — Revocation Proceeding*, instead they are sent a *Final Notice*.

Temporary Accounts

Delinquent Temporary Seller's Permits also enter into ACMS and are subject to collection action.

Closed Accounts

Closed accounts that are delinquent for failing to file a return enter into ACMS. CPPM 645.045 details the procedures for working delinquent closed out accounts.

LOCATING MISSING TAX DEBTORS AND/OR ASSETS**720.000****GENERAL****720.010**

RTC section 7092 and similar provisions for other tax and fee programs prohibit the Board of Equalization (BOE) from conducting an investigation of any person for any purpose other than tax administration. Any person violating this prohibition will be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment. For the purposes of this section, “investigation” includes any oral or written inquiry directed to any person, organization, or governmental agency.

The personal information of the BOE’s clients and taxpayers is protected from unauthorized inspection and disclosure by policy and state and federal laws. To do a satisfactory job in collecting delinquent taxes and fees, staff must be able to identify and locate taxpayers and/or their assets. This activity requires the review and evaluation of confidential personal information. All requests for this type of information must be made only for valid BOE-related business use.

All BOE employees are responsible for protecting the confidentiality of the information to which they have access. Therefore, staff will not request, access, examine, use, disclose or modify information for any non-business related reason such as out of curiosity or for personal gain. This includes browsing any information that is not a part of your assigned workload, e.g., information about the collector’s own personal information, family members (including spouse or children), friends, neighbors, business associates, co-workers, celebrities or any other individual(s) or entities not related to the collector’s work assignments.

Confidential information is not to be removed from the work site without proper authorization. Confidential information (most tax and fee payer information) must be secured in approved locations while in the office, such as locking file cabinets, etc. If confidential information is required when in the field, care must be taken not to allow non-authorized parties access to the information. Once the confidential information has served its business-related purpose, the information must be destroyed in an appropriate and confidential manner. (BEAM section 7406.1, *Destruction of Confidential Records*.)

EXAMINATION OF ACCOUNT RECORDS AND SYSTEM INFORMATION**720.020**

Discussing a tax liability with a taxpayer without knowing the basis for the liability or being familiar with the taxpayer’s filing history creates an unfavorable impression with the taxpayer. This can have a direct influence on the success of the collection interview. Before making contact with the taxpayer, the collector should review the taxpayer’s current liability and account history in ACMS, IRIS, and the district file (if a file exists). As a preliminary step in organizing a collection case, it is often helpful to take notes during the review that summarize previous relevant account activity and then transcribe those findings into ACMS under “Case Summary” in order to have available all of the details pertinent to the case. This will help the collector to request all the needed information at one time when requesting asset or skip-tracing information.

Performing a case review before contacting the taxpayer will allow the collector to:

1. Understand the basis for the liability (BOE-assessed vs. self-assessed).
2. Determine whether the taxpayer has filed and paid all tax returns and prepayments or posted a security deposit, if one was required.
3. Formulate a plan to overcome any excuses or objections.
4. Anticipate taxpayer questions.
5. Prepare answers to those questions.

EXAMINATION OF ACCOUNT RECORDS AND SYSTEM INFORMATION

(CONT.) 720.020

The review might also disclose information on assets, sources of income, financial status, and other general information that might otherwise be overlooked. Examining account records, audit working papers, and system information will often reveal names of references, relatives, banks, other creditors, debtors, former residence addresses, or other information that will help to locate a missing taxpayer or assets belonging to a taxpayer. In addition, checking the Client Taxpayer System in IRIS for other tax or fee permits held by the taxpayer is recommended.

It is essential to have a complete written record of a taxpayer's case history. All discussions with the taxpayer about the current collection case, any promises made by the taxpayer, and subsequent actions taken by the collector must be documented. Proper documentation will assist in resolving taxpayer disputes or misunderstandings regarding any actions taken by the collector and is essential if the collector is served with a subpoena to testify in court.

Prior to contact with the taxpayer always:

1. Have a thorough understanding of what is necessary to clear the assignment.
2. Review the actions necessary to clear delinquency, revocation, or collection problems.
3. Note and do not repeat previously unproductive actions, unless there is reason to believe that the action may be successful if carried out, e.g., sending a levy to secure funds in a bank account.
4. Use closely-spaced follow-up contacts with the taxpayer and limited acceptance of promises if the taxpayer has a history of broken promises or missed deadlines.
5. Summarize all relevant file and on-line computer information and input summaries into the case notes.
6. Take actions to complete the entire collection case, not only the particular assignment. Collectors are responsible for obtaining all delinquent periods for the account, as well as collecting all final billed account receivable balances and the applicable reinstatement fee(s).
7. Review the account to determine whether the taxpayer has posted an adequate security deposit or if there is a need to send the taxpayer a letter requesting an additional security deposit amount.

If the taxpayer cannot be located after examining the account records and system information, the information of other agencies, organizations, and commercial enterprises that gather and maintain information on large segments of the population is available to staff.

INTERNET COLLECTION TOOLS**720.022**

The Internet is a very useful tool that can be helpful in locating:

1. Business website addresses.
2. Physical address(es) for the business or the business owners.
3. Phone numbers.
4. Neighbors.
5. Business ownership.
6. Business licensing information.
7. Property information.
8. Suppliers.
9. Assets.
10. Financial Information.
11. Other information about the taxpayer, the taxpayer's business, its competition, etc.

Many collection tools are available using the Internet. The following list highlights some commonly accessed collection tool websites; however, this list is not intended to be comprehensive. Hyperlinks to these websites, and others, are available under eBOE "Collection Tools Over the Internet" at <http://eboe/eboe3/acms/collect.cfm>.

Some available sections include:

- Search Engines and Directories
- Government Resources
- Legal Search Sites
- Phone Directories/People Finders
- Maps/Vehicle Pricing/Misc.

SECRETARY OF STATE INFORMATION**720.025**

The following information may be obtained from the Secretary of State's Office at <http://www.ss.ca.gov>:

1. All articles of incorporation filed in the state relating to businesses, associations, insurance companies and churches. Relevant information in the Articles of Incorporation include:
 - a. Corporate number.
 - b. Date of incorporation.
 - c. Status of the corporation.
 - d. Date of last complete statement by the officers.
 - e. Type of stock.
 - f. Corporate name and address.
 - g. Corporate name change (if applicable).
 - h. President and agent name and address.
 - i. Merger date and name of surviving corporation (if applicable).
2. All name changes of persons certificated by County Clerks.
3. All conveyances of title made to the state.

SECRETARY OF STATE INFORMATION

(CONT.) 720.025

4. Record of foreign corporations qualified to conduct business in the state.
5. Record of Notaries Public licensed to do business in the state.
6. Record of annual (April 1) filing of domestic corporation's list of officer's names and addresses (non-profit domestic corporations need to file only every five years or when there is a change in officers).
7. Agent for service of legal process in California (name and address).
8. Attorney for Corporation (name and address).

Requests for hard copies of a Statement of Officers or Articles of Incorporation are sent to the Centralized Collection Section (CCS), on Form BOE-877, *Request for Corporate/Limited Partnership Information*, which is then forwarded to the Secretary of State's Office.

FINANCING INFORMATION — UNIFORM COMMERCIAL CODE**720.027**

The Uniform Commercial Code (UCC) allows creditors to perfect liens on specified personal property in all California counties by filing, at a single location, a Financing Statement describing the property. Transactions involving UCC filings may be conducted online at the Secretary of State's website. A district office that levies on personal property and receives an allegation of priority from a third party pursuant to the UCC can verify the alleged information through the Secretary of State's office.

The UCC includes provisions to assist lenders or secured parties in dealing with borrowers who move their chattels and inventories across county and state lines. The UCC deals with chattel mortgages, consignments, conditional sales, trust receipts, inventory liens and assignments of accounts receivable and provides for centralized filing of financing security information with the Secretary of State's office. For example, when a bank finances a business, the bank will file a Financing Statement with the Secretary of State's office instead of filing a chattel mortgage in the County Recorder's office.

The lender or secured party files the Financing Statement on Form UCC-1 and generally keeps the security agreement in its possession. The term "security agreement" replaces the terms "chattel mortgage, trust receipt, consignment, assignment, pledges," etc. Form UCC-1 is a brief statement or abstract containing the descriptive essentials of the security agreement. When there is a continuation, release, assignment, termination, or other change to the Financing Statement, a Form UCC-3, Financing Statement Change, is filed.

As a general rule, Financing Statements will be filed in the Secretary of State's office in Sacramento. The following transactions are exceptions:

1. Collateral such as timber, farm products, farm crops, or contracts relating to farming, are filed in the County Recorder's Office.
2. Conditional sales contracts on consumer's goods do not need filing.
3. The DMV records changes to the legal title for motor vehicles and equipment used on the highway.
4. Under certain conditions, the legal title to a mobilehome is filed with the Department of Housing and Community Development.

Requesting Information or Copies

When compliance personnel need to determine whether a taxpayer has loans or encumbrances on personal property and the information on the Secretary of State's website does not provide sufficient information, a BOE-426-U, *Request for Information or Copies*, may be completed and sent to the CCS to request the information from the Secretary of State's office.

CCS will forward the information response or copies of statements to the requesting office as soon as they are received from the filing officer at the Secretary of State's office. If no record is available, the request form will be so noted and a copy will be returned to the requester. Requests for certified copies (formerly called "Gold Seal" copies) to be used as evidence, or for hand-carried requests, are also made directly to the CCS using Form BOE-426-U.

ACCESSING INFORMATION FROM EXTERNAL AGENCY DATABASES 720.030

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

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

Resource Person Guidelines

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

5. Unless there is an extenuating circumstance, such as litigation of a case, all requested FTB, EDD, and DMV documents must be returned to the Resource Person upon completion of the case for which they were requested, or when their retention is no longer necessary. Resource Persons will promptly destroy the returned documents in a confidential manner and enter the destruction date in the EAT system.
6. Credit bureau reports requested through the EAT system will not be returned to the Resource Persons, but will be confidentially destroyed by staff upon the completion of the case for which they were requested or when their retention is no longer necessary. It is not necessary to enter a destruction date for credit bureau reports.
7. The EAT system must be updated with the destruction date of all printouts. This includes situations where database information is printed in one month but is not destroyed until the following month (or later). A list of all undestroyed documents older than three years is generated through the EAT system. Supervisors are responsible to periodically review the list to determine if a need still exists to retain the material. The Internal Audit Division (IAD) conducts periodic reviews to ensure that printouts of information are confidentially destroyed and the destruction is properly documented by the Resource Person(s).

Requestor Guidelines

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

1. Using the EAT system, the Requestor enters the request for information in the "Enter an Access Request" area and then clicks on "Submit." The applicable Resource Person will receive an e-mail notification that a request has been submitted. The "Enter Online Accesses Made" link must only be used by those in pre-defined situations (e.g. CUTS) who are authorized to access information on their own cases.
2. The requestor of the search must request information **only** from the authorized Resource Person(s) within the requestor's office/section/area of responsibility. Also, because FTB, DMV, EDD, and credit report Resource Persons often are not the same individuals, requestors may need to send separate requests to more than one Resource Person. For example, a request made for DMV information from an FTB Resource Person will not be carried out and must be returned to the requestor for proper routing.
3. The requestor must complete a separate request for each "person" (individual, corporation, partnership, or each individual partner of a partnership).
4. The EAT system provides a list of request "purpose" options. If the purpose of the request is not found in the options provided, the requestor must select "other" and enter an explanation of the purpose for the request.
5. Documents may be retained for valid business reasons including, but not limited to, write-off account reviews, quarterly collection reviews, dual determination investigations, petitions, claims for refund, and for training purposes. During the time the documents are retained, they must remain attached to the casework in a secure area to prevent unauthorized access. When retention of the documents is no longer necessary, FTB, EDD, and DMV documents are to be promptly returned to the EAT Resource Person for confidential destruction. Credit bureau reports will be promptly and confidentially destroyed by BOE staff.

6. External agency information obtained through the EAT system is confidential and is protected from disclosure by law, regulation, and policy, as is all other taxpayer information. This information is to only be used for valid BOE-related business purposes.
7. Federal tax information (FTI) never loses its identity. Federal tax return information may accompany the FTB documents provided. If a collector receives FTI from any source and transcribes the data into notes, the Internal Revenue Service (IRS) still considers the transcribed notes to be FTI even if the original document is destroyed. ACMS has an IRS Summary feature under which the user must record any FTI documented. It is crucial for the user to properly record FTI data using the IRS Summary. Documents may be confidentially retained until there is no longer a business need to retain them.

Supervisor Review Guidelines

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

PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE INTERNAL REVENUE SERVICE (IRS)

720.031

Federal Tax Information (FTI) is any information provided by IRS regarding a taxpayer including, but not limited to, information provided on federal income tax returns, quarterly federal tax returns, and annual federal unemployment tax returns. All data contained in the returns such as ownership information, personal and business addresses, and revenue and expense information is considered FTI.

The following are considered FTI:

- Original records received from IRS in both paper and electronic form.
- Copies of information received from IRS in both paper and electronic form.
- Data transcribed from IRS documents into any database, audit working papers, written and electronic forms or correspondence such as, but not limited to, levy letters.
- The printing of FTI from external agencies. The IRS has authorized the BOE to access and print FTI in the FTB's online databases. The FTB has flagged the FTI information that is contained on screens in the online databases as required by IRS Publication 1075. When a resource person accesses FTB information on FTB's online databases (TI, "Taxpayer Information System" and BETS, "Business Entity Tax System") and prints IRS information contained on screens of the databases, it is considered FTI.

There are two options for obtaining FTI from the IRS:

1. Transcript Delivery System (TDS)
2. Photocopies of IRS income tax returns

TDS provides transcripts to the Board of Equalization (BOE) electronically and is generally available within two weeks of the IRS receiving the request. Processing of requests for photocopies may take several months. Most FTI should be obtained by the TDS option.

PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE INTERNAL REVENUE SERVICE (IRS)

(CONT. 1) 720.031

The following transcripts are available through TDS:

1. *Account Transcript* includes the following information:
 - Subsequent activity posted to an account after the return is filed (e.g. payments, credits, adjustments).
 - Information on the account balance, interest, and penalties.
 - Taxpayer's filing status (e.g. "married filing joint").
 - Line item information from the return such as "Adjusted Gross Income," "Taxable Income," and "Tax Per Return." The amounts shown may be "per return" or "IRS adjusted." The transcript identifies the date on which IRS processed the return.
2. *Return Transcript* contains most lines from the original return, including attached forms and schedules. The transcript contains both the "per return" and "IRS adjusted" entries. It does not contain subsequent activity on the account. Return transcripts are available for returns filed during the current and three prior tax years.
3. *Record of Account* includes both the "Account Transcript" and "Return Transcript" information, and is available for returns filed during the current and three prior years.
4. *Wage and Income Documents* shows income reported by taxpayers on forms such as W-2 and 1099. Wage and income information are only available for individual tax returns. Wage and Income documents are only available for wages and income earned during the current and ten prior years.

Requesting FTI

Requests for FTI under either option noted above should only be made when the information is not available from FTB or any other sources. A request for FTI should be made using a BOE-33-B, *Request for Federal Tax Information*.

The following information should be included on the BOE-33-B:

- Taxpayer's name and address.
- BOE account or reference number.
- Taxpayer's social security number (if requesting individual income tax returns).
- Spouse's name and social security number (if known) when requesting individual income tax returns. Include the spouse's name if both the husband and wife are on the permit, if attempting to locate community property assets, or if there is evidence the spouse was involved with the business but is not listed on the permit.
- Federal Employer's Identification Number (FEIN) must be included when requesting partnership or corporate information.
- Write in the specific IRS form number(s) filed by the taxpayer. A complete list of available forms is provided in Exhibit 1. However, the following forms most commonly requested are:
 - (a) 940-Employer's Annual Federal Unemployment Tax Return
 - (b) 941-Employer's Quarterly Federal Tax Return
 - (c) 1040-U.S. Individual Income Tax Return
 - (d) 1065-U.S. Partnership Return of Income
 - (e) 1120-U.S. Corporate Income Tax Return

COLLECTIONS

PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE INTERNAL REVENUE

SERVICE (IRS)

(CONT.2) 720.031

- Requesting unit, name of requestor, date of request, name and title of the approver, date approved, and signature (see the third bulleted below).
- The procedures for electronic handling of the BOE-33-B are as follows:
- The Requestor will complete the BOE-33-B (except for the items to be completed by the approver as explained below).
- The Requestor will send the completed BOE-33-B for approval via email. The BOE Exchange of Information list contains the names of BOE staff within the district and headquarters unit or section, authorized to request, receive, and disclose tax information on behalf of BOE (approver). The approver is generally the District Administrator, District Principal Auditor, District Principal Compliance Supervisor or headquarters section supervisor.
- The approver will complete the section of the form titled “Approved By,” “Title,” and “Date Approved.” In lieu of a signature, the approver will type in their name followed by the word “emailed” in parentheses on the “Approved By” (signature) line.
- The approver will email the completed BOE-33-B to the *SUTD-FTI Custodian mailbox*. The approver must use the unique District / Section Identifier in the subject line of the email sent to the SUTD-FTI Custodian Mailbox. The unique identifier format will include the district or section letters and a number sequence. For example: Sacramento District Office would be KH 00001. The email from the approver documents the approver’s signature.
- The unique identifier must be included on the district’s FTI request log.

Processing FTI

The Compliance Program Analysis Section (CPAS) is responsible for maintaining the SUTD-FTI Custodian mailbox and IRS Tracking Database, as well as processing FTI requests. The procedures for processing FTI requests are as follows:

- Check the SUTD-FTI Custodian mailbox for incoming BOE-33-B requests.
- Verify that the person who approved the request is included in the BOE Exchange of Information list.
- Process the request and send the Requestor FTI materials in a double sealed envelope marked “Confidential.”
- The IRS Tracking Database sends an email to the District Administrator, HQ-SUP or their designee notifying them the FTI has been mailed.
- The FTI materials consist of the following documents:
 - o TDS transcripts, photocopies of IRS returns, or IRS letters (FTI documents).
 - o BOE-33, *Records of Authorized Examination of Federal Income Tax Returns*.
 - o BOE-85, *Inspection or Disclosure Limitations (Federal)*.
- If the request is for “Photocopy of Return,” enter the information on IRS Form 8796-A, *Request For Return/Information*. Send the form and a cover memo to:

Internal Revenue Service
Disclosure Scanning Operation Stop 93A
PO Box 621506
Atlanta, GA 30362-3006

PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE INTERNAL REVENUE

SERVICE (IRS)

(CONT.3) 720.031

- Maintain the *IRS Tracking Database*. The database documents all activities that occur in the process of issuing and destroying FTI materials. The required actions and the related database requirements are shown on the *FTI Actions & Database Activity Table* (Exhibit 2).

Receiving FTI

Upon receipt of the FTI materials in a double sealed envelope marked “Confidential” from CPAS, the Requestor must confirm receipt via email to the SUTD-FTI Custodian’s mailbox. The date of the email is entered into the database in the “District Acknowledgement” section.

Safeguarding FTI

The BOE has a statutory obligation to protect FTI from unauthorized access and disclosure under the Internal Revenue code (IRC § 6103(d)). In order to comply with the IRS information safeguarding requirements, BOE-85, *Inspection or Disclosure Limitations (Federal)*, must be attached to flag any page within BOE files that include FTI. It is not necessary, however, to attach a BOE-85 to income tax returns received from someone other than the IRS, such as the taxpayer.

The requestor is personally responsible for safeguarding the FTI documents. When staff is in possession of FTI, it is critical that the information is treated with the utmost security and confidentiality. Only staff with a business reason to view the information may access it. If the information is examined for any reason, the viewing must be documented as follows:

Hard-Copy Documents

A BOE-33 must be attached to all hard-copy documents and reports containing FTI (including, but not limited to paper documents, audit working papers, etc.). Any person inspecting the document must complete the *Date, Purpose of Examination, Signature of Board Representative, and Employee Number* fields. The form must be signed by the District Administrator or Headquarters unit or section supervisor.

Electronic Documents

The viewing or examining of electronic documents containing FTI including, but not limited to, documents on electronic media (e.g. CD-Roms (CDs), flash drives) must be documented in the *FTI Tracking Log*. To begin the entry, select *Add New Request* and complete the required fields.

Storage of Hard-Copy and Electronic Documents

While the hard-copy documents, reports, and documents on electronic media are in the possession of staff, they must be stored in a separate, locked cabinet during all times when not being examined by staff. CDs and flash drives must have a label indicating that FTI data is stored on them.

FTI in ACMS

When accessing the “IRS Address Detail” or “IRS Levy Detail” screens in ACMS, the user is presented with a warning banner that reads “CONFIDENTIAL IRS DATA.” ACMS has an IRS

Summary feature in which the user must record any FTI. It is crucial for the user to update ACMS and properly record FTI data using the IRS Summary.

Levy Letters Containing FTI

Levy letters that contain information from IRS are considered FTI. The following information may be noted on levy letters:

- Tax Debtor's SSN or FEIN
- Tax Debtor's address
- Tax Debtor's "aka" or "dba"
- Tax Debtor's spouse (name, SSN, address)
- Sources of income (Banking institutions, Financial institutions, Sources of Independent Contractor income, Insurance policies, etc.)

Levy letters that contain this type of information from IRS must be documented in the FTI Tracking Log.

Audits Containing FTI

Digital audits stored on the J: drive, archived on CDs, or uploaded to the Audit Archive must be identified if they contain FTI. To do so, the file folder should utilize the following naming convention: District Code_Case Number_Taxpayer Name_FTI. CDs must be encrypted and labeled as FTI. In addition, if viewing digital audits with FTI information, you must enter the viewing information on the FTI Tracking Log.

Destroying FTI

When hard copy documents, including transcribed notes, levy letters and *Memorandum of Garnishee*, that are provided to BOE are no longer needed, they must be forwarded to the supervisor of CPAS (MIC 02) in a double sealed envelope marked "Confidential" for destruction. In addition, an email must be sent to the SUTD-FTI Custodian's mailbox confirming the FTI materials are being returned for destruction. The date of the email is entered into the database in the "District Return Notification" section. When CPAS receives the FTI materials and BOE forms, they date stamp the envelope and enter the date returned in the database "Received from District" section.

The FTI materials will be destroyed with the approved shredder located in CPAS.

FORMS AND SCHEDULES AVAILABLE FOR TDS

TRANSCRIPT BY ENTITY TYPE

EXHIBIT 1

Account Transcript		Return Transcript		Record of Account		Wage and Income	
Individual	Corporation	Individual	Corporation	Individual	Corporation	Individual	Corporation
1040	1141	1040	1065	1040	1065	1042-S	N/A
3250A	1141A	1040A	1120	1040A	1120	1098	
5329	1141QFT	1040EZ	1120A	1040EZ	1120A	1098-C	
706	1042	1040NR	1120H	1040NR	1120H	1098-E	
706GS(D)	1065	1040REZ	1120L	1040REZ	1120L	1098-T	
706NA	1065B	1040SS/PR	1120S	1040SS/PR	1120S	1099-A	
709	1066					1099-B	
709A	1120					1099-C	
8288	1120A					1099-CAP	
Civil Penalty	1120C					1099-DIV	
Sep. Assessment	1120F					1099-G	
	1120FSC					1099-H	
	1120H					1099-INT	
	1120L					1099-LTC	
	1120ND					1099-MISC	
	1120PC					1099-MSA	
	1120POL					1099-OID	
	1120					1099-PATR	
	REIT					1099-Q	
	1120RIC					1099-R	
	1120S					1099-S	
	1120SF					5498-ESA	
	11C					5498-IRA	
	2290					5498-MSA	
	4720					8805	
	5227					All Forms	
	706GS(D)					K-1 1041	
	706GS(T)					K-1 1065	
	720					K-1 1120S	
	730					SSA- 1099	
	8288					Summary	
	8752					W-2	
	8804					W-2G	
	940					W-4	
	940EZ						
	941						
	943						
	944						
	945						
	990						
	990C						
	990EZ						
	990PF						
	990T						
	CT-1						
	Civil Penalty						

FORMS AND SCHEDULES AVAILABLE FOR TDS
TRANSCRIPT BY ENTITY TYPE

Action	Database Requirement
Process Form BOE-33-B.	Create entry on the IRS Tracking Database.
When FTI materials are received, send the FTI materials and forms BOE-33 and BOE-85 in a double-sealed envelope marked "Confidential" to the requesting office.	Click on "Email Menu," then "Notify District – Items Have Been Mailed" on the database. Verify that the FTI materials displayed in the database email match the hard copy by selecting "Preview" then "Send Email." The system sends out an email to the District Administrator, HQ-SUP or their designee notifying them the FTI has been mailed.
The Requestor acknowledges receipt of the FTI via email.	Enter the date of the email in the database "District Acknowledgement" section.
If no email is received from the Requestor acknowledging receipt of materials within two weeks of mailing, a follow-up email should be sent.	In the database email menu select "Fourteen Day Follow-up (No Acknowledgment)." The system will send an email to the appropriate party requesting an update. In addition, in the database "Comments" section, enter the date, coordinator initials, and a note that a follow-up email has been sent requesting acknowledgement of receipt of FTI materials.
The Requestor notifies CPAS via email that the FTI materials and BOE forms are being returned for destruction.	Enter the date of the email in the "District Return Notification" section.
Receive the FTI materials and BOE forms.	Date stamp the envelope and enter the date returned on the database "Received from District" section.
Destruction of all hard copy FTI materials and BOE forms in compliance with IRS Publication 1075.	Enter the date of destruction in the database "Destruction Date" section.

DEPARTMENT OF MOTOR VEHICLES – PICTURES/PHOTOGRAPHS**720.032**

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

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

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

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

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

Initiating a Request

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

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

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

Approving or Denying the Request

To approve or deny the request, the supervisor will:

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

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

Processing Requests Returned from DMV

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

Sharing DMV Information with other Agencies

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

Record Retention and Destruction

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

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

DEPARTMENT OF CORRECTIONS AND REHABILITATION INFORMATION 720.033

Staff can contact the California Department of Corrections and Rehabilitation to obtain information about whether a taxpayer is incarcerated and the facility of incarceration. Information is also available regarding whether the taxpayer is on parole in California, and where he or she can be contacted.

This information is obtained by calling the office of the Assistant Information Officer at (916) 445-6713. Information on only three offenders is allowed per telephone request. If information on more than three offenders is desired, send a fax request to (916) 322-0500.

When requesting information, be prepared to provide the taxpayer's full name and date of birth. Please note that it takes seven days to obtain information about newly incarcerated persons or prisoners who have been transferred between state correctional facilities.

OTHER AGENCY SECURITY DEPOSIT INFORMATION 720.035

Other agencies, including agencies, boards, etc., regulated by the Department of Consumer Affairs require a licensee to post a security deposit. The security may be, and usually is, posted in the form of a surety bond. Other acceptable forms of security are cash, savings and loan passbooks, or Bank Time Certificates of Deposit. The exact requirements as to the amount of the required security deposit vary between agencies, boards, etc., and may be determined by referencing the appropriate section(s) of the Business and Professions Code. Usually, a security deposit is retained for a period of time after the termination of a Other business, pending demands of the agency or the public that was served. For example, the Contractors State Licensing Board and the Department of Motor Vehicles do not release their bonds for three years.

The agencies listed below require an applicant to post a security deposit:

1. Department of Motor Vehicles
2. Athletic Commission.
3. Cemetery Board.
4. Collection and Investigation Services.
5. Contractors State License Board.
6. Structural Pest Control.

If a security deposit is a surety bond, the agency or board can furnish the name of the company that issued the bond and the bond number. Sometimes taxpayers have deposits held by surety companies that can be levied upon. Be aware that in most cases the BOE cannot make demand on surety for a bond in another agency's name (for information about making a demand on surety, see CPPM 735.030). However, companies that issue surety bonds usually require an applicant to provide a detailed financial statement along with his or her signature on the bond. If the BOE files a lien against a taxpayer, the information of the debt is a matter of public record that can be revealed to the company. In turn, the company can be asked to provide the BOE with the information from the financial statement.

For security deposits other than a surety bond, a request for offset may be made. Government Code sections 12419.4 and 12419.5 provide that the state has a lien on any funds owed by a state agency to a person who owes an amount to another state agency. In order to enforce the lien, it is only necessary that the agency to whom the money is owed notify the other agency in writing of the amount due and request that the payment to the debtor be "offset."

OTHER AGENCY SECURITY DEPOSIT INFORMATION**(CONT.) 720.035**

To request an offset for a security deposit held by another agency, send Form BOE-200-A, Special Procedures Action Request to SPS via ACMS when asserting a lien under the above sections of the Government Code. At a minimum, the Form BOE-200-A should contain the following information:

1. The name, address and account number of the person owing the liability,
2. The type of security deposit for which the offset is being requested (other than a surety bond),
3. The amount of offset requested to satisfy the liability, and
4. The name and address of the agency holding the security deposit.

DEPARTMENT OF HEALTH SERVICES OFFSET REQUESTS**720.036**

The Department of Health Services (DHS), which administers the Medi-Cal program, annually distributes over \$4 billion in payments to California healthcare providers. The Medi-Cal program includes physicians, dentists, chiropractors, optometrists, pharmacies, hospitals, ambulance services and retailers of hearing aids, prosthetic devices, wheel chairs, etc.

Healthcare provider participation in the Medi-Cal program can be confirmed through the DHS Provider Enrollment Section, (916) 323-1945. The provider must be identified by Social Security Number and/or federal identification number, and most recent address.

Use Form BOE-200-A in ACMS to send requests to offset funds being disbursed by DHS to SPS, which will request offset under the provisions of Government Code section 12419.5.

TITLE REPORTS — DISTRICT OFFICE OR HEADQUARTERS UNITS**720.037**

Most title companies will provide title information without charge upon request. When a taxpayer, or another source, provides real property information that cannot be verified through the county assessor or recorder's records because of variations in ownership listings, these unofficial reports may eliminate the need to order a title report.

However, if ordering a title report is necessary, the district office making the request from the title company will also send two copies of the order, one copy to SPS and one copy to the Financial Management Division.

STATE CONTROLLER'S OFFICE**720.038**

Property, such as dormant bank accounts, are often escheated to the State and held in trust by the State Controller's Office. Property escheated under the Unclaimed Property Law may only be claimed by the person who had legal right to the property prior to its escheat, his or her heirs, or his or her legal representative. Code of Civil Procedure (CCP) section 1540(e). Title to such property remains vested in the State until such claimant appears and claims it (CCP section 1300(c)).

Property escheated to the State is not subject to levy or garnishment by creditors of the original owner. In no case should staff serve a levy to any State agency in an attempt to reach these types of funds or for any other purpose. When funds are held for the taxpayer by another agency, the proper procedure is to notify the appropriate agency and request that funds being held by that agency on behalf of the taxpayer be offset to the BOE. However, the offset process cannot be used for escheated unclaimed funds or other trust funds.

POST OFFICE INFORMATION**720.039**

Forwarding addresses may be secured by mailing the taxpayer a letter directed to the last known address with a statement "Address Service Requested" entered below the BOE's return address in lettering large enough to be readily visible.

Form BOE-53, *Postal Service Letter*, may also be used in obtaining addresses from the post office. If Form BOE-53 is incorrectly prepared or is sent to the wrong post office, the postmaster will return the request, specifying the deficiency in the space marked "Other". Do not submit requests in duplicate.

Instructions for submitting requests for address information:

1. Address the request to the postmaster at the post office of last known address.
2. List the taxpayer's account number and the date the request is submitted.
3. On the lines provided, list the taxpayer's name and the last known address, including zip code.
4. Form BOE-53 should be signed by an authorized person.
5. Type or stamp the BOE office return mailing address in the space provided at the bottom of Form BOE-53.
6. Mail Form BOE-53 to the postmaster at the post office of last known address.
7. Enclose a pre-stamped return envelope or E-11 Business Reply envelope for any request.

In answering a request for taxpayer address information, postmasters will provide one of the following responses:

1. Mail is Delivered to Address Given: the address the BOE provided is verified by the postal service as one to which mail for the taxpayer is currently being delivered.
2. Not Known at Address Given: mail for the taxpayer is not currently being delivered to the address given.
3. Moved, Left No Forwarding Address: the addressee is believed to have moved and has not provided the post office with a change-of-address order. The address is verified as one to which mail for the taxpayer is not currently being delivered.
4. No Such Address: the address given is nonexistent.
5. Other (Specify): as appropriate, postmasters will provide other responses such as "Returned — Sent to Wrong Post Office," "Addressee is Deceased," "Address Given is Insufficient," etc.
6. New Address: if the addressee has submitted a change-of-address order, the new forwarding address will be provided.
7. Boxholder Street Address: if the last known address is a post office box, the taxpayer's street address, as shown on USPS Form 1093, *Application for Post Office Box or Call Number*, will be provided. The location of rural route boxes is public information. Post offices usually have route maps posted in the lobby. Under some circumstances, post offices are authorized to give names and addresses of box holders when the box is being used to solicit business from the public. Staff should discuss individual cases with the local postmaster. Section 261.24 of the Postal Manual contains some directions on this subject.

FINANCIAL INSTITUTION RECORD MATCH (FIRM)**720.040**

The FIRM program matches tax debtors' social security numbers (SSNs) and federal employer identification numbers (FEINs) against accounts held at participating financial institutions (banks, credit unions, insurance, and brokerage companies). Financial information obtained through FIRM is available in our Automated Compliance Management System (ACMS).

Once FIRM matches our tax debtors' files, the financial information will be displayed in ACMS through the FIRM *Fast-Path* button, located on the left side of the screen, or by selecting FIRM in the Account pull-down menu. More detailed information about FIRM is available on eBOE under ACMS *Cheat Sheets* at <http://eboe/iris/oeiris/cheatsheets/FIRM.pdf>.

Not all accounts in ACMS will have FIRM information. However, BOE submits SSNs/FEINs to the participating institutions every quarter and receives matching information every month, based on the size of the participating financial institution.

Please be aware that some financial information received through FIRM may be inaccurate or contain information that does not match our tax debtor. Therefore, it is important that you verify the FIRM information against our tax debtor's records before taking actions. For example, there may be instances where FIRM information on corporations or limited liability companies includes corporate officers' or managing members' personal financial information. Additionally, you may find individuals' information not related to our tax debtors' accounts as a result of wrong SSNs, FEINs and/or names entered by the financial institutions. For this reason, you will see a red banner displayed on the FIRM window asking you to ensure the bank information matches that of our tax debtor. Current policies and procedures regarding the *Notice of Levy* remain in effect and should be followed.

CONTACT AND INTERVIEW

722.000

THE COLLECTION INTERVIEW

722.020

All assignments will be performed in a professional manner. It is the BOE's policy to administer its laws and policies fairly and efficiently, with the expectation that employees will conduct themselves with dignity, integrity and courtesy. (See publication 336, *Ethics: Guidelines for Professional Conduct*.) In addition, discretion must be exercised to avoid disclosing confidential information to unauthorized parties. (See publication 353, *Information Security Requirements for Employees with Access to Confidential Information*.)

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

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

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

The collector must always be prepared to answer tax/fee payer questions about collection procedures, tax/fee payer rights, and appeal rights. Publication 54, *Tax Collection Procedures*, publication 70, *Understanding Your Rights as a California Taxpayer*, and publication 17, *Appeals Procedures – Sales and Use Taxes and Special Taxes*, contain excellent information covering these areas. The collector should also be prepared to discuss with tax/fee payers the publications available and how to obtain them. A statement directing the tax/fee payer to the BOE website to read publication 54 for information about BOE's collection procedures is on all billing notices for accounts in ACMS. Publication 54 also briefly describes the tax/fee payer's rights and appeal rights and references publications 70 and 17. Publication 54A, *Behind on Your Payment? What You Need to Know*, is a brochure that summarizes the information detailed in publication 54.

Tax/Fee Payers Questioning Liabilities

The BOE's primary ethical responsibility to tax/fee payers is to ensure that they pay no more and no less than the law requires. When a tax/fee payer questions the accuracy of a BOE assessed liability, all staff should be fully prepared to discuss with the tax/fee payer their rights and options. If differences between the tax/fee payer and staff cannot be resolved, the matter should be referred to a supervisor. If, after supervisor review, the tax/fee payer asks for review by the TRA Office, the case should be referred accordingly. See CPPM section 156.010 for guidance on when it is appropriate to refer a case to the TRA Office.

Bilingual and Hearing Impaired Interpreters Available

The BOE values fairness and objectivity in our treatment of all tax/fee payers and consistent in our administration of the law, while treating every individual with respect and courtesy. To facilitate the BOE's commitment to provide excellent service to all tax/fee payers, the Equal Employment Opportunity (EEO) Office maintains lists of bilingual employees available to assist tax/fee payers who have limited English proficiency. The EEO Office also makes arrangements to contract for interpreter services when there are no bilingual staff available for a particular language. When a tax/fee payer needs American Sign Language (ASL) or bilingual assistance, staff should contact the EEO Office at (916) 322-7639 or EEO@boe.ca.gov.

**CONTACT WITH TAXPAYERS REPRESENTED
BY COUNSEL OR OTHER REPRESENTATIVE****722.025**

In order to protect the taxpayer, it is always a good practice to secure written authorization from the taxpayer to discuss their case with a third-party representative, preferably prior to initiating any discussion or correspondence with the person claiming to be a representative of the taxpayer.

POWER OF ATTORNEY**722.026**

A taxpayer may be represented by legal counsel, Certified Public Accountant (CPA), or other representative as evidenced by a power of attorney document signed by the taxpayer, appointing a representative, which is provided to the BOE. Taxpayers may use a BOE-392, *Power of Attorney*, to document power of attorney status conveyed to a representative. In lieu of a BOE-392, BOE staff will accept any written document identified as a “power of attorney” containing substantially all of the following information:

1. Taxpayer’s name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
2. The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
3. The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative’s authority; and the tax period(s) for which the authorization is granted;
4. A statement that the power of attorney revokes all prior powers of attorney, with any exceptions to the revocation noted;
5. The time period during which the power of attorney shall be in effect; and
6. The signature(s) and title of all affected taxpayers and the date of signature.

In the event a taxpayer has submitted a power of attorney document appointing a representative, BOE staff must deal with the representative regarding all tax matters identified in the power of attorney document (unless directed otherwise by the taxpayer). However, staff should continue to be responsive to any direct communication from the taxpayer, and copy the taxpayer on all written correspondence sent to the representative, where appropriate.

If the representative has demonstrated a repeated failure to respond to inquiries or requests from staff, especially regarding issues that are time sensitive and require immediate action, staff may, after consulting with a supervisor, contact the taxpayer directly. All actions or correspondence must be fully documented in the Automated Compliance Management System (ACMS).

The decision to contact the taxpayer directly should be based on the representative’s degree of cooperation with BOE staff and the taxpayer’s compliance with the BOE action(s) that are requested through the representative. All subsequent contacts with the taxpayer and the taxpayer’s representative must be fully documented in ACMS case notes to protect against potential claims or allegations of harassment. In situations requiring personal contact with the taxpayer, a supervisor or lead person may participate in a conference call with the collector and the taxpayer or may accompany the collector when meeting with the taxpayer to assist in conducting difficult negotiations.

If the taxpayer, or his or her representative, has obtained a restraining order forbidding contact by the BOE, staff must comply with the order. In such cases, the Chief of Field Operations Department, the Internal Affairs Division, and the Chief Counsel should be notified of the restraining order for appropriate action.

CORRESPONDENCE WITH TAXPAYER REPRESENTATIVES**722.027**

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

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

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

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

DISCLOSURE OF CONFIDENTIAL INFORMATION TO TAXPAYER REPRESENTATIVES WITHOUT WRITTEN AUTHORIZATION**722.028**

The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibit BOE staff from disclosing confidential taxpayer and feepayer information to any unauthorized persons regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests before the BOE. (See CPPM section 135.074 for detailed information on the IPA.)

Confidential information contained in BOE records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the BOE. Requests for information of a confidential nature should be referred to a supervisor. (See CPPM, section 140.000, *Exchanges of Confidential Information*.)

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO TAXPAYER
REPRESENTATIVES WITHOUT WRITTEN AUTHORIZATION****(CONT.1) 722.028**

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, status of permit (i.e., active/inactive), and tax area code. This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides in part that the BOE may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the RTC.) Account numbers for individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) are considered confidential because an individual's account number when input into the resale verification function on BOE's website would reveal an individual's name and address, which is considered confidential. Staff should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

The procedures for handling public requests for information, including requests for Statements of Economic Interests (SEI) — Form 700, are addressed in Publication BOE-20, *What You Need to Know About Requests for Information*, available on eBOE.

Requests by a taxpayer's representative for information and records under the IPA and the California Public Records Act (PRA) will be guided by the following policy:

A taxpayer's representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

Conditions for Disclosure of Information

Generally, a written authorization such as a valid power of attorney (see CPPM section 722.026) is required to provide information about a taxpayer's account or to discuss a taxpayer's account with an authorized taxpayer representative. However, there are some situations where exceptions to this general rule are permitted.

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in IRIS and, if applicable, the Automated Compliance Management System (ACMS). Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

Verbal Authorization by the Taxpayer

Verbal authorization by a taxpayer to discuss his or her case with an authorized representative may be accepted by BOE staff over the telephone or in person. In either situation, proper identification must be furnished by the taxpayer to the BOE.

If the authorization is by telephone, staff must first verify the identity of the taxpayer by use of a driver's license or social security number through IRIS and/or ACMS before accepting the verbal authorization. If the authorization is in person, staff must ask for identification, such as a driver's license, Department of Motor Vehicles identification card, or any other document which establishes his or her identity.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information documented in IRIS and, if applicable, ACMS:

- Name, address, telephone number of the authorized representative,
- Specific subject matters that may be discussed with the representative, and
- Duration of the authorization.*

***Note:** Staff should inform the taxpayer that the verbal authorization will be limited to 30 calendar days, unless the taxpayer requests a shorter period of time. Staff should advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization for longer than 30 calendar days.

It is important to clearly establish what subject matter may be disclosed to the authorized representative. For example, if a taxpayer that has a seller's permit as a sole proprietor calls a BOE staff member regarding a bank levy that attached community property funds in the spouse's separate bank account and authorizes staff to discuss the circumstances relating to the levy with the spouse, staff may explain the reason for the levy and general information regarding levies and community property laws but may not provide any other confidential information to the spouse (e.g., the accounts receivable balance, payment history, delinquencies) without specific authorization from the taxpayer.

Before providing confidential taxpayer information to an authorized representative over the telephone, staff should verify the identity of the caller by requesting the name, address, and telephone number and matching it with the information provided by the taxpayer and noted in IRIS and, if applicable, ACMS. When the authorized taxpayer representative appears in person at a BOE office, their identity must be verified by examining their driver's license, Department of Motor Vehicles identification card, or other form of valid identification and compared to the information noted in IRIS or ACMS.

Authorization by Possession of Agency Forms, Documents, or Correspondence

Pursuant to Civil Code section 1798.24 (c), confidential taxpayer information for accounts registered to individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) may also be provided to a person representing the taxpayer if it can be proven with reasonable certainty through the representative's possession of agency forms, documents, or correspondence that this person is the authorized representative of the taxpayer. Agency forms, documents, or correspondence may include, but are not limited to, notices of determination, collection or delinquency notices, taxpayer's copy of a notice of levy, or other forms or correspondence addressed to the taxpayer.

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO TAXPAYER
REPRESENTATIVES WITHOUT WRITTEN AUTHORIZATION****(CONT.3) 722.028**

However, before releasing confidential taxpayer information, staff should attempt to verify the person in possession of the forms, documents or correspondence is the taxpayer's authorized representative. This verification can be done through a review of BOE records, (e.g., IRIS, ACMS) or by telephoning the taxpayer. If staff is unable to contact the taxpayer and is unsure whether a person is truly an authorized representative, including the spouse of a taxpayer, staff should request that the person provide written authorization from the taxpayer. If there is any doubt, confidential taxpayer information should not be provided. The following two scenarios are provided for example:

1. A person visits a BOE office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by the BOE in the taxpayer's name. The person states that certain payments made by the taxpayer were not credited to the taxpayer's account and requests a record of all payments made during the last three months on the taxpayer's account. If there is no record in IRIS or ACMS indicating the person is an authorized representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, staff should not provide the information.
2. The same situation as above, except BOE staff is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer, and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has knowledge of the account and the documentation is sufficient to indicate that the person is the authorized representative of the taxpayer.

Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter of the taxpayer's issue(s), their business name, and/or account number, but who may not have been asked by the taxpayer to represent them. An example of a speculative inquiry is a caller who knows the taxpayer's account number, but asks to verify the taxpayer's address or reported gross sales from a previous quarter. Assuming there is no record the taxpayer is being represented by the caller, the reported gross sales information cannot be provided, and if the account is coded S (Sole Proprietorship), M (Husband and Wife Co-ownership), or N (Registered Domestic Partnership), the address information also cannot be provided to that person.

Confidential taxpayer information should not be provided in response to questions that are unrelated to the actual forms, correspondence, or documentation in the possession of the person, without written or verbal authorization from the taxpayer. For example, information relating to amounts reported on tax returns or matters related to an audit cannot be provided to a person claiming to be an authorized representative based on the person's possession of a delinquency notice addressed to a taxpayer. All requests should be carefully examined and/or analyzed before inferring with reasonable certainty that the person is the authorized representative of the taxpayer.

Information Requiring Written Authorization

Requests by taxpayer representatives to examine or receive copies of taxpayer account information, correspondence, or other documents require written authorization by the taxpayer, except under the following circumstances:

1. A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing information, however, staff should check IRIS or ACMS to ensure the representative was not terminated by the taxpayer.
2. Taxpayer directed — Written authorization is not required when supplying copies of audit working papers to the taxpayer's bookkeeper or accountant when the taxpayer directed the BOE to contact the taxpayer's bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
3. Oral inquiries — Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by the BOE to represent the taxpayer. Most oral requests are for an informal review of working papers before the audit is transmitted to Headquarters — generally when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer's business name or account number, but have not been asked by the taxpayer to represent them. Staff should check the taxpayer's file and the appropriate IRIS screens to verify the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)
 - Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or CPA's relationship with the taxpayer. If the only information available on IRIS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.
 - Requests for copies of district, appeals, and central files must be obtained in writing.

Without written authorization from the taxpayer, a person purporting to represent the taxpayer should not be permitted to close a taxpayer's account or change a taxpayer's address or ownership information. Only under limited circumstances may federal tax information be provided to a taxpayer representative with a power of attorney. Staff must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

CONDUCTING THE INTERVIEW**722.030**

The objective of every contact with the taxpayer is to obtain full payment of the liability. Therefore, the representative must be in firm control of the interview from the very start. The representative should impress upon the taxpayer the seriousness of failing to pay immediately and apprise the taxpayer of the consequences for nonpayment. If payment is not forthcoming, the collector does not need to disclose the specific collection action(s) that will occur to enforce compliance.

Prior to contacting the taxpayer, it is helpful to outline a plan for working a collection case. A typical plan should include a timeline and intended actions such as the following:

Within 10 working days from date of assignment:

1. Confirm the identity of the owner(s).
2. Contact the owner, partners, or corporate officers.
3. Create a sense of urgency on the part of the taxpayer to clear the problem.
4. Give the taxpayer all the information necessary to clear the assignment.
5. Ask for payment in full on accounts receivable.
6. Ask for returns on delinquent or revoked accounts and give a specific due date. Make a reasonable effort to get the taxpayer to file returns before a Compliance Assessment (CAS) is prepared to estimate the liability. (Note: current policy is no more than two CAS's in any 12-month period).
7. Contact third parties such as accountants or business managers when requested and authorized but in such cases you should make it clear to the taxpayer that the taxpayer remains responsible for the correction of the problem, including failure of the third party to comply.
8. Do not allow third party delays. If the problem is not corrected or delays continue you must contact the principal.

During the first contact:

1. Verify ownership information.
2. Obtain pertinent collection/delinquency information. Example: banks, accounts receivable, suppliers, etc.
3. Personally serve the *Notice of Revocation* at your first in-person contact with the taxpayer, whether in the office or the field (document the service for possible prosecution).
4. Explain RTC section 6071 and advise the taxpayer to surrender the permit until the account is reinstated.
5. Set definite dates and times for compliance.
6. If practical, write down your agreement with the taxpayer and provide him or her with a copy.

Immediately After Contact:

Document all contacts and actions in the case notes. Minimize abbreviations and avoid slang. Do not include derogatory or personal comments about taxpayers or staff.

Minimum documentation must include:

1. Date of contact.
2. The name and title of the person contacted.
3. The actions that were agreed upon or that will be taken.
4. When performance is expected, including date and time.
5. An intended follow-up date.

Set Deadlines for Action or Information & Establish Follow Ups:

Time expectation: Follow-ups should range from immediately to a maximum of two weeks, depending upon the nature of the request unless extenuating circumstances are documented.

Follow-up procedure: Taking appropriate action(s) reflects favorably on the professionalism of the representative and is necessary to sustain a sense of urgency on the part of the taxpayer to resolve the problem. The key to prompt action is the use of an effective follow-up system to monitor deadlines.

1. Enter deadlines (date and time for follow up) for the next action in the ACMS case notes.
2. Set deadlines for information or taxpayer action within two weeks of contact, when appropriate.
3. Thoroughly document in ACMS case notes the reason(s) for any delay beyond the stated time expectations.

If, after discussing the case with the taxpayer, the collector is certain that full payment cannot be obtained immediately, direct questions need to be asked to secure as much information as possible regarding sources of income, available assets, and ability to pay. This information is always documented for future reference, for reporting purposes, or for the use of another staff person should reassignment of the case become necessary.

If the taxpayer cannot pay the liability in full, attempt to obtain a substantial payment on account, or a definite promise to pay at an early date. The collector must stress to the taxpayer that if payment is not made as promised, collection action will be taken to compel compliance. When a promise of full or substantial payment is obtained, the representative has an obligation to follow up with the taxpayer to make sure payment is made as promised. Failure to conduct timely follow-up actions will give the taxpayer the impression that the situation is not important to the collector.

If the taxpayer insists that payment cannot be made in full and is reluctant to enter into an installment payment agreement, do not attempt to provide the taxpayer with any legal alternatives. It is never appropriate for Board employees to offer advice regarding filing a petition in bankruptcy or to give any legal advice other than an interpretation of the tax laws administered by the BOE. Instead, the taxpayer should be encouraged to seek the expertise of a CPA, attorney, or other paid professional who is qualified to address the taxpayer's specific situation.

UNCOOPERATIVE TAX DEBTORS**722.040**

Taxpayers who are argumentative or uncooperative with regard to discussions of their tax liability should be dealt with in a firm and professional manner, and without resorting to, or assuming, a similar attitude. The collector should inform the taxpayer of:

1. The basis for the liability,
2. The taxpayer's rights, and
3. The time frame for making payment to avoid immediate collection action.

If the taxpayer remains uncooperative or argumentative, politely terminate the discussion and shift to an approach of compelling payment through appropriate active collection action(s). Be sure to note the taxpayer's uncooperative attitude in ACMS case notes and, if necessary, notify your supervisor of the situation.

In the event that the situation escalates to the point where a threat is issued by a taxpayer, or his or her representative, refer to the procedures outlined in the BOE's Threat Policy. (Board of Equalization Administrative Manual (BEAM) section 5194).

INABILITY TO PAY IN FULL**722.050**

If a taxpayer indicates an inability to pay the amount due in full, the collector should stress the advantages of making immediate full payment. The following points are often helpful in convincing a taxpayer to make payment in full immediately:

1. Not having to pay a 10 percent failure to file timely penalty if the tax amount is paid in full on or before the due date of the return,
2. Saving an additional 10 percent by not having to pay a finality penalty on a BOE-assessed liability, if the tax amount is paid in full on or before the thirtieth day after the date on the notice of determination,
3. Saving accruing interest every month on the unpaid tax balance,
4. The negative effect on the taxpayer's credit standing if a Notice of State Tax Lien or Abstract of Judgment is filed (see CPPM Section 757.000), or
5. The loss of personal property as a result of liens, levy, and seizure and sale procedures.

The collector may point out that, in addition to making a loan application with legitimate lending institutions such as banks and credit unions, taxpayers often have other sources of money available that may clear the liability. Some avenues include, but are not limited to, borrowing from friends and family members, borrowing against the equity in real estate owned by the taxpayer, refinancing vehicles, vessels or aircraft owned by the taxpayer, or paying with a credit card.

PAYMENTS TO OTHER CREDITORS**722.060**

A taxpayer may refuse to pay the BOE because payments are due to other creditors, for example, employees, vendors, other government agencies, etc. The taxpayer should not be given the impression that payments to other creditors are a higher priority than payments due to the BOE.

The taxpayer should be informed that:

1. Failure to pay sales and use tax at the time the tax becomes due and payable creates a perfected and enforceable state tax lien that includes the tax, penalties, interest, and any additional costs. (RTC section 6757),
2. Payment to other creditors will result in collection action being taken without delay, and
3. If the taxpayer is a corporation, LLC, etc., payment to other creditors can lead to the officers or other responsible parties being held personally liable. (RTC section 6829).

NOTIFICATION TO ATTORNEY GENERAL**722.070**

The Office of the Attorney General of the State of California is the legal counsel for the BOE and represents the BOE as its attorney in most cases before a court. The Special Procedures Section (SPS) may refer certain types of collection matters to the Attorney General's Office for action when requested to do so by the district offices or the Centralized Collection Section (CCS). These matters include filing a notice of lien on cause of action, objection to a third party claim or a claim of exemption, filing a suit for tax for collection against a surety or guarantor, spousal earnings withholding orders for taxes, out-of-state collection accounts, foreclosure on BOE lien, and seizures and sales of property.

To maintain a good working relationship between attorney and client, the Attorney General's Office must be notified whenever there is a change in the status of an account that the BOE has referred to it. For example, a payment received from a delinquent taxpayer in a district office must be reported to SPS so that the Attorney General's Office may be notified. The district offices and CCS will maintain controls to ensure that SPS is notified of any status changes in all accounts that have been referred to the Attorney General's Office.

RETENTION OF LEGAL DOCUMENTS**722.080**

Whether received in a district office by mail, or through personal delivery, legal documents or documents that could have legal ramifications should be forwarded immediately to SPS for review. These types of documents include, but are not limited to, notification of an assignment for benefit of creditors, probate notice, information regarding receivership proceedings, and bankruptcy notices. After review by SPS, the documents may be referred to the BOE's legal staff or the Attorney General's Office for appropriate action. (The above statement should not be construed to conflict with the instructions contained in BEAM section 7700 covering service of legal process, summons, restraining orders, subpoenas, etc.)

EVALUATION OF COLLECTION PROGRAM

722.090

The Chief of the Tax Policy Division has overall responsibility for evaluating the effectiveness of the statewide collection program and determining whether the cumulative collection efforts of the district offices and CCS meet the projected work goals set by the Sales and Use Tax Department.

**REPORTING EXTRAORDINARY SITUATIONS
OR TECHNICAL COLLECTION PROBLEMS**

722.092

Whenever extraordinary situations or technical problems that require a legal opinion are encountered in a collection case, the supervisor of SPS must be notified. When this type of guidance is necessary, the District Administrator, District Principal Compliance Supervisor, or delegated supervisor should make the contact with the supervisor of SPS and the Legal Department. The supervisor of SPS will keep the Chief, Tax Policy Division, informed of these occurrences so that they may be included in the evaluation of the Collection Program.

**BOE-ASSISTED SEARCHES OF THE
PREMISES OF TAXPAYERS ON JUDICIAL PROBATION**

722.100

In some instances, BOE staff may be asked to accompany a probation department officer who conducts a search of a taxpayer's business and/or residence. Although rare, these situations can occur, for example, as the result of misdemeanor or felony cases where the taxpayer must pay court-ordered restitution to the BOE.

When a field office receives a request for this type of assistance, the request must be sent to the Investigations Division. The probation department officer should be instructed to contact the appropriate Area Administrator in the Investigations Division by telephone. The Southern Area Administrator is responsible for Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, and Imperial counties, while the Northern Area Administrator is responsible for all other counties. If the field office is requested to provide assistance or advice in a search, the Area Administrator of the Investigations Division will send the request to the appropriate Chief of Field Operations.

PARTNERSHIP COLLECTIONS**724.000****GENERAL****724.010**

A partnership is a “person” as defined in RTC section 6005. A partnership is an association of two or more “persons” formed to carry on a business for profit. Partnerships can be formed either by written or verbal agreement. With sufficient evidence, a person may be considered a partner without an agreement if the person invested in the business or if, in the operation of the business, there was an exercise of rights or authority normally reserved to a partner.

There are three main types of partnerships:

1. A general partnership (entity type “P”) is one in which all the partners share in the profits, losses, and management of the business, although their capital contributions may vary. The general partners are also jointly and severally liable for all of the debts and obligations incurred by the partnership.
2. A limited partnership (entity type “L”) consists of one or more general partners and one or more “limited” or “silent” partners. The limited partners are not involved in the operation or management of the business and their liability is limited to the amount of their capital contribution to the partnership as written into the partnership agreement.
3. A limited liability partnership (entity type “K”) is only available for the business operations of accountants, architects and lawyers. A LLP is similar to a general partnership in that the partners share in the profits, losses and management of the business but the partners have limited liability for the debts and obligations incurred by the limited liability partnership.

The Board of Equalization (BOE) issues permits to all three types of partnerships but most commonly to general partnerships. All general partnerships and LLPs are governed by the Revised Uniform Partnership Act (RUPA). Limited partnerships are governed by the California Revised Limited Partnership Act rather than RUPA, but RUPA does apply to some activities of general partners in a limited partnership. Under these acts, limited partnerships and limited liability companies are required to have written partnership agreements and must file with the Secretary of State.

A “partnership” also includes a joint venture (entity type “V”). As used in this section, “partnership” refers to entities whose partners have joint and individual liability, which includes partners of entity types “P” and “V”, and general partners of entity type “L”, but does not include partners of entity type “K” or limited partners of entity type “L”.

Note: A business specified as a “co-ownership” such as a husband and wife co-ownership (entity type “M”) or a registered domestic partnership (entity type “N”) is not a “partnership”, but IRIS does allow separate notices to be issued to each spouse or registered domestic partner.

REVISED UNIFORM PARTNERSHIP ACT (RUPA)**724.012**

RUPA provides that a partnership is a distinct and separate entity from its individual partners and that the individual partners are distinct and separate entities from each other and from the partnership. RUPA requires that a separate notice for a liability be served on the partnership entity and on each partner individually. RUPA also imposes certain conditions on the collection of partnership debt from assets of individual partners and provides for the continuation of a partnership after the addition or deletion of partners.

RTC section 6831 (and similar statutes for other BOE-administered tax and fee programs) states, in part:

“The board shall not be subject to subdivisions (c)¹ and (d)² of Section 16307 of the Corporations Code unless, at the time of application for a seller’s permit, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.”

The subdivisions of the Corporations Code referred to above impose the noticing requirements for issuing billings and specify the conditions under which collection can be made from the assets of individual partners. Although RUPA provisions may not apply to the BOE’s tax programs unless the applicant provides a copy of the partnership agreement, it is BOE policy to follow RUPA guidelines for all billings issued to partnership accounts, notwithstanding RTC section 6831 and other related statutes.

Summary of Key RUPA Provisions

1. Pursuant to RTC section 6831 and other related statutes, RUPA billing and debt collection requirements may not apply to the BOE in every case. However, the BOE’s policy is that all partnership accounts are presumed to have RUPA rights for billing and collection purposes, despite RTC section 6831 and similar sections.
2. The legal theory of “entity” applies, i.e., the partnership is a distinct and separate entity from each of its partners. A notification sent to one partner is not sufficient to assert liability against the partnership or the other partners.
3. A partnership (entity) survives the addition or deletion of partners (unless the written partnership agreement stipulates that the partnership terminates in such circumstances).

¹ Corporations Code Section 16307(c) states: “A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner’s assets unless there is also a judgment against a partner.” This is the section of RUPA that requires separate and distinct notices (billings) to the partnership entity and to each partner. A *Notice of Determination* that becomes final is, in essence, the legal equivalent to a “judgment” against the debtor to whom the liability was assessed. This is also true for demand billings for tax, penalty, and interest on NR/PR returns, dishonored checks, etc.

² Corporations Code Section 16307(d) states, in part: “A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless either of the following apply:

- a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.
- b. The partnership is a debtor in bankruptcy....”

While other conditions also apply (e.g., a partner can agree that a creditor need not exhaust partnership assets before attempting to collect from the partners), these two subdivisions of the Corporations Code are the two that most affect the BOE’s administration of partnership accounts.

REVISED UNIFORM PARTNERSHIP ACT (RUPA)**(CONT. 2) 724.012**

4. Partners are jointly and severally liable for the debts and obligations incurred by the partnership, subject to certain limitations and conditions as discussed in CPPM 724.020.
5. A partnership entity must be billed separately from individual partners, and each partner must receive a separate billing.
6. Attempts to collect partnership debt must be taken first against assets of the partnership and the partnership assets must be insufficient to satisfy the liability before collection can be attempted against assets of individual partners (unless the partnership is a debtor in bankruptcy).

LIABILITY OF PARTNERS**724.020**

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

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

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

When a partner dissociates from a continuing partnership, that partner is generally not liable for partnership obligations incurred after the date of dissociation. There are two exceptions to this general rule, both of which are contained in the Corporations Code (CC) sections 16308(a) and 16703(b). However, these exceptions do not pertain to unpaid sales and use tax and special tax and fee liabilities incurred by a *continuing* partnership. Both of the exceptions provided by CC sections 16308(a) and 16703(b) exist for the purpose of protecting creditors who enter into transactions based upon a representation that a specific person was a partner. As such, a partner that dissociates from a continuing partnership but who does not notify the BOE, either directly or by filing a Statement of Dissociation with the Secretary of State, is not liable under RUPA for taxes and fees incurred by the continuing partnership after the date of dissociation.

LIABILITY OF PARTNERS

(CONT. 1) 724.020

If a partner fails to notify the BOE of their dissociation from a continuing partnership, evidence provided by the partner should be examined to determine if the partner did, in fact, dissociate from the partnership and the date of the dissociation. Corporations Code sections 16601(1) and 16602(a) provide that a partner has the authority to dissociate from a partnership at any time by providing notice to the partnership of his will to withdraw as a partner. The dissociated partner has the burden of proving the date of dissociation which may involve providing substantiating documentation such as:

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

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

If a partnership is dissolved as a result of a partner's dissociation or dissolved within 90 days after a partner dissociates, the partner will continue to be liable to the partnership's creditors for all of the obligations the dissolving partnership incurs until it winds up its affairs, including a predecessor liability pursuant to RTC section 6071.1 and Sales and Use Tax Regulation 1699(f), and CC sections 16701.5 and 16807. A predecessor liability could arise in any situation where the BOE was not informed that a partnership dissolved and post dissolution liabilities were incurred by an entity that continued operating the business under the dissolved partnership's seller's permit. Information regarding predecessor's liability is provided in CPPM 734.000, *Predecessor's Liability for Successor's Tax*.

RTC section 6071.1 provides the consequences for failure of a permit holder to surrender a seller's permit upon transfer of a business. The transferor (predecessor) may be held liable for up to four quarters for taxes incurred by the transferee (successor) after the transfer. Since a partner's dissociation does not cause a partnership to terminate under RUPA (unless so stipulated in the partnership agreement), application of RTC section 6071.1 applies in the rare case where the dissociation triggers the termination of the partnership and the partnership business continues, with no actual or constructive notice being received from the dissociating partner or the partnership.

Referral to the Board of Equalization Legal Department

If it is necessary to determine post-dissociation liability in a given case and there is doubt as to what the appropriate liability period should be, staff may contact the BOE's Legal Department for assistance. The request should be directed to the staff attorney regularly assigned to the Department handling the case and should be made at the Business Taxes Compliance Specialist level or above.

A referral to the Legal Department should be made only after there has been sufficient investigation and review of all the facts, circumstances, and available evidence, including a review of the partnership agreement if there is one. BOE electronic files and records should be checked for relevant information about the partnership account, such as comments that might have been entered in the IRIS system. Files in district offices, Taxpayer Records Section, and other headquarters units should be checked for information or copies of documents, such as a partnership agreement.

In addition to BOE files, the Secretary of State's Office maintains information on partnerships. Both limited partnerships and limited liability partnerships are required to register with the Secretary of State by filing a *Certificate of Limited Partnership* (LP-1), a *Registered Limited Liability Partnership Registration* (LLP-1), or a *Foreign Limited Partnership Application for Registration* (LP-5).

Federal or state income tax returns can also be valuable sources of partnership information. All partnerships are required to file Form 1065, *U. S. Partnership Return of Income*, with the IRS and attach a Schedule K-1, *Partner's Share of Income, Credits, Deductions, etc.*, for each partner active in the partnership business during the taxable year. The Franchise Tax Board (FTB) requires a similar filing (California Form 565) with the same Schedule K-1 attachments.

Key points to remember:

In the case of a disputed tax liability, the taxpayer has the burden of proof to show the liability is not owed. Accordingly, in cases regarding a partner's claim of dissociation, the burden of proving the date of dissociation is on the dissociating partner. Standard appeal procedures apply.

Dissociating general partners are each 100 percent liable for all the debts and obligations incurred by the partnership before dissociation, for the entire time they were in the partnership.

PARTNERSHIP BILLINGS**724.022**

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

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

Requesting a RUPA Demand

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

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

PARTNERSHIP COLLECTIONS**724.023**

As previously stated, it is the BOE's policy to follow RUPA rules regarding the collection of partnership debt regardless of whether at the time of application the applicant files a copy of the partnership agreement specifying that all assets are to be held in the name of the partnership. Collection must first be attempted from assets of the partnership entity before collection can be attempted from assets of the individual partners. The partnership assets must also be insufficient to satisfy the liability before collection is allowed against the partners.

NON-PARTNER CLAIMS**724.025**

If a partner is billed for a partnership liability and claims that he or she was not involved as a partner during all or part of a liability period (and therefore should not be held responsible for payment of the liability), the claimant must make a written request for relief. The burden of proof for substantiating the request rests with the claimant. The claimant's request must state the specific reason(s) why the claimant should not be held liable as a partner and must include supporting documentation. The request should be presented to the district office of control. Examples of supporting documentation include the following:

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

NON-PARTNER CLAIMS**(CONT.) 724.025**

The receiving office will forward the written request along with the claimant's documentation to the Special Procedures Section (SPS), whose staff will review the documents, the seller's permit application, tax return signatures, other BOE records, and the submitted reasons when considering the claimant's request. SPS makes a recommendation and forwards the case to the appropriate Chief of Field Operations for an approval or denial decision. After a decision is rendered, the case is returned to the SPS supervisor who will send the requester a denial or approval notification letter with a copy to both the receiving office and the Chief of Field Operations.

For approved requests, the case is forwarded to the Tax Policy Division's Registration Specialist, Compliance Policy Unit (or appropriate program area) for removal of the claimant from the liability. If the request is denied, an appeal must be made through the refund request/appeal process as long as the refund request is for paid amounts or the appeal is within statutory periods.

LIMITED PARTNERS**724.030**

As noted in CPPM 724.020, the liability of a limited partner for debts of the partnership extends only to its contributed and un-contributed obligation to the business enterprise. Contributions of a limited partner may be in the form of money, goods, real or personal property, and, in the case of restaurants, bars, or liquor stores, interest in the liquor license. All of these are subject to levy and execution for debts of the limited partnership. However, unless a limited partner contributed **real property** that was all or part of the partner's contribution to the business, the name of the limited partner cannot be included in liens or abstracts recorded to acquire liens on the real property.

JOINT VENTURE**724.040**

A joint venture is a legal organization that takes the form of a short-term partnership in which the persons jointly undertake a transaction for mutual profit. Generally, each person contributes assets and shares the risks. Like a partnership, joint ventures can involve any type of business transaction and the "persons" involved can be individuals, groups of individuals, companies or corporations.

In general, collection of liabilities from joint ventures is governed by and enforceable under the rules applicable to partnerships. If collection cannot be made from the assets of the joint venture, then collection action may commence on the assets belonging to the members of the joint venture.

CORPORATE COLLECTIONS**726.000****GENERAL****726.010**

RTC section 6005 recognizes a corporation as a “person” separate and distinct from its members, stockholders, directors, or officers. Generally, a corporate liability is collectable only from assets of the corporation. Although personal liability for amounts owed by a corporation can be asserted against members, stockholders, directors, or officers under certain conditions, they do not acquire personal liability solely through affiliation with the corporate entity.

When a corporation has no assets, is defunct, or when personal liability cannot be asserted against the corporate officers, there is no source from which collection can be made. Therefore, to minimize losses arising from delinquent corporate liabilities, it is necessary to take appropriate actions when registering the account such as:

1. If financial documentation is provided by the applicant, thoroughly analyzing the corporation’s financial status when the corporation applies for a permit.
2. Obtaining an adequate security deposit.
3. Reappraising the security requirements whenever difficulties with the corporate account develop.
4. Documenting all responsible parties and verifying that it is the normal practice of the corporation to collect tax reimbursement.

ACTIVE ENTITIES AND RTC SECTION 6829**726.015**

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

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

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

REQUIREMENTS TO QUALIFY AS A CORPORATION**726.020**

A corporation is formed after filing articles of incorporation with, and receiving a corporate charter from, the Secretary of State's office. A corporation does not legally exist until this process is complete. If the unincorporated entity begins to make retail sales, or purchases tangible personal property for self-consumption in California without payment of use tax, a dual determination for sales or use taxes applicable to those sales or purchases should be issued against the individual owner(s), sole proprietorship(s), partnership(s), joint venture(s) or other entities comprising the ownership of the business.

If an entity, after obtaining a seller's permit as a corporation, is found to actually be an unincorporated entity, a dual determination should be issued against the true owners of the business, e.g., a sole proprietorship, an individual or individuals, a partnership, a joint venture or other entity. For purposes of tax administration, a foreign corporation that has not registered with the California Secretary of State is an incorporated entity, although it is not qualified to conduct business in this state.

Under RTC section 23301, a corporation may have its active status suspended for a variety of reasons. If a corporation is suspended, the liability for payment of sales and use taxes becomes the obligation of the individual members, stockholders, directors or officers for the period in which the corporation is suspended. Certain requirements must be satisfied prior to issuing a determination against a corporate officer or officers of a suspended corporation.

**INCORPORATION WITHOUT
NOTIFICATION TO THE BOARD OF EQUALIZATION****726.030**

Occasionally, an individual or partnership will obtain a seller's permit and then incorporate without notifying the BOE of the change. The newly formed corporation is a separate "person" under RTC section 6005, and is required to obtain a new permit. If a liability is disclosed that was incurred after the date of incorporation, staff will assess the liability against the corporation by issuing a new permit to the corporation or through use of an "arbitrary" permit number.

If the liability is uncollectible from the corporation, a report may be sent to SPS requesting a dual determination against the entity to which the initial permit was issued (the predecessor). The basis for issuing a dual determination against the predecessor is that the taxpayer's failure to notify the BOE of the incorporation deprived the BOE of an opportunity to obtain an adequate security deposit resulting in a loss to the state. To request a dual determination in the above circumstance, notify SPS by sending a memorandum along with supporting documentation.

OVERVIEW

There are various forms of business entities recognized in California. They are: corporations, partnerships, limited partnerships, limited liability companies (LLCs), and limited liability partnerships. As discussed below, the first four entity forms can participate in various transactions that may affect their status, including merger, conversion, and acquisition, all as provided in the California Corporations Code (CCC). Limited liability partnerships, however, are precluded from some such transactions. (There are also sole proprietorships, the treatment of which is discussed below.) A merger involves two or more entities while a conversion involves only one. A merger, or merger reorganization, is the absorption of one entity by another that survives, retains its name and identity, together with the added capital, franchises and powers of the merged (or disappearing) entity, and continues the combined business. The merged entity ceases to exist and the merging entity alone survives. Thus, the surviving entity acquires all rights and property of the disappearing entity and is subject to all debts and liabilities of the disappearing entity (as if the surviving entity had itself incurred them).

In a conversion, the entity that converts into another is, for all purposes, the same entity that existed before the conversion, except that the form of business organization (and possibly the name) has changed. In both cases, the debts and obligations of the former entity become the debts and obligations of the new or surviving entity. A limited liability partnership, however, is precluded from converting into another form of business entity.

Since the debts and obligations of the former entity become the debts and obligations of the converted or merged entity, it is inappropriate to issue successor billings or dual determinations to transfer or replicate a liability established against the former entity to the converted or merged entity. If the liability of the disappearing entity has gone final, these merged or converted entities are not entitled to the statutory 30-day petition rights accorded rightful donees or successors. Instead, a demand billing (that includes information regarding the conversion and a reference to the origin of the liability) will be sent to the surviving or converted entity for payment of the liability incurred by the former entity. If a demand billing needs to be sent to a converted entity, a memo or e-mail request should be sent to the Special Operations Branch (SOB) with all pertinent information included such as the names and account numbers of the former and succeeding entities, amount(s) and periods of liability, documentation and information sources, etc. Any other evidence, such as written statements or documents should also be forwarded.

There are also two types of acquisitions. One involves the acquisition of the shares of a stock of a corporation (also known as an “exchange reorganization”), and the other involves the acquisition of the assets of a corporation (a “sale-of-assets reorganization”). Thus, when one person or entity acquires all of a corporation’s shares of stock from others, the corporate form remains intact, and only the shareholders have changed. The corporation has been acquired by new owners, but it retains its identity. Therefore, if the corporation holds a seller’s permit with the BOE, that permit should continue in the corporation’s name. Alternatively, in the case of a “sale-of-assets reorganization,” when any form of business sells its assets (as opposed to sale of its shares or membership interests), the provisions of Revenue and Taxation Code (RTC) sections 6811-6814 and Regulation 1702 may be triggered, leading to the issuance of a successor determination. Specific types of each of these transactions (along with instructions for registration and billing requests once a transaction has occurred) are discussed below.

STATUTORY MERGERS

Statutory mergers follow the provisions set forth in the CCC for the given type of entity. For a merger to be valid, the merged entities must have followed the requirements set forth in the CCC.

Statutory provisions governing merger reorganization for corporations are set forth in the CCC, Chapter 11, and specify the statutory legal formalities required to merge a corporation with another corporation or other business entity in California. Two or more corporations may be merged into one of those corporations. The board of each corporation seeking to be merged must approve an agreement of merger. As set forth in section 1107(a) of the CCC, once a statutory merger has occurred, the merged or disappearing corporation no longer exists and the surviving corporation succeeds to all the rights and property of the disappearing corporation and is subject to all of the debts and liabilities of the disappearing corporation (as if the surviving corporation had itself incurred them).

Mergers of limited partnerships are authorized pursuant to section 15911.10 of the CCC. Mergers of partnerships are authorized pursuant to section 16910. Mergers of LLCs are authorized by section 17710.10. With respect to mergers of each of these forms of entity, the surviving entities are subject to debts and liabilities of the disappearing entity, as if the surviving entity had incurred them.

There is no authority for mergers of limited liability partnerships.

Another type of statutory merger is called “short-form merger,” which is a merger of a parent corporation with one or more wholly owned subsidiaries, or the merger of a parent corporation and one or more subsidiaries of which the parent corporation owns at least 90%, but not all, of the outstanding shares of each class.

Registration for Mergers

In a statutory merger, the merged corporation ceases to exist. BOE staff should close out the BOE account(s) of the disappearing corporation and document that the accounts were merged into the surviving corporation and its BOE account(s).

CONVERSIONS

Conversions of corporations are governed by sections 1150-1160 of the CCC. In a conversion, the entity that converts into another is, for all purposes, the same entity that existed before the conversion, except that the form of business organization (and possibly the name) has changed. A corporation may be converted into a “domestic other business entity” if the shares of the converting corporation are treated in conformity with CCC section 1151 in that: (1) each share of the same class of the converting corporation is treated equally with respect to any cash, right, securities or other property to be received and (2) nonredeemable common shares of the converting corporation are converted into non-redeemable equity securities of the converted entity. An entity in California that wishes to convert to another domestic entity must approve a plan of conversion that states all of the following:

- The terms and conditions of the conversion.
- The jurisdiction of the organization of the converted entity and of the converting corporation and the name of the converted entity after conversion.
- The manner of converting the shares of each of the shareholders of the converting corporation into securities of, or interests in, the converted entity.
- The provisions of the governing documents for the converted entity, including the partnership agreement or LLC articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.
- Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting corporation.

Conversions of limited partnerships are authorized pursuant to CCC section 15911.02. However, a limited partnership may not convert to a limited liability partnership (CCC section 16955). Conversions of general partnerships are authorized pursuant to CCC section 16902. Conversions of LLCs are authorized by CCC section 17710.02. With respect to conversions of each of these forms of entity, the converted entities are subject to all debts and liabilities of the converting entity, as if the converting entity had incurred them.

There is no authority for conversions of limited liability partnerships.

Registration for Conversions

In this type of situation, it is not necessary to close out the account(s) of the converting entity and issue a new account(s). The name of the entity and type of business may need to be changed on the account(s).

If a sole proprietor decides to incorporate or form some other type of business entity (such as a partnership, limited partnership, or LLC), that is not a conversion. Staff should close out the account(s) of the sole proprietor and issue a new account(s) to the new entity. There would be no question of the liability of the individual for taxes and/or fees owed prior to the incorporation. The liability of the individual owner(s) for the subsequent liabilities of the new entity would be subject to the BOE's rules as set forth in RTC section 6829 or RTC section 6071.1 (a) and (b).

Conversions - Administrative Fees for Cigarette Licensees

Under the Cigarette and Tobacco Licensing Act of 2003, cigarette manufacturers and importers are required to pay an administrative fee when they begin operations in the state. In cases where a corporation undergoes a conversion, the entity would not be required to pay an administrative fee. Conversely, if a sole proprietor incorporated, or formed an LLC or other form of business entity, the resulting corporation or other form of entity would be required to obtain a new Cigarette and Tobacco Products License and pay an administrative fee when it begins operations in this state.

BILLING REQUESTS FOR STATUTORY MERGERS AND CONVERSIONS

To request a demand billing to a merged or converted entity, a memorandum should be sent to SOB. The request must indicate the status (final or non-final) of the underlying liability. An open petition or appeal of one or more of the disappearing entities must be respected. In such case, rather than issue a demand billing, SOB will send the new entity a Statement of Account with specific bill notes and notify the Petitions Section who will add or substitute the surviving entity in place of the disappearing entity during the petition or appeal process.

BUSINESS CONVERSIONS, MERGERS, AND ACQUISITIONS**(CONT.3) 726.033**

Along with the status of the underlying liability, the request should include all pertinent information such as the names and account numbers of the former and succeeding entities, amount(s) and periods of liability, documentation and information sources, etc. Any other evidence, such as written statements or documents, should also be forwarded.

DE FACTO MERGERS

A more difficult issue arises when one entity has effectively shut down without formally dissolving, and the owner has formed a new entity, doing the same business in the same location. There is no formal merger and no contract of sale that would support a successor liability billing.¹ If the facts have been sufficiently investigated and certain conditions are present, the BOE may be able to assert that there has been a “de facto” merger and that the new entity should be billed as a “mere continuation” of the former entity. The following elements must be present to determine that there has been a de facto merger:

Elements of a De Facto Merger

1. Transfer of substantially all of the business assets of the former entity to the new entity;
2. Substantial alignment of ownership and/or control of the new and old entities (are the owners and managers of both entities substantially similar?);
3. Absence of meaningful consideration paid by the new entity for the assets of the former entity;
4. Evidence that the new entity is merely continuing the business of the former entity, such as: using a substantially similar business name, using the same business location, maintaining the same vendor accounts who supply to the new entity, using the same phone number, and having the same employees; and
5. The absence of evidence that the former entity formally dissolved, filed appropriate documentation with SOS and wrapped up its affairs.

Before taking steps such as registration of the new entity under a de facto merger theory, or submitting billing requests for the new entity, a dual determination under RTC section 6829 must have been explored. The BOE may not issue a de facto billing until after a dual determination under RTC section 6829 has been issued, or until after the BOE has determined that the requisite elements for a section 6829 dual determination are not present.

Registration for De Facto Mergers

In this type of situation, BOE staff should close out the account(s) of the shut-down entity and issue a new account(s) for the new entity. If the new entity is not willing to self-register, an arbitrary permit number can be issued in order to complete the registration. The registration activities should be performed based on the results of the BOE investigation activities.

¹ Statutes for successor’s liability exist under the Sales and Use Tax Law , Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administrative Fees Law and Diesel Fuel Tax Law. There are no statutory provisions for successor’s liability for other tax and fee programs administered by the BOE.

Billing Requests for De Facto Mergers

A demand billing for a liability that is final can be issued to the surviving entity for payment of the liability incurred by the former entity. As with all requests for demand billings, the request must state the status of the underlying liability. An open petition or appeal of one or more of the disappearing entities must be respected. In such case, rather than issue a demand billing, SOB will send the new entity a Statement of Account with specific bill notes and notify the Petitions Section who will add or substitute the surviving entity in place of the disappearing entity during the petition or appeal process.

The request must include all pertinent information such as the names and account numbers of the former and succeeding entities, amount(s) and periods of liability, documentation and information sources, etc. However, in order to pursue a de facto merger, all five elements of a de facto merger must also be present and clearly documented in the request. Send requests for demand billings to SOB who will consult with the Litigation Division before the request is approved.

Statute of Limitations for Mergers and Conversions

There is no specific statute that limits a conversion, merger, or de facto merger billing of a secondary entity for the liability of a primary entity. The doctrine of laches may apply in these cases where there is no statute. The doctrine affords a taxpayer an equitable defense if the BOE's billing was unreasonably delayed. Therefore, the BOE's policy is to issue the conversion, merger, or de facto merger billing within three years of acquiring knowledge of the facts supporting the secondary billing.

ACQUISITIONS

Acquisitions are a form of reorganization, and are covered in subdivisions (b) and (c) of section 181 of the CCC. Persons or entities can make acquisitions of all the forms of business entities discussed previously in the Overview part of this section. It is important to distinguish between a situation involving the acquisition of the equity securities of an entity, such as shares of stock of a corporation, a partnership interest of a general partnership, or membership interests of an LLC (also known as an "exchange reorganization"), and the acquisition of the assets of an entity (a "sale-of-assets reorganization"). The two types of acquisitions are described below.

Acquisition of Equity Securities / Exchange Reorganization

When one person or entity acquires some or all of an entity's equity securities from others, the form of the entity remains intact, and only the shareholders or owners have changed. The entity has been acquired by new owners, in whole or in part, but retains its identity. If it holds accounts(s) with the BOE, the account(s) should continue with the same name. The acquisition of an entity through exchange reorganization does not trigger successor liability. The sale of equity securities of an entity, including membership interests of an LLC, is not a transfer of ownership of physical assets for a financial consideration. Any liability of the entity that existed before the exchange reorganization remains a liability after such a transaction. There is no "disappearing entity" and no "surviving entity," therefore, there is no billing.

Registration for Acquisition of Equity Securities

In this type of situation, the entity continues to exist. It is not necessary to close out the account(s) of the entity and issue new account(s). Depending on the responsibility of the person acquiring the equity securities, the names of the persons acquiring the interest in the entity (such as partnership shares in a general partnership or a new CEO of a corporation) may need to be added to the account in the same manner as if such purchaser was one of the owners at the time the entity was originally registered as provided in Chapter 2 of this CPPM.

Registration for Assets/Sale-of-Assets Reorganization

Staff must determine if the entity whose assets were acquired has actually closed. All locations of the “selling” entity must be closed before closing out its account(s). Staff should issue new account(s) to the entity that acquired the assets.

Billing Requests When There is an Acquisition

If the elements of a successor liability are present, the acquiring entity can be billed as a successor. See CPPM section 732.000 for more information.

NOTIFICATION OF REGISTRATION CHANGES

Information concerning updates to registration due to mergers, acquisitions or conversions may come from the tax or fee payer through written correspondence, investigation, or communication by telephone or e-mail with the account holder or its representative. Regardless of whether a liability exists, upon notification of a merger, acquisition or conversion, staff receiving the information should verify the status of the old and new entities via the “Business Search” function available on the Secretary of State’s (SOS) website located at <http://kepler.sos.ca.gov>.

Since the entity may be registered for multiple programs with the BOE, staff making the discovery of the merger, acquisition or conversion, should check for other related accounts in IRIS. In the event staff discover other BOE accounts that are affected by the merger, acquisition or conversion but the accounts/programs are not under their jurisdiction (based on tax or fee program), they should prepare a memo for their District Principal Compliance Supervisor (or equivalent for Special Taxes and Fees programs) containing the following elements:

- a. BOE account number(s) and TIN affected.
- b. SOS number (existing if applicable and new) affected by change.
- c. Type of change (merger, de facto merger, conversion, sole proprietor to corporate change, acquisition of equity securities, acquisition of assets).
- d. Effective date of change.
- e. Action taken on BOE account(s) administered by discovering jurisdiction.
- f. New BOE account number(s) and TIN established if applicable.

BUSINESS CONVERSIONS, MERGERS, AND ACQUISITIONS**(CONT.6) 726.033**

The District Principal Compliance Supervisor (or equivalent for Special Taxes and Fees programs) overseeing the area that discovered the merger, acquisition, or conversion should forward the aforementioned information and documents used to verify the information to the District Principal Compliance Supervisor (or equivalent for Special Taxes and Fees programs) responsible for overseeing registration activities outside their jurisdiction (based on tax or fee program) requiring potential account updates.

JEOPARDY DETERMINATIONS

If staff determines the facts showing that the secondary entity is concealing or otherwise disposing of its assets, the BOE could issue a jeopardy determination, which would have the effect of rendering that entity's liability final (see CPPM section 764.020 for information on jeopardy determinations). The mere creation of the secondary entity and the cessation of business by the primary entity, however, do not alone justify use of a jeopardy determination. A jeopardy determination is reserved for those cases where assets are truly in danger of being immediately hidden, moved, or otherwise disposed of.

INCORRECT CORPORATE REGISTRATION**726.035**

It may happen that a California corporation holding a seller's permit dissolves and then incorporates in another state without notifying the BOE and without significantly changing the conduct of their business in California. The dissolution invalidates the seller's permit as the "person" that the seller's permit was issued to no longer exists, and therefore the dissolved corporation cannot continue to engage in business as a retailer in this state. The new corporate entity must first register with the Secretary of State's office and then obtain its own seller's permit from the BOE.

If the dissolved corporation has an existing liability, or a liability is disclosed through investigation or audit subsequent to dissolution, a dual determination should be requested against the new entity. In cases where the successor has terminated and the security deposit is in the form of a surety bond, see CPPM 732.000 et. seq.

California corporate law applies to both California corporations and foreign (out-of-state) corporations doing business in this state. If a California corporation dissolves, it is required to notify the Board of Equalization, the Secretary of State's office, and all other creditors whose addresses appear in the corporate records. If it does not do so and there is no security deposit or other means of collection because the corporate assets have been distributed, shareholders who are, or were, responsible persons may be held liable for any debts of the corporation arising prior to dissolution. Examination of the company stock register or Secretary of State files will provide information on corporate shareholders. (See California Corporations Code sections 1901(a), 1901(c), and 2011(a)).

UNPAID LOANS**726.045**

A corporation may authorize a loan of corporate funds or assets to stockholder(s), officer(s) or director(s). When authorized corporate loans to stockholders, officers, or directors remain unpaid, and the corporation has a sales and use tax liability, collection from such person(s) may be pursued. In other words, if the stockholder, officer or director owes money or assets to the corporation, the money or assets can be reached through the following:

1. Notice to withhold.
2. Notice of levy.
3. Warrant.

Loans that are not voted on by the holders of a majority of the shares of all classes of stock (other than stock held by the benefited person) are unauthorized loans. If officers or directors approve unauthorized loans, similar collection action can be taken against those directors and/or shareholder recipients.

When either unpaid authorized loans or unauthorized loans exist, the auditor or collector should document the type of loan, name of recipient, terms of loan, balance unpaid and type of action by the board of directors authorizing such loans (Corporation Code sections 315, 316(a)(3)).

UNLAWFUL DISTRIBUTIONS**726.050**

When collection of a corporate liability is doubtful and an unlawful distribution or other unlawful act by a director or directors (as described below) is suspected, the minutes of the corporate Board meetings should be examined for proof of such unlawful distribution or other unlawful acts. Other documents that may need to be examined are the retained earnings statement, the balance sheet, the statement of changes in financial position, etc. If there is sufficient proof of an unlawful distribution, the BOE may seek court action against the directors and/or shareholders in order to pursue collection of the liability.

Shareholders of a corporation may be liable for unlawful distributions that they knowingly receive. Corporations Code section 506 describes the actions that constitute unlawful distributions.

Corporations Code sections 309 and 316 provide that directors who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders:

1. The distribution of retained earnings or assets to the corporation's shareholders in the following circumstances:
 - a. When the amounts of retained earnings prior to the distribution do not at least equal or exceed the amount of the proposed distribution; or
 - b. When immediately after the distribution:
 1. The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) is not at least equal to 1 1/4 times its liabilities (not including deferred taxes, deferred income and other deferred credits); and
 2. The current assets of the corporation are not at least equal to the corporation's current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense to the corporation for such fiscal years if the average earnings were not at least equal to 1 1/4 times current liabilities (Corporations Code section 500); or
 - c. When a corporation makes a distribution and it is likely the corporation will be unable to meet any liabilities as they mature (Corporations Code section 501).
2. The distribution of assets to shareholders after institution of dissolution proceedings without paying or adequately providing for all known liabilities.

OUT-OF-STATE COLLECTIONS**731.000****GENERAL — SUTD****731.010**

The collection of delinquent sales and use taxes from persons who incurred liabilities in this state but who have since relocated outside California is the responsibility of each district office and/or the Centralized Collection Section (CCS). Staff will attempt to locate missing tax debtors or assets by using correspondence, telephone calls, and requesting out-of-state DMV reports, IRS returns, credit reports, county assessor checks or information from any other out-of-state agency or source of information that may be of assistance. Out-of-state collection cases other than sales and use tax are the responsibility of the program area that administers the tax or fee.

A case may be referred to the Out-of-State District Office for additional investigation if:

1. In-state collection action is not successful or feasible,
2. The taxpayer has been located,
3. There appear to be attachable assets, and
4. The amount owing is sufficient to warrant an out-of-state auditor making personal contact.

Referral is made using Form BOE-142, *District Request for Investigation* (see CPPM 704.000) and the referral must include all pertinent case information.

REFERRAL OF CASE TO OUT-OF-STATE DISTRICT OFFICE**731.020**

Before referring a case to the Out-of-State District office, the in-state district or CCS must consider:

1. The size of the liability, and
2. Whether the Out-of-State District office has a course of collection action to pursue.

Accounts should not be referred to the Out-of-State District if the amount owing is relatively small or if it is obvious that no further action can be taken beyond the actions already completed. In addition, do not refer accounts to the Out-of-State District if there is a clear indication the account should be written off.

OUT-OF-STATE DISTRICT OFFICE ACTION**731.023**

Upon receipt of a Form BOE-142, the Out-of-State District office reviews the account, the liability, and any other significant factors to determine whether an auditor should make a field call when assigned an audit in the taxpayer's area.

The Out-of-State District will return the assignment to the referring district office (with the results of the investigation) or CCS when:

1. Personal contact is not practical.
2. Personal contact by the out-of-state auditor does not result in payment or positive information on assets.
3. Collection action cannot be pursued by the Out-of-State District office.

OUT-OF-STATE DISTRICT OFFICE ACTION**(CONT.) 731.023**

If the out-of-state auditor makes contact with the taxpayer, the auditor should obtain as much information as possible concerning the taxpayer's assets and notify the Out-of-State District office so that the compliance staff can take appropriate action.

The auditor's report will describe the actions taken on the account and any information that may be helpful in determining whether a referral to the Attorney General or initiating a write off is warranted. The referring district or CCS is responsible for writing off the liability or requesting referral of the case to the Attorney General if personal contact by an Out-of-State District office auditor is not practical, or if personal contact by the auditor does not result in payment or yield information on the taxpayer's assets.

OUT-OF-STATE TAXPAYER — COLLECTION ACTIONS**731.025**

Under RTC section 6757, a perfected and enforceable state tax lien is created when a taxpayer fails to timely pay its taxes, including interest, penalties, and any additional costs, when they become due. The lien is created by operation of law. Although not recorded with the Secretary of State or with a county recorder, the lien satisfies any lien requirements mandated by the various California Codes that address earnings withholding orders for taxes (EWO).

Generally, assets of a taxpayer located outside California are outside the jurisdiction of the State of California to collect. However, when a taxpayer who owes a liability is located out of state and is employed, collectors may send an EWO to the out-of-state employer if the employer has a place of business, payroll office, payroll account, or some other presence in California or has a designated agent for service of process in California. In such case, the employer has submitted itself to California's jurisdiction and must honor the EWO by garnishing the wages of the specified employee.

OUT-OF-STATE DISTRICT — COLLECTION RESPONSIBILITY**731.040**

Other than collections, the Out-of-State District office is responsible for performing all of the compliance functions for retailers whose records are located out of state but who maintain a place of business in this state. The Centralized Collection Section (CCS) is responsible for the collection function for out-of-state accounts.

The Out-of-State District office compliance staff does not perform field calls. Therefore, if an out-of-state account has a business location in California, the responsible in-state district office may be called upon for assistance in performing a field investigation.

If an Out-of-State branch office reports that a taxpayer may have assets in California, such as accounts receivable or property (real or personal), the Out-of-State District office will send a copy of the report to CCS. CCS will proceed with collection action against these assets in the same manner as any other account.

SPECIAL PROCEDURES SECTION — AUTHORITY AND RESPONSIBILITY 731.050

The Special Procedures Section (SPS) has final authority for determining whether a request for discharge from accountability should be made pursuant to an Out-of-State District recommendation. SPS will thoroughly review each Form BOE-479 received. If there is concurrence in the recommendation, the request for discharge from accountability will be processed. If, however, for any reason, SPS does not concur with the recommendation, the write-off will be returned to the district office.

SPS also has final authority for determining whether referral to the Attorney General should be made pursuant to an Out-of-State District recommendation. In most cases, when such a recommendation is received, SPS will arrange to secure a credit report on the taxpayer. After securing the credit report, SPS will consider all factors and determine whether the case should be referred to the Attorney General.

NOTIFICATION OF ACTION TO DISTRICTS 731.060

In every case where a Form BOE-479 is received by SPS, or where referral to the office of the Attorney General has been recommended, SPS will inform the responsible district office of the action taken. Such notification may be in the form of a copy of Form BOE-479, or a copy of the letter referring the case to the Attorney General.

SUCCESSOR'S LIABILITY**732.000****POLICY REGARDING COLLECTION FROM SUCCESSORS****732.010**

The purchaser of a business or stock of goods should require the seller to produce a Form BOE-471, *Certificate of Payment*, issued by the Board of Equalization (BOE) showing that the seller's sales and use tax liabilities have been paid and that no tax is due. If the seller does not produce a Form BOE-471, the purchaser should withhold up to the amount of the purchase price from the seller and request a tax clearance from the BOE under RTC section 6812. The BOE will issue a Form BOE-471 if no sales or use taxes are due from the seller. If the seller owes a liability to this agency, Form BOE-1274, *Notice of Amounts Due and Conditional Release*, will be provided that shows the amount that must be paid in order to obtain a release from liability for amounts owed by the seller.

If a purchaser requests a tax clearance, the BOE must issue either Form BOE-471 or BOE-1274 within 60 days of the latest of the following three dates or successor liability can no longer be assessed against the purchaser:

1. The date the BOE receives the written request from the purchaser.
2. The date of the sale of the business or stock of goods.
3. The date the seller's records are made available to the BOE for audit.

If a purchaser of a business or stock of goods does not receive a *Certificate of Payment* from the seller or does not request a tax clearance from the BOE pursuant to RTC section 6812 and withhold a sufficient portion of the purchase price from the seller (predecessor) to cover the seller's sales and use tax liabilities, the purchaser becomes personally liable for the seller's unpaid sales and use tax liabilities to the extent of the purchase price valued in money. However, no collection action can be taken against the purchaser (successor) until a notice of successor's liability is issued and becomes final.

Certain types of transactions do not support issuing a notice of successor billing, such as a purchase of a business or a stock of goods:

1. Through a bankruptcy proceeding.
2. From a franchisor.
3. From a creditor who has obtained a judgment and seized the business assets.
4. From a landlord who has evicted a tenant and seized assets.

First efforts to collect will be directed against the predecessor. This policy will be adhered to only as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor but held by a third party.

LIABILITY SECURED BY SURETY BOND

732.020

If the liability of the predecessor is secured entirely by a surety bond, no collection action should be taken against the successor even though a successor's billing has been issued. If payment cannot be obtained from the predecessor, demand will be made upon the surety to clear the liability. The billing to the successor serves as notification of a "contingent liability" since it is anticipated that the surety will pay the liability.

If only a portion of the predecessor's liability is secured by a surety bond and the predecessor has no assets to pay the liability, demand should be made on the surety before requiring the successor to pay. The approximate amount anticipated from the surety should be taken into consideration if collection action commences against the successor before the surety makes payment to the BOE. However, the successor's liability is not reduced by the amount for which the surety of the predecessor is liable until the BOE receives payment from the surety.

SURETY BOND ON SUCCESSOR'S ACCOUNT

732.030

The successor may be required to post a security deposit upon obtaining a seller's permit for the purchased business. If the successor posts a surety bond, the surety (usually an insurance carrier) can only be held liable for amounts arising from the business operations of the successor. In other words, a surety bond posted by a successor cannot be used to satisfy an obligation billed to the successor for successor's liability.

SUCCESSOR'S LIABILITY AS A TAX

732.040

With the exception of the preceding section, the liability of a successor is considered to be a tax liability and is subject to all remedies and priorities as if the liability had been incurred by the successor through its own operations. A successor's liability may be included in bankruptcy, an assignment for benefit of creditors, or probate claims filed against the estate of a successor and is entitled to the same priority as other tax claims.

Agreements or contracts between the buyer and seller that attempt to place the responsibility and time of payment of the liability cannot overcome the requirements of the law and will be disregarded.

SUCCESSOR BILLINGS**732.050**

The law requires the BOE to issue a notice of successor liability to the purchaser of a business or stock of goods in order to enforce the purchaser's successor liability. A notice of successor liability is issued for any amount owed by the predecessor over \$500, up to the purchase price of the business or stock of goods. Once the notice of successor liability is mailed, the successor has 30 days to petition the liability prior to the initiation of collection action (RTC section 6814). If the successor files a timely petition of the amount determined to be due, the account will not enter into active collection status in ACMS pending the outcome of the petition.

AMOUNTS NOT DUE OR DELINQUENT AT TIME OF SALE**732.060**

A successor's liability only extends to the amount the successor was required to withhold from the purchase price at the time the successor purchased the predecessor's business or stock of goods. The amount a successor is required to withhold includes all of the seller's sales and use tax liabilities (taxes, interest, and penalties) incurred with regard to the business or stock of goods up to the date of the purchase regardless of whether the liabilities have been reported, billed, or become final, to the extent of the purchase price. The amount does not need to be a matter of record when the sale of the business takes place. For example, the successor's liability may be disclosed during a close-out audit of the predecessor's account or generated if, subsequent to the sale, the predecessor files a final return without payment (or with a partial payment).

SUCCESSOR'S LIABILITY RESTRICTED TO LOCATION PURCHASED**732.070**

The liability of the successor is limited to amounts owed by the predecessor incurred at the business location(s) purchased. If the predecessor operated the business at multiple locations, the liability incurred at the purchased location(s) must be determined to assert successor's liability against the purchaser.

PURCHASE OF FIXTURES, EQUIPMENT, OR STOCK OF GOODS**732.080**

Before a purchaser can be held liable as a successor, the fact, that "a business or stock of goods" has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease or a liquor license, successor's liability is not necessarily applicable.

If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor's liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor's business to become liable as a successor, a comprehensive report should be submitted to the next level of supervision for possible referral to the Special Operations Branch (SOB).

One source of information for determining whether there was a sale of a business or stock of goods is the taxpayer's returns filed with the Internal Revenue Service (IRS). The IRS requires taxpayers to file Form 8594, *Asset Acquisition Statement*, when there is a transfer in the ownership of a business. IRS Form 4797, *Sales of Business Property*, is required when there is a sale of a group of assets that makes up a trade or business. The information contained on these forms may help in determining the value of fixtures, equipment, or other assets when a business is sold.

Bulk Sale of a Business – IRS Form 8594

IRS Regulation section 1.1060-1(e)(1)(ii) and Internal Revenue Code (IRC) section 338 require that both the buyer and seller in an applicable asset acquisition report on Form 8594 the amount of consideration in the transaction and specific information about the allocation of consideration among the assets transferred.

Both the seller and the buyer of a group of assets that make up a trade or business are required to file Form 8594 to report such sales if goodwill or going concern value attaches to, or could attach to, the assets and if the buyer's basis in the assets is determined only by the amount paid for the assets. Generally, Form 8594 would be attached to the Federal Income Tax Return for the year in which the sale occurred. However, a supplemental Form 8594 must be filed if the buyer or seller is amending a previously filed form because of an increase or decrease in the buyer's cost of the assets or the amount realized by the seller.

The information that must be reported on Form 8594 includes the following:

1. Name, address, and taxpayer identification number of the buyer and seller
2. Purchase date
3. Total consideration for the assets
4. Amount of consideration allocated to each class of assets and the aggregate fair market value of assets of each class
5. Statement as to whether the buyer and seller agreed upon the fair market value of the assets in the contract of sale
6. The useful life of each class III intangible and amortizable asset - Class III assets are all tangible and non-tangible assets (e.g. furniture and fixtures, land, buildings, equipment, and accounts receivable)
7. A statement as to whether, in connection with the acquisition of the group of assets, the buyer also obtained a license, a covenant not to compete, or entered into a lease agreement, an employment contract, a management contract, or similar arrangement between the buyer and the seller (or the managers, directors, owners, or employees of the seller).

Exceptions to the requirement for filing IRS Form 8594 include the following:

1. The acquisition is not an applicable asset acquisition. An applicable asset acquisition includes both a direct and indirect transfer of a group of assets, such as a sale of a business, if goodwill or going concern value attaches to, or could attach to, the assets, and the buyer's basis in the assets is wholly determined by the amount paid for the assets.
2. A group of assets that makes up a trade or business is exchanged for like-kind property in a transaction to which IRS Regulations section 1.1031(j)-1 applies. Generally, for a like-kind exchange, there must be a property-by-property comparison for computing the gain recognized.
3. A partnership interest is transferred.

Sale of Business Property – IRS Form 4797

IRS Form 4797 is used to report the sale or exchange of property used in a trade or business; depreciable and amortizable property; oil, gas, geothermal, or other mineral properties; and IRC section 126 (certain cost-sharing payments) property. Form 4797 is also used to report the following:

1. The involuntary conversion of property used in a trade or business and the capital assets held in connection with a trade or business or a transaction entered into for profit, as well as the disposition of non-capital assets other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business.
2. The disposition of capital assets not reported on IRS Schedule D.
3. The recapture of IRC section 179 expense deductions for partners and S corporation shareholders from property dispositions by partnerships and S corporations. The deduction allows for up to the entire cost of certain depreciable business assets, other than real estate, in the year purchased, which may be used as an alternative to depreciating the asset over its useful life. Taxpayers cannot use the IRC section 179 deduction to the extent that it would cause them to report a loss from their business.
4. The computation of recaptured amounts under IRC section 179 and IRC section 280F(b)(2), when the business use of section 179 or listed property drops to 50% or less (IRC section 179 - The limitation on depreciation for luxury automobiles; limitation where certain property is used for personal purposes).

Requesting Copies of Forms

Staff should request a copy of IRS Forms 8594 and 4797 from the taxpayer to determine the sales price of the tangible personal property when it is either sold or transferred under the conditions covered in this section. If the information is not readily available from the taxpayer, staff may request the information following the procedures outlined in CPPM section 720.031.

CONSIDERATION IN A FORM OTHER THAN MONEY**732.090**

The purchase price paid for a business need not be in the form of money to establish a liability against the successor. Furthermore, the sale of a business or stock of goods may occur with or without documents that convey the terms of the sale and an escrow may not be involved. If the purchaser agrees to the assumption of obligations owed by the seller, agrees to cancel amounts owed to him by the seller, or gives something other than money as a consideration for the transfer of the business, the purchaser can be held liable as a successor. In cases where the consideration is represented by something other than money, the value of the business or stock of goods purchased must be determined to define the extent of liability. (RTC section 6812).

When the only consideration is an assumption of debt, the purchase price of a business is that portion of the seller's debt obligation that the buyer has assumed. A written request should be sent to both the buyer and the seller to obtain documents relative to the transfer of the business assets. Based on the response, additional evidence may be required to support a successor's liability action.

Some examples of documentation that may support an assumption of liability for a successor billing include:

1. Buyer's income tax returns listing expenses of the seller.
2. Information from a county assessor or state agency that shows the buyer paid back-taxes and/or fees on the seller's behalf

Documentation to support a request for a successor's liability billing can be generated from many different sources such as:

1. Reviewing all file material and history notes for supplier and landlord information.
2. Searching the Internet (sites such as CLEAR or other available sources).
3. Making field calls to identify suppliers.
4. Reviewing the predecessor's audit information.

Use Form BOE-1511, *Dual Determination — Creditor/Supplier/Landlord*, to obtain documentation from these sources. In certain instances, a subpoena duces tecum (subpoena for production of records) may be necessary to obtain copies of the payments made by the seller.

PENALTY AND INTEREST — SUCCESSOR'S LIABILITY**732.100**

The liability incurred by a successor with regard to the purchase of a business or stock of goods includes all amounts incurred by the predecessor, or any former owner, from the operation of the business, including amounts incurred from the sale of the business, even though such amounts may not be determined as of the date of purchase. All tax, interest, and penalties incurred by the predecessor, up to the amount of the purchase price, shall be billed to the successor. Although the successor liability billings are not directly subject to accrual of interest, successors are liable for all the predecessor's tax, penalty, and interest, including interest accrued after the issuance of the notice of successor liability. However, negligence or fraud penalties assessed to the predecessor after the date of purchase will not be due from the successor pursuant to Regulation 1702(d)(2) unless there is a relationship between the successor and the predecessor. Such penalties may be relieved under certain circumstances. (See RTC section 6814 and Regulation 1702.)

Successors seeking relief from penalty under RTC section 6814(b)(2) should be directed to file an online request for relief from penalty on the BOE website. Staff should encourage taxpayers without internet access to visit a district office or another location with internet access to complete the request. However, if these options are not available, staff should provide a BOE-193, *Request for Relief from Penalty*, which is available in ACMS. This form should be returned to the district office that handles the taxpayer's account and not to headquarters.

Staff will update ACMS with a note to indicate that the taxpayer has either filed an online relief request, or filed a completed BOE-193. The ACMS note will include the successor's reasons for making the request. If appropriate, the BOE-193 is then approved and signed by the District Administrator or his/her designee. The person approving the form should likewise enter notes in ACMS and send the form to headquarters for processing, which includes further review of the request and adjustment of the penalty, if warranted. If the liability has not been petitioned, the BOE-193 should be sent to SOB. If the liability has been petitioned or a late protest has been submitted, the form should be sent to the Petition Section.

PURCHASE MONEY DEPOSITED IN ESCROW DOES NOT RELIEVE A SUCCESSOR**732.110**

If the purchaser allows funds in escrow to be distributed without first securing a tax clearance from the BOE, the fact an escrow was conducted is of no significance. A successor cannot be relieved of liability because funds in the amount of the purchase price or a portion thereof were deposited in an escrow from which the BOE did not receive payment.

If other creditors are serving levies on funds in escrow, the BOE should promptly levy for the amount of the obligation due from the predecessor in order to secure the available escrow funds. If the escrow funds are exhausted, or if there is only enough money for a partial payment against the predecessor's debt to the BOE, the successor remains liable for the predecessor's liability to the extent of the purchase price.

REQUESTING A SUCCESSOR BILLING**732.115**

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

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

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY**732.120**

A notice of successor's liability billing may be issued no later than three years after the BOE is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuing the notice of successor's liability begins to run once the BOE has been notified of the purchase of the business.

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

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

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

HEADQUARTERS' RESPONSIBILITY — SUCCESSOR BILLINGS**732.130**

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

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

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

DISTRICT RESPONSIBILITY — SUCCESSOR BILLINGS**732.140**

The district offices occasionally receive a petition for reconsideration of a notice of successor's liability directly from the successor. Since routine collection procedures are normally instituted on "final" liabilities, the original petition and the envelope in which the petition was mailed should be immediately forwarded to the Petitions Section for processing. When the Petitions Section places the successor billing into petition status, the account is flagged in ACMS to stop any collection activity that would normally commence on the petitioned liability.

The district office staff is responsible for ensuring that all petitions for redetermination are handled on a priority basis. Copies of any correspondence between the successor and the district office or headquarters' staff should be sent to the Petitions Section.

When the district investigation is completed, a report of the findings should be sent to the Petitions Section. This report should include the following:

1. If applicable, the district's basis for recommending that the successor billing either be reduced or canceled.
2. Whether or not the successor agrees with the district's recommendation.
3. Whether or not the successor wants a hearing.
4. Information summarizing efforts to collect from the predecessor. This information must also be clearly documented in the predecessor's file and included in hearing information prepared for Board hearings.

PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX**734.000****GENERAL****734.010**

Under RTC section 6072, a person will surrender its seller's permit to the Board of Equalization (BOE) for cancellation when the person is no longer actively engaged in conducting business that requires the person to hold a permit. Upon discontinuing or transferring a business, the permit holder shall promptly notify the BOE of the change in status. When possible, the permit holder should deliver the seller's permit to the BOE for cancellation, but is not required to do so. Notifying another state agency of the transfer does not constitute notice to the BOE. If the predecessor claims that the BOE received constructive notice that the business was transferred to a successor, the information supporting the claim should be referred to the Special Procedures Section (SPS) for possible cancellation of the predecessor's liability.

Notice of the transfer must be received by either:

1. An oral or written statement to a BOE office or authorized representative accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. (The permit itself need not be delivered to the BOE if it is lost, destroyed, or is unavailable for some other acceptable reason).
2. Receipt of the transferee's (successor's) application for seller's permit. It is unlawful for a successor of a business to operate the business without a permit issued in its name.

If the transferor has actual or constructive knowledge that the transferee is using the transferor's permit in any way, the failure of the transferor to notify the BOE of the transfer or to deliver the seller's permit for cancellation subjects the transferor to liability for taxes, interest, and penalties (excluding fraud penalties) incurred by the transferee. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor (substantially the same ownership), the liability is limited to the quarter in which the business is transferred, and the three subsequent quarters (Regulation 1699(f)). Some of the ways the transferee may improperly use the transferor's permit include:

1. Displaying the transferor's permit in transferee's place of business.
2. Issuing resale certificates using the transferor's seller's permit number.
3. Filing tax returns using the name and seller's permit number of the transferor.

Collectors should attempt to collect from the successor first. However, collection efforts should begin against the predecessor if it appears that delaying action against the predecessor will jeopardize the collection of the liability. When it is evident that the predecessor did not notify the BOE of the business transfer, a notice of determination in the name of the predecessor should be requested by sending a memo to SPS. The request must explain the circumstances involved. The notice of determination, when issued, is a formal notice informing the predecessor of his/her liability. Active collection actions can be taken after the finality date of the notice of determination.

DUAL DETERMINATIONS AGAINST PREDECESSOR - WHEN APPLICABLE 734.012

When a predecessor fails to notify the BOE that he or she discontinued, sold, or transferred his or her business, the predecessor may be held liable for tax, interest, and penalty (except for fraud or intent to evade) incurred by the successor/transferee, if the predecessor had actual or constructive knowledge that the successor/transferee was using his or her permit in any manner. The predecessor's liability, however, is limited to the quarter in which the business was transferred, and the three subsequent quarters. However, the limitation on liability does not apply in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business is still owned or held by the predecessor (see RTC section 6071.1(a) and (b), and Regulation 1699(f).)

**DUAL DETERMINATIONS AGAINST
PREDECESSOR FOR SUCCESSOR'S LIABILITY****734.015**

Collection problems can arise due to the lapse of time between the determination of liability against the successor and issuing a dual determination against the predecessor. Some examples of these problems are:

1. The predecessor's account is closed out with no record of a liability and the predecessor's security deposit is refunded prior to issuing a dual determination.
2. The predecessor is not immediately informed of a tax liability that he/she shares equally with the successor.
3. The predecessor's file, along with possible collection leads, may have been destroyed prior to issuing the dual determination.

When a predecessor's liability is involved, three determinations may result.

1. A determination issued against the predecessor for any period that he/she actually operated the business.
2. A second determination issued against the successor for the period during which he/she operated the business.
3. A dual determination issued against the predecessor concurrent with the issuance of a determination against the successor. The dual determination should be issued beginning with the date on which the BOE first had knowledge of the change in ownership. As stated in the previous section, except in the case where the ownership is substantially the same after the transfer as before the transfer, the liability is limited to the quarter in which the business was transferred and the three subsequent quarters. Periods prior to the transfer date may not be included in dual determination for predecessor's liability as they are not legally assessable against the predecessor.

In the case of a billing for predecessor's liability, current practices applying to dual determinations will be followed. The only exception would arise if a 25% fraud penalty is applied to the successor's tax liability. Sales and Use Tax Regulation 1699(e) specifically states that the predecessor is not liable for any fraud penalties. In this instance, the fraud penalty will be replaced by a 10% negligence penalty on the dual determination issued against the predecessor.

COLLECTION FROM SURETIES AND GUARANTORS 735.000**EFFECTIVE PERIODS AND LIABILITY 735.010**

A surety can be held liable for an amount that its principal failed to pay only if the liability results from transactions that occurred during the effective period of the bond. The bond effective period runs from the date shown on the face of the bond until 30 days after the Board of Equalization (BOE) receives a notice of termination from the surety. The liability of the surety extends to tax, penalty, and interest, regardless of the location(s) where the liability was incurred.

NOTIFICATION TO SURETIES 735.020

SOB prepares the demand for payment against a surety bond posted by a taxpayer as a security deposit. Making a demand on the surety may only be used as a last resort (see CPPM 735.035).

In order to keep sureties informed of the status of the accounts of their principals, they are also notified when SOB files claims in bankruptcies, assignments, or probates.

RECOMMENDATIONS FOR DEMANDS ON SURETIES 735.030

A collector may recommend making demand on the surety if all of the following conditions are met:

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

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

DEMANDS ON SURETIES — CORPORATE ACCOUNTS 735.035

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

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

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

Consequently, the following procedures will be followed when a surety bond secures liability on a corporate account.

1. If collection cannot be made from the corporation, and the corporate officer(s) indemnify the bond, and the liability for the secured bond does not exceed the penal sum of the bond plus \$500 (normal minimum amount of liability required to issue a dual determination), a request for demand on the bond is in order.

COLLECTIONS

DEMANDS ON SURETIES — CORPORATE ACCOUNTS

(CONT.) 735.035

2. If the liability for the secured period exceeds the penal sum of the bond by more than \$500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed and demand on the bond deferred until the potential for collection from the individual(s) has been thoroughly explored.

INTEREST CHARGES ON DEMANDS

735.040

In many cases, the amount of the tax-debtor's liability covered by the surety is not sufficient to pay the liability in full. When a demand is made on a surety:

1. If the total amount of the tax-debtor's liability is less than the amount of the bond, the demand will provide for interest (calculated on the tax portion of the liability) at the prevailing interest rate required under the RTC, and any portion of the penalty, up to the full amount of the liability.
2. If the liability exceeds the total amount of the bond, the demand will be for the full amount of the bond. In addition, the demand will provide for additional legal interest at the prevailing per annum rate as provided for in the Code of Civil Procedure.

APPLICATION OF PAYMENTS FROM SURETIES

735.050

Payments received from a surety for application to a liability incurred during the effective period of the bond will be applied as follows (except as otherwise authorized by the supervisor of SPS):

1. Tax.
2. Interest.
3. Penalty.

LIMITATION PERIODS FOR DEMANDS

735.070

The BOE's legal staff believes that the limitation period for making demand on a surety bond or guaranty is within ten years from the date a tax liability becomes due, or within ten years from the effective date of termination by the surety or guarantor, whichever is earlier. SPS will make demand on the surety well in advance of the expiration of the limitation period to allow for the filing of a legal action, if necessary, or to obtain a waiver of the limitation period. If the surety will not furnish a waiver and has not made payment, SPS will refer the matter to the Attorney General to file a legal action if the amount of liability warrants such action. Legal action must be filed against the surety or guarantor before the limitation period expires.

DEMANDS INVOLVING MORE THAN ONE SURETY

735.080

If there is more than one surety on an account, demands will be made on each surety for the amount of liability incurred during the effective periods to the extent of the penal sum of each bond. If there is an overlap of the effective periods, the liability due for the overlap period will be prorated between the sureties. If an overlap exists, each surety is liable for the full amount incurred during the overlap period.

COLLECTION FROM GUARANTORS

735.090

The provisions applying to collection from guarantors in relation to effective periods, limitation of liability, notification, demands, interest charges, application of payments due, and limitation periods for demands are the same as those applying to sureties.

BANKRUPTCIES, ASSIGNMENTS FOR THE BENEFIT OF CREDITORS, RECEIVERSHIPS, AND PROBATES

740.000

BANKRUPTCY – IN GENERAL

740.010

Bankruptcy is a system of federal laws, rules, and procedures pursuant to which persons and entities may submit their assets, liabilities and financial affairs to the jurisdiction of the United States bankruptcy courts. Bankruptcy often involves the interplay of both federal bankruptcy law and state law. The Bankruptcy Reform act of 1978 created the Bankruptcy Code, which became effective in October 1979. The Bankruptcy Code contains the federal statutes that provide the substantive law for all bankruptcy cases. The Federal Rules of Bankruptcy Procedure govern bankruptcy procedures, administration, and litigation. Bankruptcy case law interprets the statutes and rules under the specific facts of a case and provides legal precedents for cases with similar facts.

The Board of Equalization (BOE) is prohibited from collecting from a tax debtor outside of bankruptcy when a tax or fee is discharged in a bankruptcy case. If a debtor has a liability that is excepted from the bankruptcy discharge, creditors may continue to take collection action against the debtor, since the debtor is no longer protected by the automatic stay provided by filing bankruptcy. When a debtor has a current or potential unpaid tax or fee liability to the BOE, the Bankruptcy Team in the Special Procedures Section (SPS) should review the bankruptcy case to determine whether the BOE has a right to receive a distribution from a bankruptcy estate and to collect from a debtor. If so, the Bankruptcy Team should take appropriate action to protect the BOE's right to receive a distribution from the bankruptcy estate and to collect from a debtor outside the bankruptcy case.

Ordinarily, to receive distributions in bankruptcy cases, creditors, including tax agencies, must file proofs of claim. The Bankruptcy Team monitors the status of bankruptcy cases, files proofs of claim, and collects liabilities for accounts in bankruptcy. Once a case exits bankruptcy, the Bankruptcy Team will remove it from legal status, and, if a liability remains collectible, return collection responsibilities to the district office.

PACER

740.020

There are thirteen Bankruptcy Courts in California, spread among four districts: Southern (San Diego area), Central (Los Angeles area), Northern (Bay Area), and Eastern (Fresno/Sacramento/Central Valley areas). Although many of the BOE's tax debtors file bankruptcy in California, cases affecting the BOE's tax debtors may be filed in bankruptcy courts throughout the country.

The court dockets of cases filed in these courts and most legal papers filed in these cases can be accessed using the PACER System (Public Access to Court Electronic Records). PACER is accessible via eBOE or through the internet at: <http://pacer.psc.uscourts.gov/psco/cgi-bin/links.pl>. The BOE has a general username and password used by the entire agency. This information is available through the responsible supervisor.

The U.S. Party/Case Index serves as a locator index for PACER. The U.S. Party/Case Index is a national index for U.S. district, bankruptcy, and appellate courts that searches the entire nation's bankruptcy filings by name, social security or case number.

PACER can also be used as a collection tool since it can be used as support for issuing dual determinations and successor liabilities.

IDENTIFICATION OF BANKRUPTCY STATUS**740.030**

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

Either PACER information or an actual written notice of a taxpayer's bankruptcy is required in order to update accounts in the online system with the legal status.

For sales and use tax accounts, the district offices, headquarters sections, CCS, and SOB collectively are responsible for designating bankruptcy legal status for accounts in the online system. Also, the Property and Special Taxes Department (PSTD) collection staff and SOB are collectively responsible for designating bankruptcy status for PSTD accounts in the system. SUTD and PSTD staff should enter the bankruptcy information into the legal subsystem when:

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

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

When a notice regarding commencement of a bankruptcy case is sent directly to the headquarters office of the BOE, SOB will enter the bankruptcy information into the legal subsystem. SOB does not forward the bankruptcy notice to the districts, CCS, or divisions within PSTD.

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

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

AUTOMATIC STAY**740.040**

USBC §362

United States Bankruptcy Code §362 places a “stay” (stop order) on most collection activity starting the moment the debtor files bankruptcy. Most collection efforts **must** be immediately released, removed and/or stopped from that date until the automatic stay and the discharge injunction no longer restrain the BOE’s collection actions.

BOE collection actions prohibited by the automatic stay include:

1. Revocation of a seller’s permit.
2. Supplier cut off letters.
3. Liens.
4. Levies or withholds.
5. Warrants (including keepers, till taps, and seize and sells).
6. Demands for payment (including demand notices).
7. FTB, EDD and other offsets.
8. Suspension of Liquor License.
9. Earnings Withholding Orders for Taxes (wage garnishments).

BOE actions that are not prohibited by the automatic stay include:

1. Demands for tax returns to be filed.
2. Assessments including compliance assessments, field billing orders, dual determinations, successor billings and audits.
3. Providing Statements of Account.
4. Continuance of any petition or appeal.
5. Withholds on transfer of liquor licenses.
6. Filing of criminal complaints.
7. Correspondence or discussions with the debtor and counsel regarding the things specifically listed in this section.

When in doubt as to whether an action may violate the automatic stay, please contact the Bankruptcy Team before proceeding. A violation of the automatic stay can lead to sanctions against the BOE.

EFFECTS OF LAW CHANGES**740.050**

Since the enactment of the Bankruptcy Code in 1978, there have been many significant amendments. Some of the more significant amendments that affect the BOE are:

1. The Bankruptcy Reform Act of 1994. The automatic stay exception was broadened to permit taxing agencies to take the following actions:
 - a. Audit to determine a tax liability.
 - b. Issue a notice of tax deficiency to the debtor.
 - c. Demand delinquent tax returns.
 - d. Make an assessment for any tax.
2. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) became effective beginning October 17, 2005 and it:
 - a. Codified the tolling of certain periods while a previous bankruptcy case was pending.
 - b. Added exceptions to discharge in both chapter 13 and chapter 11 cases for:
 1. Failure to file
 2. Fraud

CLAIM PREPARATION ON PRE-PETITION LIABILITY**740.060**

Prior to the filing of a bankruptcy proof of claim:

1. All potential pre-petition liabilities must be identified. To accomplish this:
 - a. Delinquent returns must be filed or compliance assessments should be processed and billed.
 - b. Pending audits should be completed and billed.
 - c. In cases where successor liability exists, a notice of successor liability should be issued and billed.
 - d. In cases where responsible person liability exists, a notice of dual determination should be issued and billed.
2. In addition, prior to filing a bankruptcy proof of claim, SPS staff should:
 - a. Review filed returns to determine whether they are correct.
 - b. Return any money collected in violation of the automatic stay.
 - c. Determine whether a cash deposit may be applied to the account.
 - d. Verify correct application of payments.

After completing the above steps, BOE staff should prepare a proof of claim including all pre-petition tax and fee liabilities. The proof of claim must indicate the appropriate designation of a liability as secured, priority, or general unsecured. If an audit or other determination has not been completed, a contingent proof of claim indicating a potential tax or fee liability should be filed.

SPS is responsible for accounts in bankruptcy legal status until the legal case is closed in IRIS. All account maintenance and compliance tasks required to prepare and file a proof of claim in a bankruptcy case will be handled by SPS. Staff in district offices and divisions within PSTD should continue to provide taxpayers with all other account related services requested by the taxpayer (e.g. provide split returns, close-out of permits, update addresses, etc.)

DELINQUENT AND SPLIT RETURNS**740.070**

After transmitting a legal case from the legal claim case screen, the district office or SPS must ensure all pre-petition returns have been filed. In many cases, a Financial Obligation (FO) and tax return must be split to account for liabilities incurred before and after the bankruptcy petition date.

Although this function is primarily the responsibility of SPS, if the taxpayer is present in a district office or in communication with a district office or division within PSTD, staff should assist SPS by determining whether the permit or license is active or closed out and obtaining delinquent or split returns.

A FO is established at the time the tax return is addressed for mailing.

1. If at the time the legal claim is entered on the legal claim case screen, and the system has not yet established a FO, the system will automatically split the FO. Split tax returns will be mailed to the taxpayer by the IRIS system, however, if circumstances require that the returns be mailed immediately, SPS may manually prepare and mail split returns to the taxpayer.
2. If a tax return for the full reporting period was filed without payment, SPS will prorate the difference for the purpose of filing the claim.
3. If a FO for the entire period has been established, but the return has not been filed, district or SPS staff will need to manually split the FO to create a pre-petition and a post-petition return. Staff will then print and mail these returns to the taxpayer. It is the district office staff's responsibility to obtain the returns and establish follow-ups.

When pre-petition returns cannot be obtained with adequate time (two weeks) for SPS to file a claim, a Compliance Assessment should be prepared (see CPPM 540.170).

AUDIT ON PRE-PETITION LIABILITY**740.080**

In all cases where an audit is to be conducted or is in process, but is not yet completed, the Audit Approval section of the legal claim case screen must be completed. Once completed, the legal claim screen will be transmitted to SPS promptly so proper controls can be established for the timely filing of a proof of claim.

Audit staff should be informed of a bankruptcy claims bar date so that an audit can be billed with sufficient lead-time to permit SPS staff to timely file a proof of claim. SPS staff needs at least 2 weeks prior to a claims bar date to process and file a proof of claim.

Audit staff should periodically communicate with SPS staff regarding the status of the audit. If there are problems or delays in the completion of the audit, communication should take place as early as possible to insure that all required steps to preserve the BOE's claim are taken by both audit staff and SPS.

If audit staff is contemplating an audit after a bankruptcy case was filed and the audit period is pre-petition, or pre-confirmation (Chapter 11 cases), audit staff should contact the Bankruptcy Team to determine whether the bankruptcy case affects the liability not yet billed, prior to investing time in an audit.

For requests for Determination of a Tax Liability pursuant to section 505(b)(2) of the bankruptcy code, see CPPM 740.190.

DUAL DETERMINATIONS ON PRE-PETITION CORPORATE LIABILITY**740.090**Revenue and Taxation Code §6829
Sales and Use Tax Regulations 1702.5 and 1702.6

If an officer of a corporation that has a liability with the BOE files a bankruptcy petition, the corporate account should be reviewed for a possible responsible officer dual determination against the officer. If a responsible person dual determination cannot be completed in time to file a proof of claim, but there are indications that a responsible person liability may be established, SPS staff should file a contingent claim. A contingent claim asserts the potential liability of the corporate officer.

DISPOSITION OF SECURITY**740.100**

Revenue and Taxation Code §6815 and §6701

If a bankruptcy case is pending when an account is closed out with no delinquencies or liabilities pending or otherwise, the taxpayer's security deposit should be returned in care of the:

1. Bankruptcy trustee (Chapter 7 cases).
2. Debtor-in-Possession (DIP) or trustee (Chapter 11 cases).
3. Debtor (Chapter 13 cases).

If a liability exists when an account in bankruptcy status is closed out, the taxpayer's security deposit should be applied to the outstanding liability and the Bankruptcy Team notified so that a review of the account can be made. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the BOE in trust to be used solely in the manner provided by Revenue and Taxation Code (RTC) sections 6701 and 6815. Generally, demands are not made on surety bonds or guarantees until after the bankruptcy case is closed.

PRE-PETITION CLAIMS (IN GENERAL)**740.110**USBC §502
USBC §507

"Sales tax", "excise tax", and "fees", as used in this section, are from section 507(a)(8) and other pertinent sections of the United States Bankruptcy Code. Definitions of "sales tax", "excise tax", and "fees" may differ under California laws.

Types of Pre-petition Claims

1. **Priority Claim:** A priority claim can be filed for a liability that qualifies for priority under §507(a)(8) of the bankruptcy code. This includes:
 - a. Sales tax liabilities for which returns were due within three years of the petition date.
 - b. Sales tax liabilities that became final within 240 days of the petition date.
 - c. Sales tax liabilities that were assessable, but not yet assessed, as of the petition date.
 - d. Excise tax liabilities (includes use tax) for which a return is required and due within three years of the petition date.
 - e. Excise tax liabilities (includes use tax) that arise from a transaction occurring within three years of the petition date.

(These periods may be tolled for cases in which a prior bankruptcy case or offer-in-compromise was pending.)

PRE-PETITION CLAIMS (IN GENERAL)

(CONT.) 740.110

1. **Secured Claim:** A secured claim is a tax or fee liability secured by an interest in real or personal property when:
 - a. The BOE has a valid pre-petition lien filed with the Secretary of State's Office or the BOE has a valid pre-petition lien recorded with a county recorder's office in which the debtor owns real property as of the petition date, and
 - b. There appears to be equity in the property to which the BOE's lien attaches.
2. **General Unsecured Claim:** A general unsecured claim is a tax or fee liability that is neither entitled to priority treatment nor secured.
3. **Gap Claim:** When a debtor is forced into bankruptcy through the filing of an involuntary petition, the period after the commencement of the involuntary case, but before the order of relief, is referred to as the "gap" period. A tax liability arising during the gap period is entitled to priority and should be asserted as a gap claim.

Emergency Proof of Claims

Occasionally, a district office may be asked by the Bankruptcy Team to file a proof of claim with a bankruptcy court to meet a claim bar date.

In these cases, SPS will e-mail a copy of the claim to the district office. The proof of claim should be signed by a Business Taxes Compliance Supervisor II at the district office. The district will then be responsible for filing the proof of claim with the bankruptcy court. If there is no district office located near the court, SPS will e-mail the proof of claim to the district office nearest the bankruptcy court. Once a proof of claim has been filed with a bankruptcy court, the district office should provide SPS with a court-stamped copy of the proof of claim.

Claims Bar Date

With few exceptions, proof of claims must be filed before a claims bar date to be paid. The law allows governmental units 180 days from the bankruptcy petition date to file pre-petition claims. However, if a different bar date has been set by court order, then BOE must follow that bar date.

Proofs of claim in chapter 13 cases should be filed prior to the date first set for hearing on confirmation of a debtor's chapter 13 plan.

Claims Agent

Proofs of claim must be filed at the address designated for filing. In large chapter 11 cases, a claims agent may be assigned to administer claims. In those cases, the BOE may be directed to file its proof of claim with the agent – not the bankruptcy court.

CHAPTER 7 BANKRUPTCY**740.120**USBC Chapter 7 in General, Specifically §727
USBC §523

A chapter 7 bankruptcy case is a liquidating bankruptcy case. A chapter 7 case can be commenced by an individual or a business entity through the filing of a bankruptcy petition, or by creditors who file an involuntary petition.

A chapter 7 trustee is appointed to administer a chapter 7 case. The trustee is responsible for gathering the debtor's non-exempt assets, if any, reducing those assets to cash (when appropriate), and making distributions to creditors in accordance with the distribution provisions of the Bankruptcy Code. All legal or equitable interests of a debtor in property as of the petition date become property of a debtor's bankruptcy estate.

Chapter 7 cases can be considered either "asset" or "no asset" cases. Although a debtor's voluntary petition will state whether a case is believed to be an asset case or a no asset case, the chapter 7 trustee ultimately makes this determination. If a trustee declares the case to be a no asset case, but later recovers assets for distribution to creditors, the designation can be changed, with a notice sent to creditors to file a claim.

Late Proofs of Claim

The law allows the BOE to file a late proof of claim in a chapter 7 case as long as the proof of claim is filed on or before (1) the trustee's commencement of a final distribution to creditors, or (2) 10 days after the mailing to creditors of a summary of the trustee's final report, whichever comes first. Nevertheless, every attempt should be made to file a proof of claim before a claims bar date.

The BOE's proof of claim should include all unpaid taxes and fees and all interest accrued to the petition date. In a separate category, the proof of claim should include post-petition interest and penalties. In surplus cases where unsecured creditors will be paid in full, the BOE may be entitled to receive a distribution on its post-petition interest and penalties.

Discharge

A discharge in bankruptcy is typically issued by a bankruptcy court within 180 days of the petition date. Only individuals are entitled to receive discharges in chapter 7 cases.

Closure

The date of closure of a chapter 7 bankruptcy case depends on whether the case is an asset or a no asset case. No asset cases typically close within a few months of the petition date. Asset cases typically close many months, if not years, after the petition date.

Resumption of Collection Activity

If a tax or fee liability to the BOE is excepted from discharge, BOE staff may resume collection activity against a debtor and a debtor's assets that are not included within a bankruptcy estate, after the debtor receives a discharge in bankruptcy. Ordinarily, BOE staff waits until a bankruptcy case is closed to commence collection action to avoid any possibility of violating the automatic stay.

A case will remain under SPS control as long as SPS deems necessary. Staff should not pursue collection against a debtor without SPS direction while a case remains under SPS control due to a bankruptcy.

Pursuant to Bankruptcy Code section 523, certain liabilities are excepted from a chapter 7 discharge. The following types of liabilities are excepted from discharge:

1. Priority tax debt (see CPPM 740.110 and USBC §507).
2. Tax liabilities associated with a fraudulent return.
3. Tax liabilities for which the debtor made an attempt to evade or defeat the tax.
4. Tax liabilities associated with the debtor's failure to file returns.
5. Tax liabilities associated with returns filed late and within 2 years of the petition date.

If a tax or fee liability is discharged and it is not secured by a valid state tax lien, then SPS will process an adjustment to the liability within IRIS. If a liability is discharged, but a valid state tax lien secures the liability and was recorded before the petition date, a "Discharge from Accountability" should be processed online (see CPPM 740.160). If the lien is released at a subsequent date, SPS staff will adjust the liability.

CHAPTER 13 BANKRUPTCY CASES

740.130

USBC Chapter 13 in General, Specifically USBC §1305, §1325, and §1328

Chapter 13 bankruptcy cases enable individuals only (not legal entities) with regular income to repay all or part of their debts pursuant to the provisions of a plan confirmed by order of a bankruptcy court. Debtors make installment payments to a chapter 13 trustee, who, in turn, makes a distribution to creditors. The term of the plan is usually three to five years.

Basic Terms of a Chapter 13 Plan (USBC §1325)

The debtor's plan should:

1. Provide for installment payments.
2. Not exceed 5 years in duration.
3. Pay priority claims in full.

A chapter 13 trustee and creditors can object to confirmation of a debtor's proposed plan if it is not feasible or if the plan does not provide for the proper amount, treatment, or payment of the claims of the creditors.

The Bankruptcy Team will monitor chapter 13 cases to insure that all payments that the BOE is entitled to receive under a confirmed chapter 13 plan are being timely paid to the BOE and applied correctly to pre-petition liability.

Claim

In a chapter 13 case, the BOE's proof of claim may include only pre-petition tax and pre-petition interest. BOE proofs of claim filed after a claims bar date usually receive no distributions from the chapter 13 trustee, and the liability may be ultimately uncollectible if the debtor receives a discharge in bankruptcy.

Post-Petition Tax Liabilities

A chapter 13 debtor is required to timely report and pay post-petition tax liabilities while a bankruptcy case is pending. Since the automatic stay remains in effect until a debtor receives a discharge or the case is dismissed, the BOE may not take collection action on post-petition liabilities. The BOE may move to dismiss a case or convert a case to a chapter 7 if a taxpayer does not report or pay a post-petition tax liability. The BOE may also file a claim under Bankruptcy Code section 1305 (see CPPM 740.170). The BOE's Legal Department must be consulted before filing a section 1305 claim. Efforts should be made to collect a post-petition tax liability by voluntary compliance before either course of action is pursued.

Discharge (USBC §1328)

A chapter 13 debtor does not receive a discharge until all payments under a plan have been made and a plan is otherwise consummated. A chapter 13 discharge, for cases filed prior to October 17, 2005, discharges all tax liabilities arising prior to the petition date. If a bankruptcy case is filed after October 17, 2005, tax liabilities resulting from the debtor's failure to file returns or fraud are excepted from discharge.

The Bankruptcy Team will process any necessary legal adjustments and lien releases for tax and fee liabilities that are discharged in a chapter 13 bankruptcy case.

In some chapter 13 cases, a debtor can receive a hardship discharge without completing all plan payments. The Bankruptcy Team should be consulted to determine the effect of a hardship discharge on a BOE liability.

CHAPTER 11 BANKRUPTCY CASES**740.140**

USBC Chapter 11 in General, Specifically USBC §1129 and §1141

A chapter 11 bankruptcy case can be either a reorganization case or a liquidation case. Occasionally a trustee will be appointed to administer a chapter 11 case, but generally a debtor remains in control of the assets and business affairs as a DIP (DIP).

Plan (USBC §1129)

In most chapter 11 cases, a DIP or trustee is required to file a disclosure statement and a plan of reorganization or liquidation. A disclosure statement should explain in ordinary terms the reasons why the debtor commenced its bankruptcy case, describe in ordinary terms how creditors' claims will be treated, and describe how the debtor will reorganize or liquidate.

The BOE often has a priority tax claim in a chapter 11 case. The Bankruptcy Code requires a priority tax creditor to be treated not less favorably than as follows:

For cases filed prior to October 17, 2005:

1. Deferred cash payments.
2. Payment of a priority tax claim under a plan are not to exceed 6 years from the date of assessment.
3. Priority tax claims should include all pre-petition taxes or fees and all interest accrued to the petition date.
4. Allowed claims are required to be paid in full, plus post-confirmation interest on the claim at a rate set by the court.

For cases filed after October 17, 2005:

1. Regular installment payments.
2. Payment of a priority tax claim under a plan cannot extend beyond 5 years from the petition date.
3. Treatment of a priority tax claim will include all pre-petition taxes or fees and all interest accrued to the petition date and will not be less favorable than the most favored non-priority unsecured claims.
4. The BOE's allowed priority tax claim must be paid post-confirmation interest at the BOE's rate as of the date of confirmation.

If a proposed plan does not properly provide for treatment of the BOE's claim, the BOE may object to confirmation of the plan.

Claim

In a chapter 11 bankruptcy case, a BOE claim includes only pre-petition tax and/or interest.

Plan Default

Once a chapter 11 plan is confirmed, the BOE cannot collect on a pre-confirmation tax or fee liability except as provided for in the confirmed plan. If there is a default in payment under a confirmed plan, the BOE can declare a default under the confirmed plan, notify the plan administrator of the default, and demand payment. If the demand is not met, the BOE can collect the full unpaid balance of the amount of its allowed proof of claim.

1. "Notice of Default" letter is sent approximately 30 days or more after the debtor defaulted on the plan.
2. "Notice of Breach of Contract and Demand for Payment" is sent approximately 60 days after a debtor defaults on a confirmed plan and after no response to the first letter. It sets a response deadline by which the BOE will consider the default a breach of contract and will begin collection action.

Once the date specified in the second letter passes, the Bankruptcy Team may remove the account from legal status and return the account to the staff responsible for collection action in the district office or division of PSTD. Collections are limited to the liability provided by the confirmed plan. This will include the monitoring of legal interest on the claim. The Bankruptcy Team should be consulted if there are any questions as to what should be collected – or about how to monitor the payments. (See CPPM 740.150 for specifics on the Discharge Review process).

Post-Petition Collections

The DIP or trustee who continues with the operation of the business is required to comply with the requirements of the law to file tax returns and pay taxes as they come due. Any liability that accrues subsequent to the date of the petition and prior to confirmation of a plan is an expense of administration, and, as such, is entitled to expense of administration priority. An expense of administration claim should be filed prior to plan confirmation. See CPPM 740.170 for more information on expense of administration claims. Any liability that accrues after confirmation of a plan can be collected as if the debtor was not in bankruptcy.

Discharge of a Tax or Fee Liability upon Confirmation (USBC §1141)

In chapter 11 cases filed prior to October 17, 2005, for both individuals and legal entities, discharge occurred upon confirmation of a plan. A full discharge is only granted to corporate debtor's, not to individuals. A discharge for an individual is subject to the same exceptions to discharge provided by Bankruptcy Code section 523 in a chapter 7 case.

In chapter 11 cases filed on or after October 17, 2005, BOE tax and fee liabilities owed by legal entities are discharged when a plan of reorganization is confirmed. Tax and fee liabilities owed by individuals are discharged only when a plan of reorganization is fully paid and otherwise consummated. Plans of liquidation should not contain a discharge provision because discharge is not allowed in these cases.

In legal entity cases filed prior to October 17, 2005, a discharge under chapter 11 discharges all liabilities incurred prior to the confirmation date. For cases filed after October 17, 2005, tax liabilities incurred either for failure to file a return or associated with a fraudulent return are excepted from discharge.

While an account remains in chapter 11 bankruptcy status, the Bankruptcy Team will monitor the case to insure that all plan payments are made to the BOE. After all payments have been made, the Bankruptcy Team will make any necessary adjustments to the liability and route the account back to the district office if a collectible liability still exists.

DISCHARGE REVIEW

740.150

After a taxpayer receives a discharge in bankruptcy or a proof of claim for a tax or fee liability is paid through a bankruptcy case, or both, it will be the responsibility of SPS to:

1. Determine the extent to which a BOE liability has been satisfied through payment.
2. Determine whether or not a BOE tax or fee liability has been discharged in bankruptcy.
3. Legally adjust discharged liabilities using the IRIS legal adjustment process.
4. Apply discharge-in-bankruptcy (DFB) status to any liability periods in the IRIS Difference System (DIF) that are discharged.
5. Post notes in ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, that specifically describe the discharged and non-discharged status of pre-bankruptcy balances.
6. Analyze whether a pre-bankruptcy BOE tax lien has survived the discharge (CPPM 740.160).
7. Release BOE tax liens that have not survived a bankruptcy discharge.
8. Post notes to ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, specifically describing property/conditions to which any surviving lien remains attached.
9. Post notes in ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, regarding any joint debtor accounts (partnership, husband and wife co-ownership, etc.) as to dischargeability for the specific joint debtor who has received a discharge.
10. Issue a demand for any non-discharged liability.

LIENS ON DISCHARGED DEBT

740.160

In re Carlson 292 F.Supp. 778
In re Isom 901F.2d 744

Generally, in a chapter 7 case, tax liens on a liability that has been discharged survive bankruptcy if the liens attached to real or personal property prior to a bankruptcy filing. The BOE retains the legal right to collect the tax liability, but only from the property to which the tax lien attached prior to the bankruptcy case and not from the tax debtor personally. Where a tax liability is discharged, but the tax lien survives a bankruptcy discharge, the tax liability should not be legally adjusted. Instead, collection staff will submit an online "Discharge from Accountability" to SPS. If, at a future time, the lien is released (see below), SPS will process a legal adjustment at that time.

LIENS ON DISCHARGED DEBT**(CONT.) 740.160**

If a taxpayer wishes to obtain a lien release on a liability that was discharged through bankruptcy, it must establish to SPS' satisfaction that the lien did not attach to any pre-petition property. Evidence to support this assertion includes:

1. A Title Report certifying that a search of the grantor/grantee index of the county where the lien was recorded discloses no property in the debtor's name or transferred to or from the debtor's name from the time the lien was recorded until the petition date.
2. Copy of bankruptcy schedule "A" showing no real property.
3. Copy of IRS tax returns for the years between the day the lien was recorded to the day the bankruptcy petition was filed.
4. Statement under penalty of perjury that the taxpayer owned no property, nor had property transferred to or from his ownership between the date the lien was recorded and the petition date.
5. If property was owned, but was subject to foreclosure, all documents/deeds verifying this transfer must be provided.

SPS will review the documentation provided and if it is satisfied the lien has no value (does not attach to any property), it will release the lien. These requests are subject to approval by the supervisor of SPS.

Enforced collection against a tax debtor or a tax debtor's property must not take place on any discharged debt, except as against property to which the BOE's tax lien attached and as permitted under BOE policy.

POST-PETITION CLAIMS**740.170**

USBC §503 and §1305

Post-petition claims include:

1. Expense of Administration Claims (EOA):
 - a. In a chapter 11 case in which the debtor incurs tax liability after filing bankruptcy but before confirmation of a chapter 11 plan, an EOA claim should be filed for the liability between the petition date and the confirmation date, if the tax liability is not voluntarily reported and paid.
 - b. In a chapter 11 or 13 case in which the debtor incurs tax liability after filing bankruptcy, but the case converts to a chapter 7 case, an EOA claim should be filed for any liability incurred between the petition date and the conversion date.
2. Section 1305 Claims: Pursuant to Bankruptcy Code section 1305, the BOE may file a claim for unpaid taxes incurred while a chapter 13 case is pending, however, such claims should be filed only after consulting with the BOE's Legal Department.

Both EOA and section 1305 claims include tax, interest and penalties (full debt as of the date the EOA or section 1305 claim is filed).

1. Liquor Licenses:

The BOE should place withholds on transfers of liquor licenses when it is discovered that a debtor has filed for bankruptcy.

California Business and Professions Code Sections 24049 and 24074 provide that all liabilities owed to the BOE, the Franchise Tax Board, the Employment Development Department, the Alcoholic Beverage Control, and unsecured county taxes incurred in connection with a liquor license shall be paid prior to distribution of any funds to any other person.

The BOE is entitled to payment of the sales proceeds of a liquor license to the extent necessary to satisfy an unpaid tax or fee liability. If there are insufficient sales proceeds to pay a BOE tax liability in full, then the BOE takes the full sales proceeds and applies them to the liability. The BOE should be paid outside a bankruptcy case and directly from escrow.

2. Sale of Personal Property (Liquidation Sales):

An Asset Purchase Agreement (APA) is a contract between a buyer and a seller (the seller may be a debtor in possession or a trustee) for the purchase of substantially all the assets of the debtor's bankruptcy estate. The APA many times will describe the assets, the purchase price, conditions to closing, real estate matters, assumptions of liabilities, and other details that are required to complete the transfer of the assets from one party to the other. An APA must be approved by the court. The BOE, along with other creditors, may object to the sale.

An APA is often found in large liquidating cases. The APA should be reviewed closely to determine if there is any California taxable tangible personal property being sold – usually in the form of fixtures and equipment.

SPS staff may request audit staff to review the APA to determine the tax consequences of a sale. Taxpayers should be encouraged by BOE staff to declare the amount due on a Sales and Use Tax Return – or to state in writing the amount of the measure of the tax liability. If the APA does not specify a value for the fixtures and equipment, BOE staff should prepare an estimate of value.

Once the amount of the tax liability is declared by a taxpayer, or determined by the BOE, an EOA claim should be filed for the full amount due if the liability is not voluntarily paid.

If an objection to an EOA claim is filed, the BOE must defend it in bankruptcy court or the claim may be disallowed and the BOE will not receive a distribution.

When a trustee or a DIP employs an auctioneer/liquidator to sell the assets of the estate, any taxes are to be reported and paid by the auctioneer/liquidator.

The effective date of payment on all remittances received from the bankruptcy court/trustee on taxable liquidation sales will be the date the court approves the payment. All additional interest that has accrued from the time payment is approved by the court to the time the BOE actually receives the money will then be backed out.

1. Sale of Real Property:

If a trustee or DIP is selling real property located in a county in which the BOE has a lien, the BOE can require that the lien be paid in full prior to a release of the lien.

The trustee can request that a sale take place “free and clear” of all liens and encumbrances. Although this removes the lien from the property, the lien will usually attach to the proceeds of the sale to the same extent and validity. The funds should then be disbursed according to the priority of the liens filed. If there are other governmental agencies (FTB, IRS, EDD) involved, the agencies will typically use assessment dates instead of recording dates to determine who should receive payment (although bankruptcy is excluded from the requirements of the Inter-Agency Agreement, its guidelines are still utilized in lien comparisons between agencies during bankruptcy). The BOE Legal Department should be advised and consulted upon receipt of a motion to approve a sale free and clear of a BOE lien or interest.

If there is not enough money (equity) in the property to pay the BOE’s lien, then the BOE does not receive payment – the lien remains in place (i.e. recorded in the county), but the property was sold free and clear.

2. Retail Sales:

If a trustee is continuing the business or if there will be a taxable liquidation sale by a trustee who does not hold a valid seller’s permit for the estate, an account will need to be issued. The account should be opened in the name of the estate or the trustee, just as if the trustee was a regular taxpayer. (See CPPM 210.010, *Sellers Permit*).

If the trustee is declaring the proceeds from one sale or a few sales, then an arbitrary account number should be issued with the reason “bankruptcy, liquidation” cross-referencing the debtor’s account number. Arbitrary accounts are used because they will not create delinquencies leading to the revocation of the trustee’s account. At the time of registration, the district office will provide the trustee with a tax return and information pertaining to the taxability of the liquidation sale and the completion of the return.

3. Other BOE Accounts

In the event a trustee requires a seller’s permit to continue an ongoing business, or an arbitrary account to report liquidation of assets, district office staff should determine whether the trustee needs to be registered for any other BOE programs. District office staff should review the predecessor’s Taxpayer Identification Number for additional BOE accounts. In the event the trustee needs additional BOE accounts, district office staff should contact PSTD and advise them of the potential new accounts.

In such cases, a District Principal Compliance Supervisor (or their designee) should send an email notification to the Operations Manager of the Property and Special Taxes Department. The email should be sent to the Outlook mail box titled “PSTD-Referrals from SUTD.”

The email notification should include the name, address and phone number of the trustee. The notification should also include the predecessor’s and trustee’s seller’s permit number. The notification should include other BOE accounts the predecessor held prior to the trustee assuming control of the business. PSTD staff will review the notification and forward the information to the appropriate division for further action, as well as appropriate account maintenance on the predecessor’s PSTD-related accounts.

REQUESTS FOR PROMPT DETERMINATION OF TAX**740.190**

USBC §505(b)(2)

Under Bankruptcy Code section 505(b)(2), a trustee or taxpayer may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the estate by submitting a tax return and a request for such a determination. The trustee and the debtor will be discharged of any liability for any unreported tax if:

1. The BOE does not notify the trustee within 60 days that the return has been selected for examination (audit).
2. After notifying the trustee the account will be examined, the BOE does not notify the trustee within 180 days of the additional amount due (if any) or within such additional time as the court permits.
3. Once the amount determined by the BOE, or the court, is paid.

When staff is contacted by SPS concerning requests made under Bankruptcy Code section 505(b)(2), it is important that they process such requests to examine or audit returns on a priority basis.

VALID SERVICE UPON THE BOARD**740.200**

The Rules of Bankruptcy Procedure and the Federal Civil Rules of Procedure are very specific in reference to what constitutes valid service. The Board is presumed to have received proper notice when it is served in compliance with the following rules:

1. Summons and Complaint for Adversary Proceedings:
Pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(6) and California Code of Civil Procedure (CCP) section 416.50, the summons and complaint must be served upon the BOE's Executive Director at:
Board of Equalization
Executive Director
450 N Street, MIC: 73
Sacramento CA 95814-0073
2. Service on the California State Board of Equalization
Pursuant to Federal Rule of Bankruptcy Procedure 2002, the following address has been designated for all bankruptcy notices, unless otherwise indicated:
California State Board of Equalization
Account Information Group, MIC 29
P.O. Box 942879
Sacramento CA 94279-0029
3. Objections to Claims
Pursuant to Federal Rule of Bankruptcy Procedure 3007, a Notice of Objection to Claim must be served at the address specified on the Proof of Claim filed by the BOE.

Requests for Prompt Determination of a Tax Liability

Pursuant to Bankruptcy Code section 505(b)(1)(A) the address designated for service of all section 505(b) requests for prompt determination of tax liability is:

California State Board of Equalization
Special Procedures Bankruptcy Team, MIC 74
P.O. Box 942879
Sacramento CA 94279-0074

PARTNERS IN BANKRUPTCY**740.210**

When two or more persons are jointly responsible for payment of a BOE tax liability (partnership accounts, husband and wife co-ownership accounts, etc.), Special Operations Branch (SOB) will be responsible for determining which liabilities, if any, have been discharged by a joint debtor's bankruptcy discharge. If all joint debtors have discharged liabilities, the liabilities may be legally adjusted. If not, the tax liability should not be adjusted, nor should the Discharge From Bankruptcy (DFB) status code be set. If a lien release is appropriate for a discharged joint debtor, but not for all joint debtors, a partial release as to the affected person should be issued.

A partner that is not in bankruptcy is not protected by the automatic stay of a partner in bankruptcy. Collection can continue on the partner not protected by the automatic stay. When a partnership consists of a married couple, marital community property and funds will be protected from collection by the automatic stay of 11 U.S.C. Section 362(a). It does not matter whether one or both of the spouses file for bankruptcy. Most or all of the marital community's property and funds will belong to the bankruptcy estate pursuant to 11 U.S.C. Section 541(a)(2)(A). Case specific questions about community property should be directed to SOB.

Demand Notices for Non-Bankrupt Partners

SOB staff can create and issue a demand notice in IRIS to an individual non-bankrupt partner whose partnership account has a legal designation. The demand copy that is addressed to the partnership, as well as the copy belonging to the partner(s) who filed bankruptcy, will not be produced if a legal designation on the partnership account exists. If a demand notice is created and one or more partners are ineligible to receive the demand due to the legal designation on the partnership account, the demand for the ineligible partners will reject and an assignment (BNK) will be created in assignment control for follow-up by SOB supervision. If a demand notice is created and one or more partners are ineligible to receive the demand due to discharged liabilities, the demand for the ineligible partners would reject and an assignment (DFB) will be created in assignment control for follow-up by SOB supervision. If a notice is suppressed for either reason, the appropriate rejection code will be displayed on the DIF BN screen.

Browse Client/Difference Relationship Screen (DIF XB):

The DIF XB screen displays Difference Client Relationships for a selected Client ID. All account and difference information belonging to the identified client will be displayed. Query fields allow the list to be positioned at a selected relationship type or account number. If a relationship type code is entered in the "Rel" seek field, the list is displayed starting from the relationship type code. If an account number is also entered in the account seek field, the list is displayed starting from the account number. A user can then select a record that will navigate him or her to the Maintain/Inquire Difference Client Relationship screen. The DIF XB screen is available to all BOE staff.

The Browse Client/Difference Relationship screen has a second panel. The second panel provides additional information (e.g., legal case ID, case name) that will help you find the desired record. Press function key F20 in order to access the second panel. The additional information will only appear if the user has entered the legal case ID and case name for the relationship.

Maintain/Inquire Difference Client Relationship (DIF XM):

The DIF XM screen allows a Client Difference Relationship to be entered or viewed. A Client Difference Relationship specifies the type of relationship between the two entities and the date range the relationship was effective. The system will check for a relationship between client and difference and process according to the relationship's existence at the time. For example, if a partner's liability is discharged in bankruptcy, then a demand would not be sent to the partner.

If the Client Difference Relationship is ended, the relationship is no longer in effect for any process that runs after that update. To reestablish the relationship, a new relationship must be created. This new relationship may have the same effective date as the previous record's end date. It may also have the same effective date as the previous record, if the previous record ended the same day. The DIF XM screen may only be accessed and modified by SOB staff.

District Offices and Special Taxes and Fees:

District office and Special Taxes and Fees staff will often enter an account into the legal subsystem when a legal action is pending (Bankruptcy, Probates, Assignments, etc.). The responsibilities and procedures of data entry will remain the same with one exception. Since partners are tracked on an individual basis, the bankrupt partner's Taxpayer Identification Number (TIN) must be entered. The partnership's TIN should no longer be linked to the legal action unless the entire partnership has filed bankruptcy. It is imperative that the bankrupt partner's TIN be entered so the notice process will be effective and accurate.

This functionality will allow the tracking of an individual partner's personal liabilities by providing a comprehensive listing of accounts, differences, and effective dates at the client level. In addition, the system will automatically and accurately determine who is eligible to receive a demand based on the pending legal actions of partnership accounts. This will allow BOE to pursue these types of partnership liabilities without violating the automatic stay and will uphold the goals and objectives of RUPA and BOE

APPLICATION OF BANKRUPTCY PAYMENTS

740.220

Payments made during a pending bankruptcy need to be closely monitored. Only SPS should change applications of bankruptcy payments (i.e. payments from a trustee or DIP).

1. Payments made by an estate, trustee, or debtor for payment of a bankruptcy claim through the bankruptcy court must be applied to the periods specified in the BOE's proof of claim.
2. Payments made by an estate, trustee, or debtor for payment of a secured liability must be applied to the liability which that asset secured (i.e. if not all periods are subject to a lien, then proceeds from the sale of a property should be applied to the liabilities that are subject to a lien).
3. Payments made by a debtor after the petition date must be applied to the debtor's post-petition liability. (The only exception is if a chapter 7 debtor wants to make voluntary payments toward pre-petition debt, as he will still owe it when his bankruptcy has concluded).
4. Over-payments made prior to the bankruptcy must be either applied to pre-petition liability or refunded to the trustee or DIP.

When collection staff have questions concerning the application of a payment, they should contact the Bankruptcy Team.

APPLICATION OF BANKRUPTCY PAYMENTS**(CONT.) 740.220**

If a payment from a source outside the bankruptcy proceedings alters the BOE's filed claim, the Bankruptcy Team should be notified to review the claim for possible amendment.

BANKRUPTCY IN IRIS**740.230****Important Legal Screens:**

1. **LGL LC (Legal Case):** To see the information entered, or to enter information on IRIS concerning a legal case.
2. **LGL SC (See Claim):** To see what claim or claim(s) the BOE may have filed on any given case.
3. **LGL MC (Make Claim):** Used only by SPS staff to enter information about a new claim.
4. **LGL AG (Attorney General):** To see the information entered, or to enter information on IRIS concerning an Attorney General case (only SPS staff can enter an AG case).

Staff may access legal subsystem screens by using 1) the account number-(a), 2) the case number-(c) or 3) the case id number-(i).

Accessing Legal Screens by Account Number, Case Number or Case Id Number:

1. **BOE Account Number:** Users should enter the desired LGL screen on the first two spaces of the "GO" line in IRIS. On the third space, users should enter the letter "A", followed by the nine-digit BOE account number.
2. **Bankruptcy Case Number:** Users should enter the desired LGL screen on the first two spaces of the "GO" line in IRIS. On the third space, users should enter the letter "C", followed by the bankruptcy case number.
3. **Case ID Number:** Users should enter the desired LGL screen on the first two spaces of the "GO" line in IRIS. On the third space, users should enter the letter "I", followed by the case ID number.

Initial Legal Entry:

1. Promptly upon learning the taxpayer is involved in bankruptcy, staff will obtain the required information and complete the Legal Claim Case screen online (LGL LC).
2. Lists of appropriate TIN numbers to use for courts, chapter 13 trustees, and some chapter 7 trustees have been provided to all districts. If collectors need assistance relating to TIN numbers for courts and trustees in the LGL-LC screen, they should contact SPS.
3. The case must be transmitted using the F20 key in order for the account to be put in legal status.

During the Pending Bankruptcy:

1. Pre-petition periods are marked with B07, B11, or B13 (on DIF DA) depending on the type of bankruptcy filed.
2. Liability in a chapter 11 that is post-petition, but pre-confirmation, is marked with just the letter "B."
3. Post-petition and post-confirmation chapter 11 periods are not marked.
4. Staff will not be able to send a demand on any period "marked" with a bankruptcy indicator.

BANKRUPTCY IN IRIS**(CONT.) 740.230**

After the Bankruptcy Concludes:

1. SPS will mark any discharged period with a DFB indicator in the “status” column. Occasionally the DFB indicator will be hidden under other status indicators. Staff should use the DIF DI screen and place an “M” on the moreable field to view the status for the period.
2. Once a discharged period is marked “DFB”, a demand for payment cannot be issued for that period. However, a statement of account may be issued to the taxpayer.
3. Collection should not take place on any period marked with a DFB status indicator.
4. Questions concerning why a DFB status indicator is placed on a particular liability should be directed to SPS.

BANKRUPTCY IN ACMS**740.240**

1. Initial entry and transmission of the legal screen will automatically route the account to SPS for monitoring, on the next day. Do not place a hold on the account because it could impede this automatic process.
2. Once the bankruptcy case is removed from legal status, the case will automatically route to the district office or PSTD division of control the following day.
3. Collections staff should look for the comment under “Legal Case Summary” in ACMS that gives them a review of the impact of the bankruptcy proceedings on the liability prior to working the account.
4. DFB status on any given liability will be reflected in ACMS. ACMS will stop and/or warn regarding any collection on a liability marked with a DFB indicator.
5. Any questions regarding comments made in ACMS in reference to a bankruptcy should be directed to the Bankruptcy Team member that made the comment.

GLOSSARY OF BANKRUPTCY TERMS**740.250**

TERM	DEFINITION
Assets Abandoned by Trustee	The trustee in bankruptcy may decide not to retain certain assets of the debtor as part of the bankruptcy estate. For example, the debtor may not have sufficient equity in certain assets to make retention of those assets worthwhile for the estate. The trustee may petition the court for abandonment of the assets and, if approved, the assets are released from the estate. The debtor may also file a motion to compel the trustee to abandon particular assets on the grounds that they are burdensome to the estate, or of inconsequential value or benefit to the estate.
Automatic Stay	The filing of a bankruptcy petition operates as a stay of (in effect, an injunction against) collection activities, including the commencement or continuation of judicial and administrative proceedings, the enforcement of liens, the setoff of mutual debts, and all actions to collect, assess, or recover a claim that arose before the bankruptcy filing. The stay does not prevent or stop an audit to determine tax liability, the issuance of a notice of tax deficiency, a demand for tax returns, or the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment. Creditors acting in violation of the stay may be sanctioned by the court.

TERM	DEFINITION
Claims Bar Date	The deadline date by which claims for pre-petition liabilities must be filed.
Administrative Claims Bar Date	The deadline date by which claims for post-petition liabilities must be filed.
Bankruptcy Code	The informal name for Title 11 of the United States Code, the federal bankruptcy law.
Bankruptcy Estate	The commencement of a bankruptcy case creates an estate, which is comprised of all property, real and personal, of the debtor as of the commencement of the case, plus property acquired by the estate during the case.
Case Closed	Administration of the bankruptcy estate is complete and the case is closed.
Chapter 7	The chapter of the Bankruptcy Code providing for liquidation, i.e., the sale of the debtor's nonexempt property and distribution of the proceeds to creditors.
Chapter 9	The chapter of the Bankruptcy Code providing for the reorganization of a political subdivision, municipality, public agency, or instrumentality of a state.
Chapter 11	The chapter of the Bankruptcy Code providing for the reorganization of a business or of the financial affairs of an individual or a husband and wife (can also be a liquidation)
Chapter 12	The chapter of the Bankruptcy Code providing for the adjustment of debts of a family farmer with regular income.
Chapter 13	The chapter of the Bankruptcy Code providing for the adjustment of debts of an individual with regular income.
Claims in Bankruptcy	A creditor's assertion of a right to payment from the debtor or the debtor's property.
Confirmed Plan of Reorganization	Court approved plan that provides the terms of debt repayment, and that often re-vests the assets of the bankruptcy estate in the reorganized debtor.
Date of Order of Relief	The date of filing of any voluntary petition, or the date that that court enters an order for relief against the debtor in an involuntary case (commenced by creditors).
Debtor	A person or entity that has filed a petition for relief under the Bankruptcy Code.
Debtor in Possession (DIP)	A debtor who remains in control of the administration of the business and assets of the debtor's estate during a chapter 11 case. A DIP has powers and authority similar to those of a court appointed chapter 11 trustee.
Discharge	The release of a debtor from personal liability for dischargeable debts. A discharge operates as an injunction against the commencement or continuation of any action to collect, recover, or offset a discharged debt as a personal liability of the debtor.
Dismissal	Places the parties in essentially the same position as before the bankruptcy was filed.

TERM	DEFINITION
Dividend	Monies received from the bankruptcy estate as a result of a claim.
Expense of Administration Claims (or Administrative Claims)	The actual, necessary costs and expenses of preserving the bankruptcy estate. Generally, claims arising after the commencement of the case are administrative claims. Tax debts incurred by the estate (i.e. after the case commenced) are administrative claims.
Gap Period Claim	A creditor's claim that arises in an involuntary case after the petition is filed but before the issuance of the order for relief.
Involuntary Bankruptcy	A bankruptcy petition filed by creditors against a debtor. The court will order relief against the debtor (order the debtor into a bankruptcy) if a debtor is generally not paying his/her debts as they become due. The automatic stay applies upon filing the petition. Until the court enters an order for relief, may continue to use, acquire, or dispose of property. An involuntary case can only be filed in a chapter 7 or chapter 11 bankruptcy. When dealing with an involuntary petition, complete the legal claim screen and transmit to SPS. Enter BI7 in the "type" field.
No-Asset Case	A chapter 7 case in which there are insufficient assets to warrant liquidation and distribution to creditors. A no-asset case may later become an asset case if assets are discovered. Conversely, a case originally believed to be an asset case may become a no-asset case.
Petition	The document that commences a bankruptcy case.
Priority of Claims	<ol style="list-style-type: none"> 1. In cases filed on or after October 17, 2005, claims for child, spousal and family support have first priority. In cases filed before October 17, 2005, these claims have seventh priority, just ahead of tax claims. 2. Expense of Administration Claims. 3. Gap Period Claims. 4. Claims for wages, salaries, and commissions owed by the debtor, with certain limitations. 5. Claims for contributions to employee benefit plans, with certain limitations. 6. Certain claims of grain producers and U.S. fishermen 7. Claims for deposits toward the purchase or rental of items for personal, family or household use, with certain limitations. 8. Certain claims for federal, state, and local taxes.

TERM	DEFINITION
Trustee in Bankruptcy (the Case Trustee)	Disinterested person appointed by the Office of the United States Trustee. The trustee has authority to control all assets of the debtor and is responsible for administering the estate. A trustee is always appointed in chapter 7 cases. In chapter 11 cases, a trustee is appointed in cases where the court finds fraud, dishonesty, incompetence, or gross mismanagement by the debtor, or where the appointment of a trustee would be in the best interests of the creditors. If a chapter 11 trustee is appointed, the trustee will manage the debtor's business. In chapter 7 cases, the business is usually closed, but the trustee may operate the business pending liquidation if the court finds that the creditors would be better served by keeping the business open.
U.S. Trustee	The United States Trustee Program is an agency of the United States Department of Justice that is responsible for overseeing the administration of bankruptcy cases and private trustees. The United States Trustee is responsible for the integrity of the system to insure that all the parties, including the attorneys and trustees are doing what they are required by law to do.
Voluntary Bankruptcy	A bankruptcy case in which the debtor files the petition.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS

740.260

Revenue and Taxation Code §6757, 7053, and 7054
 Code of Civil Procedures §493.010 et seq., §1204 - §1206, §1800, and §1802
 Civil Code §1954.1

- 1. An assignment for the benefit of creditors (assignment) is not a court action.** It is a contractual agreement between a debtor (assignor) and a company or individual (assignee) selected to liquidate all assets, and disburse the proceeds for the benefit of creditors.
- 2. Assignments are very loosely regulated.** There is no one place in California Law to find information on assignments.
- 3. Notice must be given to creditors.** (CCP section 1802).
 - a. The assignor must file, under penalty of perjury, a list of creditors on the day the assignment is entered.
 - b. The assignee has 30 days after the assignment has been accepted to give written notice of the assignment to the creditors.
 - c. The assignee will establish a date by which creditors must file their claims. The date should not be less than 150 days and not greater than 180 days from the date of written notice of creditors.
 - d. If a corporate officer turns the company over to the assignment company without disclosing a debt to the BOE and the BOE is not noticed of the assignment, the BOE can treat the liability as if no assignment has been filed. The BOE should determine if a dual determination should be pursued against the corporate officer.

- 1. Priorities of Claim.** Claims are paid in the following order:
 - a. Claims of the United States (31 U.S.C. section 3713).
 - b. Wages (CCP section 1204).
 - c. Employee benefit contributions (CCP section 1204).
 - d. Money placed on deposit for goods and services not delivered (CCP section 1204.5).
 - e. Preferred labor claims (CCP section 1206).
 - f. Amounts due to the BOE (including penalties and interest thereon) – except where a lien or secured interest is superior to any BOE lien or interest. (RTC section 6756).
- 2. Account Maintenance**
 - a. An assignee has a right to occupy any business location for up to 90 days as long as it pays the monthly lease amount. After 90 days a landlord can terminate the lease if allowed by contract (Civil Code section 1954.1)
 - b. If an assignee operates a business after the business enters into an assignment, the assignee should have its own permit.
- 3. Preference Payments**
 - a. Under state law, if within 90 days of the assignment a creditor received a payment either voluntary or involuntary, the assignee may assert a preference action in court. (CCP section 1800(b))
 - b. The assignee may also try to have any liens or attachments removed.
 - c. A preference action must be filed within 1 year of the commencement of the assignment.
 - d. If the assignee asserts that a payment to the BOE was a preference payment, there are several defenses listed in CCP section 1800(b) that include:
 1. The new transfer was intended to be a contemporaneous exchange for new value.
 2. The transfer was in payment of a debt incurred during the ordinary course of business, the challenged payment was made in the ordinary course of business and according to ordinary business terms.
 3. The transfer constitutes the creation of a statutory lien under RTC section 6757, or the “fixing” of that lien by the subsequent recording of the Notice of State Tax Lien.
 4. The payment to a claimant was in exchange for a release of an asserted claim of lien.
- 4. Control of the Account**
 - a. Day-to-day control of the account is in the hands of the district office or division of PSTD.
 - b. SPS handles the monitoring of the assignment case.
- 5. Status of the Case**
 - a. Status is only obtainable through communication with the assignment company.
 - b. There is no current law that requires the assignment company to provide a disbursement schedule for creditors (in general) showing the proposed distribution of the liquidated funds.
 - c. The Board can use RTC sections 7053 and 7054 to request that a disbursement schedule or proposed disbursement be supplied.

PROBATES

Probate Code (in general), Specifically Probate Code §11420, §9760, §9201, and §9203
Revenue and Taxation Code §6487.1

Probate: Probate is a legal process by which legal title to property of a deceased person (“the decedent”) is transferred from an estate to its beneficiaries by the court. It is designed to ensure the fair distribution of a decedent’s assets and settlement of outstanding debts. If the decedent had a will at the time of death, an executor is named in the will as the individual selected by the decedent to fulfill the instructions set forth in a will. If the decedent did not have a will, an administrator is appointed by the court to handle the affairs of the decedent and distribute property as required by statute.

1. Assets subject to probate:
 - a. Assets in the decedent’s name alone.
 - b. One-half of each asset registered as community property in the decedent’s name with his or her spouse.
 - c. The decedent’s portion or share of an asset where the asset is registered as tenants in common with other people
 - d. Assets which are owned by the decedent, but not registered, such as furniture, jewelry, etc.
2. Assets not subject to probate:
 - a. Assets held in joint-tenancy.
 - b. Assets held in a living trust.
 - c. Life insurance and IRA benefits where a beneficiary is named.
 - d. Assets passing to the surviving spouse, even if held in the decedent’s name alone.
 - e. Assets registered by husband and wife as “community property with right of survivorship.”
3. Making a Claim
 - a. Probate Code section 9201: The personal representative or administrator must make a written request to a public entity creditor. The creditor’s time to respond is based on the law of the public entity. For sales and use tax law, see RTC section 6487.1, which provides that a notice of deficiency determination shall be mailed within four months of the written request. Otherwise, pursuant to Probate Code section 9100, a claim must be filed four months after the date letters are first issued to a general personal representative or sixty days after the date notice of administration is delivered to the creditor.
 - b. RTC section 6487.1: The BOE has four months from the written request to issue a deficiency determination to the personal representative or administrator.
 - c. Probate Code section 9203: If property of the estate is disbursed before the BOE’s allowed time to file a claim, we can hold the distributee’s (whomever received the funds) liable with costs.
 - d. A claim is either Allowed or Rejected by the personal representative (administrator).
 - e. The BOE has 90 days to respond to a rejected claim.
4. Account Maintenance

5. Staff must determine the status of a decedent's business, did it close or was there a change in ownership – is a new permit needed?
 - a. A sole proprietor who dies should not have a close out date beyond the date of the individual's death.
 - b. A partnership should only remain as a partnership if there are two or more remaining partners, otherwise the remaining partner should get a sole proprietor permit.
6. Probate Estate as operator of the business
 - a. If the probate estate (i.e. estate administrator) is operating a decedent's business, the estate should get its own permit (ex., The Estate of Emma Lou Pappel, as the taxpayer).
 - b. Probate Code section 9760: The personal representative may continue to operate a decedent's business for up to 6 months without a court order. A court order is required after 6 months.
 - c. District office staff should request a copy of the death certificate for the file – but this is not a requirement to proceed.
7. Control of the account
 - a. Day-to-day control of the account is in the hands of the district office or division of PSTD.
 - b. SPS handles the monitoring of the probate case.
8. Status of the case
 - a. A probate action is filed in probate court, which in most cases is a separate division of Superior Court. The action is usually commenced in the county in which the debtor died.
 - b. Many probate courts have docket information available through the court's website.
 - c. SPS can send a letter to the administrator requesting status of the case if unable to access the docket information – or if the information in the docket is sparse.
9. Non-Compliance of an Estate while running a decedent's business
 - a. Probate Code section 11420: Any taxes incurred by the Estate would be considered an "expense" of the Estate.
 - b. The BOE must use the Attorney General to file a motion to allow the expense – it is not just a regular claim filing (there is no such thing as an expense claim in a probate case).
10. State Tax Liens
 - a. A tax lien filed before the date of death remains in effect against the estate and is fully enforceable.
 - b. A tax lien filed on a decedent after the death is also a valid lien against the estate of the debtor. If the BOE knows a taxpayer is deceased, a lien should be filed against "The Estate of X."
 - c. In cases where the decedent's property was held in joint tenancy, transferred to a living trust, or transferred to a spouse on or before the date of death – a lien filed after death would have no effect.
 - d. In most cases, BOE's filing of a lien after a probate action has commenced is unlikely to improve BOE's position with respect to payment of its claim and it may hinder efforts by the representative to sell the property.

APPLICATION OF BANKRUPTCY PAYMENTS

(CONT.) 740.270

- e. On the other hand, where a personal representative of an estate incurs a tax liability and fails to pay or there is a risk of additional liens or security interests being recorded against the property (decreasing the likelihood that the BOE will be paid) a lien may be appropriate.
- f. Accordingly, a lien should be filed after a probate action has commenced only after consulting with the Board's Legal Department.

RECEIVERSHIPS

740.280

Code of Civil Procedures §1204 - §1206 and §564
Revenue and Taxation Code §6756

1. Receivership: The appointment of a person to hold in trust and administer property subject to litigation, settle the affairs of a business involving a public interest, or manage a corporation during reorganization.
 - a. A receiver is appointed by the court in any case in which the court is empowered by law to appoint a receiver. (Code of Civil Procedure section 564)
 - b. A receivership is not always a liquidation proceeding and, therefore, there is not always a disbursement.
2. A receiver can be appointed by the court in the following cases (Code of Civil Procedure section 564):
 - a. By a vendor, partner, or creditor, where it is shown that property or funds are in danger of being lost, removed, or materially injured, or where a party seeks to vacate a fraudulent purchase.
 - b. By a secured lender, where it appears that the property is in danger of being lost, removed, or materially injured (and the property is insufficient to pay the debt).
 - c. By judgment or to enforce a judgment.
 - d. When a corporation is insolvent or has been dissolved.
 - e. In an action of unlawful detainer.
 - f. At the request of either the Office of Statewide Health Planning and Development or the Attorney General.
 - g. In an Assignment for Benefit of Creditors, regarding the assignment of rents to maintain real property.
3. The receiver is sworn in. The receiver has the power to bring and defend actions in his own name as receiver, keep possession of the property, receive rents, collect debts, make transfers, and generally do such acts respecting the property as the court may authorize.
4. Priorities. Claims are to be paid in the following order:
 - a. Claims of the United States (31 U.S.C. section 3713).
 - b. Wages (CCP section 1204).
 - c. Employee benefit contributions (CCP section 1204).
 - d. Money placed on deposit for goods and services not delivered (CCP section 1204.5).
 - e. Preferred labor claims (CCP section 1206).
 - f. Amounts due to the BOE (including penalties and interest thereon) – except where a lien or secured interest is superior to any BOE lien or interest. (RTC section 6756).
5. Claims in Receiverships. There is no formal timeline to file a claim in a receivership case, however the Board policy is to file the claim within 4 months of the filing if possible.

RECEIVERSHIPS

(CONT.) 740.280

6. Account Maintenance. If a receiver runs the business, then the receiver should have its own permit. (See CPPM 210.010, *Sellers Permits*).
7. Control of the Account
 - a. Day-to-day control of these accounts remain in the district office or division of PSTD. Status requests and questions regarding the proceedings can be directed to SPS staff.
 - b. SPS staff will maintain the legal case.
8. Status of the Case. Since receiverships are monitored through the court, information regarding the case can be accessed through the Superior Court website, or, if not online, at the court itself.

COURT ORDERED RESTITUTION

740.290

Restitution is defined as the act of making whole or giving the equivalent for any loss, damage, or injury. The purpose of restitution is to help victims recover from any financial hardship caused by a criminal activity.

A **restitution order** is a court order directed to the taxpayer requiring the payment of restitution (monetary payment), generally as a condition of probation or parole in a criminal case. The court issues a restitution order to cover the economic loss or actual crime-related expenses incurred by a victim as a result of a crime.

Under state law, offenders convicted of a felony or misdemeanor in California may be required to pay a fine, penalty, and the cost of investigation, in addition to an amount for restitution. If the defendant is on formal probation, payments may be made to the county where the crime/offense occurred. If the payment is directed to the county, the designated county is responsible for dividing the total funds received and forwarding the BOE's portion to the appropriate BOE office.

The stipulated final judgment documents **may** specify how the restitution payments are allocated between taxes, fines, penalties, and cost of investigations. When the stipulated final judgment documents do not provide specific information regarding the allocation of payments, the Investigations Division (ID) must review the criminal complaint and determine the amounts and periods to designate as restitution and whether any portion of the restitution is already billed. When any of the seized funds are provided to BOE, ID will determine how to apply any monies received toward the restitution periods.

Restitution payments ordered by the court on behalf of the BOE may be for less than the full amount of the civil liability (e.g., audit billing) owed by the taxpayer to the BOE. In this situation, the taxpayer remains liable for the full amount of the civil liability.

The passage of Assembly Bill 242, filed with the Secretary of State on October 9, 2011, and made effective on January 1, 2012, allows the BOE to collect on restitution orders in the same manner as other collections. Special Operations Branch (SOB) will monitor accounts in ACMS/IRIS that have active court-ordered restitution and are currently on probation, parole, or diversion; however, the control of the accounts will remain assigned to the Field Operations Department (FOD), or the Business Tax and Fee Department (BTFFD) and will not transfer out of their assigned state in ACMS. The assigned collector will continue to work any additional liabilities and/or delinquencies and take the necessary collection action.

COURT ORDERED RESTITUTION**(CONT. 1) 740.290**

The collection of restitution by the court is a continuation of a criminal court action and therefore excepted (excluded) from the automatic stay provisions of the bankruptcy code (11 USC 362(b)(1)). However, if the court relies on BOE to collect the restitution due, the automatic stay does apply, and BOE cannot collect until the bankruptcy case is dismissed, or the BOE obtains leave from the court to collect while the stay is in place.

Payments required by a restitution order may continue to be due, even after a taxpayer's probation has ended.

ID's Responsibilities:

Document the information from the court-ordered restitution in ACMS for sales and use tax accounts and IRIS for special taxes and fees accounts.

Obtain and forward the restitution orders or information from the court to SOB for monitoring while the taxpayer is on probation, parole, or diversion. A copy of the restitution order will be attached to a formal memorandum to SOB with the following information:

- ID's restitution summary form.
- Copies of ID's executive summary (when applicable) and all court documents detailing the sentencing, restitution, terms, and requirements during the probation period.

File a court motion to:

- Modify restitution orders that are in default,
- Request an extension of probation,
- Request an increase in court-ordered restitution payments

Attend court hearings as referred by the field office on restitution cases.

Prepare a memo to FOD or BTFD when collection of the restitution order is paid in full, or the taxpayer's probation or parole has ended and the restitution has not been fully satisfied. The memo should include the most recent contact information available, and any additional notes or materials gathered by SOB while they were monitoring the case.

Provide quarterly reports to the Deputy Director, FOD and BTFD of those restitution cases that are being monitored by ID or SOB.

In the case of a Revenue and Taxation Code (RTC) section 6071 misdemeanor citation (operating with a revoked permit) where the taxpayer does not appear for a court hearing, a bench warrant is typically issued. If a bench warrant is issued, ID should attempt to have the taxpayer arrested or brought before the local District Attorney's office.

SOB, Liens and Specialized Collections Section's Responsibilities:

Monitor all active court-ordered restitution and fines for FOD and BTFD during the period the taxpayer is on probation, parole, or diversion. SOB will also monitor individual partners and corporate officers that were ordered to pay restitution on behalf of the partnership or corporation while the individual is on probation, parole, or diversion. SOB will perform the following duties:

- Coordinate with FOD or BTFD to establish an account number for court-ordered restitution and create a restitution period.
- Ensure restitution payments are applied appropriately.
- Create the unbilled cost of collection assessment for sales and use tax accounts on IRIS to track and monitor restitution payments. (Special Taxes Return Processing Branch personnel will create their own unbilled differences.)

COURT ORDERED RESTITUTION**(CONT. 2) 740.290**

- Cancel the unbilled cost of collection as soon as the restitution amount is billed.
- Make the necessary payment adjustments for restitution payments during the probation, parole, or diversion period.
- Prepare a memorandum to ID indicating whether restitution was or was not satisfied when the taxpayer's probation, parole, or diversion ended.
- Provide ID quarterly reports on active restitution cases.

Document in ACMS/IRIS:

- Receipt of the restitution order from ID and the terms of the restitution.
- Receipt and adjustment of restitution payments.
- Whether restitution is or is not satisfied when the probation period ended.
- Actions taken if restitution payments are not made.
- Contacts made with the assigned probation or parole officer, County's Revenue Department, ID, FOD, or BTFD.

SOB, Specialized Audit Section's Responsibilities:

Initiate RTC section 6829 dual determinations for sales and use tax liabilities in cases where a responsible person was ordered to pay restitution on behalf of a business that was terminated. The request to issue an RTC section 6829 dual determination will be forwarded by SOB to the Audit Determination and Refund Section for processing.

Coordinate with the impacted program area to create arbitrary accounts for corporate officers or other persons who are ordered to pay restitution by the court when an RTC section 6829 dual determination cannot be established.

Coordinate with the impacted program area to create arbitrary accounts for individual partners affected by the Revised Uniform Partnership Act where the court ordered the individual to pay restitution.

Cashier Section's Responsibilities:

Receive the payments and identifying documentation directly from the taxpayer or county. The check will be processed and the amount keyed into IRIS.

Any supporting documentation along with a copy of the payment will be forwarded to SOB, Liens and Specialized Collection Section, to determine the proper payment application.

Special Taxes and Fees Account Billings

Upon completion of the prosecution an account is created. The Return Processing Branch (RPB) will receive the referral memo from ID. RPB will review the court case provided by ID and request an account to be created (if needed) by the Registration and Licensing Section. RPB also determines the amount to be billed including any penalties or interest and establishes a billing on the account pursuant to RTC sections 30483 or 60709. Since the restitution is considered "final" by court decree, the billing created in IRIS is considered 'final' and collectable when the restitution is established on BOE records.

COURT ORDERED RESTITUTION

(CONT. 3) 740.290

The court-ordered restitution is applicable to Taxable Activity Types (TATs) CR, CP, LR(Q), LD(Q), and LW(Q). RPB will establish the bill using the following information;

- Difference type EAB (external agency billing)
- Difference activity type COR (court-ordered restitution)
- Notice type DER (demand court-ordered restitution)
- FO type OTB (one time billing)

A statement will then be sent to the taxpayer at their listed address by first class U.S. Mail. Once the billing is established in IRIS, it will migrate to ACMS and be routed to the collector as directed by ACMS routing rules.

Collections:

RTC sections 7157 (sales and use tax), 8407 (motor vehicle fuel taxes), 30483 (cigarette and tobacco products taxes), and 60709 (diesel fuel taxes) allow restitution orders, or any other amounts imposed by a court of competent jurisdiction, for criminal offenses upon a person or any other entity. These amounts are due and payable to the BOE and may be collected by the BOE in any manner provided by law for the collection of a delinquent tax liability.

The following points apply to restitutions and amounts due before, on, or after January 1, 2012:

- They are treated as final and due;
- Refund or credit is not allowed;
- Interest may accrue on amounts due;
- They are not subject to statute of limitations;
- State tax lien may be filed.

FOD collection staff should work directly with ID staff to set the taxpayer on a monthly payment plan equal to the total restitution/cost of investigations awarded divided by the length of probation, parole, or diversion. An exception will be made for cases where the payment plan has been set by the court or where the taxpayer has submitted documentation supporting a financial hardship, in which case a review of the financial documents will be used to set the monthly payment amount. (See CPPM section 770.000.) If notified by SOB, collection action should be taken if the taxpayer is in default of the probation, parole or diversion terms.

The BOE may consider offer in compromise requests submitted by taxpayers owing court-ordered restitution, provided the amount of the offer includes the unpaid restitution amount.

RESTITUTION ORDER TO FEDERAL AGENCY

In cases where a taxpayer is ordered to make restitution payments to a federal agency, a case referral should be submitted to ID with the following:

- ID's restitution summary form, and
- Copies of ID's executive summary (when applicable) and all court documents detailing the sentencing, restitution, terms, and requirements during the probation period.

After ID reviews the referral, they will forward it to SOB to consult with the Litigation Division to determine if collection action may be taken.

FIELD CALLS**749.000****GENERAL****749.010**

For compliance purposes, there are seven primary reasons to make a field call:

1. To reinstate an account after revocation of the permit or license.
2. To obtain payment and/or delinquent tax returns.
3. To verify that the business is operating or closed.
4. To gather collection and skip-tracing leads.
5. To gather evidence for prosecution.
6. To maintain a physical presence in the business community.
7. To conduct certain non-collection related activities, such as permit inspections pertaining to swap meets.

In addition to the seven reasons above, there are other reasons to make field calls such as witnessing the destruction of alcoholic beverages or conducting an investigation for city or county annexation purposes (an annexation investigation may be necessary when a city or county incorporates territory into its existing geographic area. When this occurs, the businesses within that area will need to have the tax area code changed.) Although the majority of compliance field calls are oriented toward reinstating accounts and collecting money, all field calls require advance planning and should never occur without proper preparation.

Before making a field call, the collector should have a plan of action and be completely familiar with the taxpayer's account information, ACMS history, and the requirements the taxpayer must meet in order to reinstate the permit or license, if a revocation exists. In addition, the collector should be prepared to collect all amounts owed by the taxpayer, obtain all tax returns that are due from the taxpayer, and provide the taxpayer with all the necessary documents to complete the assignment.

For each field call, the collector should have a primary plan and some contingency plans. For example, a field call reveals that the business location is vacant. In this case, the primary plan to reinstate the taxpayer's account must be altered and the contingency of talking to the nearby business neighbors, visiting the taxpayer's home address, contacting the landlord, or another alternative plan put into action.

The collector will normally schedule a number of field calls on the same day and should map out the business locations to be visited. Clustering the field calls together allows the collector to minimize travel time. Mapping requires the use of a Thomas Guide map book or similar resource, such as MapQuest. If the vehicle taken to the field is equipped with an onboard navigation system, the route to the various businesses can be preprogrammed to provide the most economical route.

CONDUCTING FIELD CALLS**749.020**

The following tips will help to insure successful field calls:

1. Present yourself professionally by dressing and behaving professionally. By doing so, you demonstrate that you take your position as a representative of the BOE seriously and create an atmosphere of respect and credibility with the taxpayer.
2. Before leaving the office, you must know your reason(s) for meeting with the taxpayer, have reviewed the case history, mapped out your route, and ensured that you have all the information necessary to complete your assignment. Some recommended items to bring with you on a field call include:
 - a. State of California identification card and business cards.
 - b. Receipt book.
 - c. Cell phone.
 - d. Copy of the revocation notice.
 - e. Extra tax return forms.
 - f. Applications for the taxpayer to obtain a permit or license.
 - g. Pertinent regulations or publications.
 - h. Envelopes, notepad, and tape (for taping notices to the door when necessary).
 - i. Calculator.
 - j. Thomas Guide or similar map book.
 - k. Coins for parking meters.
 - l. BOE-945, Receipt for Books and Records of Account.
 - m. Counterfeit bill detection pen.
 - n. Security deposit documents
3. Obtain all tax returns, payments, or other information that will clear the assignment. If this cannot be accomplished during the field call, document the attempt to obtain this information and take appropriate action to prompt a response from the taxpayer, or to clear the assignment.
4. While in the field, safeguard the security of all BOE property, including equipment, work papers, receipt books and payments.
5. Upon returning to the office, complete Form BOE-609, Tax Representative Daily Report.

REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**749.025**

This section outlines procedures for staff to follow when they encounter a business that appears to be selling counterfeit goods during a field call or other taxpayer contact. Pursuant to Revenue and Taxation Code sections 6007 and 6009.2, when a person is convicted of trafficking counterfeit goods, all of their sales and purchases of those goods are considered taxable. The BOE may bill the convicted seller for unpaid sales or use tax within one year after the last day of the calendar month following the date of conviction.

Procedure for Reporting Suspected Counterfeit Goods

When a collector encounters a person during a field call who appears to be selling counterfeit goods, he or she must report the suspected activity to the Tax Recovery and Criminal Enforcement Task Force (TRaCE) by completing the Report a Crime electronic form available on the BOE's TRaCE webpage. Collectors must check the Other box and identify themselves as "BOE Staff" in the *What is your relationship to the suspect? Check all that apply* section located at the bottom of the report form. TRaCE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

Procedure for Reporting Convicted Traffickers of Counterfeit Goods

When BOE staff receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media), they must send a referral directly to the Investigations Division. Staff should address the referral memo to the Chief of Investigations and Special Operations Division and include, at a minimum:

1. Staff's name and contact information,
2. Any pertinent information about the convicted trafficker (taxpayer's name, business DBA, permit information if available, etc.), and
3. The source of the information.

FIELD CALLS — SPECIAL EVENTS**749.030**

RTC section 6073 provides that the BOE may:

1. Require the operator of a swap meet, flea market, or special event to verify that any person desiring to engage in or conduct business as a seller on premises owned or operated by the operator holds a valid seller's permit.
2. Obtain a written statement from any seller not holding a seller's permit that he or she is not offering for sale any item the sale of which is subject to sales or use tax or that he or she is otherwise not required to hold a valid seller's permit.
3. No more than three times a year, require an operator to submit a list of vendors conducting business on its premises as a seller.
4. Impose a fine not to exceed \$1,000 for each offense on any operator of a swap meet, flea market or special event who refuses or fails to comply with the provisions of RTC section 6073.

It is often desirable to conduct a "permit inspection" of these types of special events. Prior to making a field call for this purpose, the collector should:

1. Contact the event operator and obtain a list of event participants and the booth or space number for each participant.
2. Check the names of the participants against registration information in IRIS and verify that the permit is valid, active and in good standing.
3. Identify the participants who do not hold a valid seller's permit and return the list to the event operator. Advise the operator that the identified participants will need to meet with you prior to opening their booth on the first day of the special event.
4. Make a field call to the special event on the first day to obtain compliance from those participants who did not resolve the situation prior to the start of the event.

CATERING TRUCKS AND THEIR SUPPLIERS**749.035**

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

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

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

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

District Responsibility

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

1. Periodically identify and contact all catering commissaries (houses) located within the district to advise them of the requirements of this legislation.
2. Use BOE-570-A, *Notice of Revocation to Principal's Suppliers*, to notify the suppliers of the catering truck operator when the operator's seller's permit is revoked. Upon reinstatement of the seller's permit, BOE-570-B, *Notice of Reinstatement to Principal Suppliers*, must be sent to inform suppliers that the permit is valid and a resale certificate from the operator may be accepted (See CPPM 751.140).
3. Issue a request to each house for a listing of mobile truck caterers (operators) purchasing from them. The law does not specify the format in which the list should be supplied (e.g., alphabetically). Attempt to secure the list in a format that will minimize the time expended in verification by using BOE-12, *Request for Listing of Catering Truck Operators*.

CATERING TRUCKS AND THEIR SUPPLIERS

(CONT.) 749.035

4. When the list is received:
 - a. Verify information where seller's permit numbers are provided.
 - b. Contact any operators without valid seller's permits to apply for a seller's permit immediately, following the normal district procedures for non-permitted sellers.
 - c. The following guidelines should be used to determine whether a catering truck driver is an independent contractor or an employee of the catering house. Indicators of employee status are:
 - 1) The driver's contract with the house does not identify the driver as an independent contractor.
 - 2) The driver receives a salary or commission from the house and the house withholds taxes and social security payments, and carries unemployment or worker's compensation on the drivers.
 - 3) The house retains complete control over the detail of work performance (e.g. pricing, purchasing, etc.).
 - 4) Drivers must account to houses for all receipts.
 - 5) For income tax purposes, the house reports gross truck sales as their income and the driver reports as an employee.Indicators of independent contractor status are:
 - 1) The contract between the catering house and driver specifies that the driver is an independent contractor.
 - 2) The driver does not receive a salary from the house, nor does the house withhold social security payments, unemployment or worker's compensation.
 - 3) The catering truck drivers are not required to purchase all food and supplies from the catering house leasing the truck.
 - 4) No accounting is made by the driver to the house for sales. The net profit from their sales is their income.
 - 5) For federal income tax purposes, the driver prepares a Schedule C "Profit or Loss from Business."
5. When the list is not received within the specified time:
 - a. Send the BOE-12 again, using certified mail.
 - b. If the house fails to comply with provisions outlined in RTC section 6074(a), send BOE-13, *Follow-up for Listing of Catering Truck Operators*, using certified mail.
 - c. If no response, create a compliance assessment in the online system to apply the \$500 penalty as provided by Section 6074.
 - d. After the determination is issued and/or collected, issue another request for the list, using certified mail. If cooperation is still not obtained, repeat the process of assessing and collecting the penalty until compliance is obtained.

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

DISHONORED CHECK PROCEDURE**750.000****GENERAL****750.010**

Processing dishonored checks, credit cards, EFT transactions, etc, hereinafter “checks” is a priority for both headquarters and district office staff so that monies due to the State of California are promptly collected. Close examination of potential collection cases and prompt, firm action by collection staff when the first offense occurs will tend to reduce the number of dishonored checks submitted by taxpayers.

The Cashier in headquarters will send dishonored checks to the responsible headquarters units and district offices using a dishonored check transmittal. Experience shows that possession of a taxpayer’s dishonored check increases the effectiveness of the collection program and facilitates the collection effort.

Payment by personal check should not be accepted to replace a check previously dishonored by the financial institution. Staff will request that the taxpayer replace the dishonored check in full with certified funds, including penalty and interest. Payment plans should not be accepted for a liability arising from the intentional filing of a dishonored check or payment with the Board of Equalization (BOE).

When a dishonored check is replaced in certified funds, the account should be reviewed for adequate security, appropriate reporting basis and eligibility for audit. If a guaranty is held as a security deposit, the current financial condition of the guarantor(s) should be re-evaluated to verify adequate assets are available to cover any potential tax liability. (A new guaranty should not be obtained from persons whose guaranties are already on file for the account.)

Staff should be aware that a demand billing or statement of account prepared due to a dishonored check may not be a complete statement of the taxpayer’s liability because non-final items are billed separately from final items.

DISHONORED CHECKS FOR REINSTATEMENT FEES AND SECURITY DEPOSITS**750.020**

Whenever a check for payment of reinstatement fees is dishonored, the Cashier in headquarters will forward the check(s) to the responsible unit or office using a dishonored check transmittal form in the same manner as other dishonored checks. The dishonored check transmittal form is also used to transmit dishonored checks for special taxes and timber tax accounts.

Dishonored checks for security deposits posted for sales and use tax accounts are sent to the responsible unit or office with a Security Deposit Cost Security Detail/Maintain printout.

CANCELLATION OF CHARGES DUE TO BANK ERRORS**750.030**

When it is determined that a financial institution dishonored a taxpayer’s check in error, the penalty and interest charges assessed on the account will be canceled. For district office accounts, letters from financial institutions acknowledging errors should be promptly forwarded to the Return Analysis and Allocation Section for adjustment. The Consumer Use Tax Section and Special Taxes Division will review all bank letters for their own accounts and make the appropriate adjustments.

If a check is dishonored because of insufficient funds and the taxpayer requests relief from penalty due to extenuating circumstances, the request should be referred to the Return Analysis and Allocation Section, Consumer Use Tax Section, or Special Taxes Division, depending on the type of permit or license held by the taxpayer.

PHOTOCOPIES OF DISHONORED CHECKS**750.040**

Occasionally, a financial institution will return a photocopy rather than the original dishonored check. This occurs when the original check is lost in transit between the depository bank and the financial institution on which the check is drawn. Returning photocopies of dishonored checks lost in transit appears to be a common and acceptable banking practice. Photocopies of dishonored checks should be treated the same as original dishonored checks.

There have been instances where a check that was lost-in-transit found its way back to the taxpayer. The taxpayer will generally bring this fact to the collector's attention upon initiation of collection efforts to replace the dishonored item.

If the taxpayer alleges that the bank actually honored the returned check, the following procedure will clear the taxpayer's account:

1. Obtain a copy of the front and back of the original check showing the cashier's batch number and date. Note: If the check can be traced (using PAY TR in IRIS) and it is confirmed that it was posted to an incorrect account number, complete Form BOE-523, *Tax Return and/or Account Adjustment Notice*, and submit it to the Return Analysis Unit in order to have the payment moved to the correct account.
2. Secure a copy of the entire bank statement showing the taxpayer's checking account was debited for the correct amount, and a copy of the subsequent bank statement to make sure the amount has not been credited back to the taxpayer's account.
3. Circle the appropriate check number and amount on the bank statement(s).
4. Forward the copy of the bank statement to the Cashier in headquarters along with the copy of the check.

DISHONORED CHECKS — PUNITIVE DAMAGES**750.050**

Legal action should be considered as an alternative to citing the account for failure to pay taxes when that failure results from a returned check and the account exhibits a history of returned checks because of insufficient funds. The legal action remedy is proper if, over a period of two years, the account has had more than three dishonored checks that were not paid by the bank.

Existing law makes it a crime to fraudulently write a bad check. This means that the maker of the check knows there are insufficient funds in the checking account to cover the check.

Civil Code section 1719 (a)(1) authorizes a \$25 service charge for the first dishonored check and \$35 for each subsequent dishonored check. Civil Code section 1719(a)(2) creates a liability for triple the amount of the check, but in no case less than \$100 or more than \$1500 for failure to pay a dishonored check. A written demand must be delivered by certified mail to the maker of the dishonored check. If the maker fails to pay the amount of the dishonored item within 30 days, a cause of action can be initiated. A cause of action may be brought in any appropriate court, including small claims court (as long as the amount does not exceed the jurisdiction of that court).

When the first dishonored check is billed to the account, a bill note will inform the taxpayer that a court action can result if the dishonored check is not paid immediately. This bill note does not take the place of the demand letter, which by law must be sent via certified mail; it merely places the person on notice that such action can take place.

DISHONORED CHECKS — PUNITIVE DAMAGES

(CONT.) 750.050

The district of control, or the responsible Headquarters unit, is responsible for initiating and maintaining a record of these actions. Use the five-step guide below to initiate legal action.

If the bank sends notice that a check was dishonored:

1. Contact the maker of the check in person, by telephone, or by letter. Notify the maker that the check has been dishonored and you are requesting immediate payment.
2. A decision to initiate civil proceedings to collect damages should be made if immediate payment is not received. A demand for payment, Form BOE-119 (available in ACMS), must be mailed by certified mail with a return receipt requested.
3. If payment is not received on or before 30 days from the date the demand letter was mailed, a claim may be filed in Small Claims (\$7500 limit) or Municipal Court. This requires filling out forms and paying a fee. The fee may be recovered if a favorable judgment is reached; recovery is up to the discretion of the court.
4. The court will notify the BOE of the date when the case will be heard. After a court date has been set and a Notice of State Tax Lien has been filed, all the documents related to the case must be assembled. These documents should include:
 - a. The notice from the bank.
 - b. Notes of conversations with the tax or fee-payer.
 - c. Any correspondence with the tax or fee-payer regarding collection efforts.
 - d. A copy of the demand letter and certified receipt. (The returned receipt is a valuable addition when presenting evidence to the court.)

During the court hearing, the responsible collector or designee must be prepared to detail all efforts taken to collect the debt. The person who accepted the check should also attend the court hearing for the purpose of identifying the maker and testifying about any initials, identification or information written on the check.

5. A favorable judgment is good for ten years. Money can be collected at any time during that period using collection procedures and legal remedies available for any debt. Please note, up to \$500 in damages and the amount of the check and court costs may be recovered.

If the court renders a favorable judgment, the damages and other charges are collectable by requesting a writ of execution at any time within the ten-year life of the judgment. The notice of levy or warrant for collection may not be used to enforce collection. Monies collected on the judgment for damages or other charges will be reported on Form BOE-904, *Advice of Miscellaneous Receipts*, and identified as “recovery for damages/costs of judgment # XYZ-007.” Form BOE-904 will be required for reimbursement of any costs advanced and a second BOE-904 for recovery of damages. Do not apply amounts collected for damages (or damages and costs) to the accounts receivable as no billing will be made. Damages collected will become a part of “General Fund—Miscellaneous Revenue.”

An abstract of judgment may be recorded in the county in which the judgment debtor owns real property, if this action is considered beneficial in aiding collection. (An advance for recording fees and other services will be made, if necessary.)

**ELECTRONIC MAIL — NOTICE OF DISHONORED CHECKS
AND NO REMITTANCE/PARTIAL REMITTANCE RETURNS**

750.060

The Cashier in headquarters notifies the district office or special taxes division by e-mail of dishonored checks, no remittance (NR) tax returns and partial remittance (PR) tax returns, in order to expedite collection efforts. The amount used as a minimum for immediate notification of dishonored checks, NR returns and PR returns is \$15,000. If e-mail is down more than 24 hours, the Cashier in headquarters will telephone the responsible district or special taxes division with the information.

INFORMATION TO BE PROVIDED

750.070

The Cashier in headquarters will provide the following information (when available and legible) to the responsible district office or special taxes division when there is a dishonored check for \$15,000 or more:

- Account number.
- Taxpayer's name and telephone number.
- Name of person who signed the check.
- Amount of the dishonored check.
- Reporting period(s) the remittance was to cover.
- Reason the check was dishonored.
- Bank, branch and address of bank.

The Cashier in headquarters will provide the following information (when available and legible) to the district office or special taxes division when there is a NR or PR tax return for \$15,000 or more:

- Account number.
- Taxpayer's name and telephone number.
- If the return is NR or PR.
- If a PR tax return, the amount of the check received with the return, the bank/branch address and the name of the person who signed the check.
- Reporting period of the return.
- Signature on the return.
- Amount due with return (tax only).

HEADQUARTERS CASHIER UNIT PROCEDURE

750.080

For dishonored checks exceeding fifteen thousand dollars (\$15,000) the Cashier in headquarters will e-mail the dishonored check information to the district office. The information will be e-mailed to the designated Business Taxes Compliance Supervisor (BTCS) in the district office and the information is usually e-mailed to more than one BTCS to ensure that there is a back-up person who receives the check information.

The Cashier in headquarters will send the dishonored checks to the appropriate offices. If there are any questions about the checks, the Cashier in headquarters must be contacted as soon as possible.

The Cashier in headquarters will e-mail the NR and PR tax return information to the designated BTCS without delay. Any questions in reference to the tax return information must be asked as soon as possible after receiving the e-mail.

DISTRICT OFFICE PROCEDURES**750.090**

The appropriate BTCS must check his or her e-mail mailbox each working day after 8:00 a.m. and after 1:00 p.m. to determine whether their office has received any dishonored checks, NR or PR tax returns. To ensure receipt of this information, district offices may wish to set at least one of the BTCS's mailboxes to "print and retain." This will cause the printer to automatically print any information in their mailbox for future reference. The information should be distributed to district or branch office staff immediately for their review and action.

District and branch office staff, through the appropriate BTCS, should then contact the Cashier in headquarters within the above noted window periods if they have any questions. To contact the Cashier in headquarters in reference to these dishonored checks, NR or PR returns, the BTCS can use e-mail or the telephone. District offices must contact the Cashier in headquarters within the same day with any questions.

The Cashier in headquarters has a list of the compliance supervisors in each district office who are designated to receive the e-mail. If a designated compliance supervisor promotions, transfers, etc., the new BTCS should receive a mailbox immediately and the Cashier in headquarters must be notified of the change.

Generally, an assignment is automatically created in ACMS once a check has been dishonored and billed in IRIS. However, if an ACMS assignment does not exist at the time replacement funds are received, a manual case setup should be created in ACMS. After ensuring that a collection assignment exists, any useful information on the check should be transcribed onto the asset field (using the asset fastpath button), followed by sending the check to the taxpayer's file in the Taxpayer Records Unit in Headquarters.

RETURNING DISHONORED CHECKS**750.100**

Dishonored checks are retained in the taxpayer's file in the Taxpayer Records Unit unless the taxpayer makes a written request to have the check returned and pays acceptable replacement funds in the amount of the dishonored check. Upon receiving such a request and payment, staff will prepare a signed memo and send it to the taxpayer Records Unit to retrieve the check. When returning the dishonored check to the taxpayer, staff will also send the taxpayer ACMS Form BOE-134, *Letter Re: Dishonored Checks*.

REVOCATION**751.000****GENERAL****751.010**

RTC section 6070 states, “Whenever any person fails to comply with any provision of this part relating to the sales tax or any rule or regulation of the board relating to the sales tax prescribed and adopted under this part, the board upon hearing, after giving the person 10 days’ notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The board shall give to the person written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this part relating to the sales tax and the regulations of the board.”

Before revoking a permit or license, the Board of Equalization (BOE) must notify the taxpayer in writing that action against the permit or license is contemplated and give the taxpayer 10 days to show cause why the permit or license should not be revoked for the specified cause. Form BOE-420, *Notice to Appear*, is mailed to the taxpayer for this purpose. For both “periodic” and “cause” delinquencies, IRIS generates the BOE-420 and it is mailed to the taxpayer from headquarters.

The BOE-420 serves as a request for the taxpayer to appear for a “hearing” in a BOE office at a specified date and time to address the citation of its seller’s permit. If the taxpayer clears the cause of the citation prior to the hearing date, the hearing is no longer necessary. If the taxpayer does not clear the cause of the citation on or before the date specified, or fails to appear for the hearing, the permit or license is revoked 60 days after the mailing date of the *Notice to Appear*. Form BOE-433-S, *Notice of Revocation (Seller)*, or appropriate revocation form for other tax and fee programs, is mailed to the taxpayer.

If the cause of revocation is cleared in its entirety on or before the effective date of revocation, the BOE-433, *Notice of Revocation*, will not be mailed to the taxpayer. However, if returns or payments have not posted to the taxpayer’s account in IRIS on or prior to the revocation date, the taxpayer will be mailed a BOE-433. If this should happen, the staff should note in ACMS the reason why the revocation is inoperative and provide the taxpayer with form BOE-16, *Cancellation of Revocation*.

REASONS FOR REVOCATIONS**751.020**

The BOE may revoke a permit or license for violation of any provision of the applicable law. For sales tax accounts, the reasons for revoking a seller’s permit are:

1. Failure to file and pay tax return(s).
2. Failure to pay a balance.
3. Failure to post required security, replace security, or post additional security.
4. Failure to keep or make available proper records.
5. Failure to surrender permit for cancellation when not actively engaged in business as a seller of tangible personal property.
6. Failure to comply with any provision of the Sales and Use Tax Law.
7. Failure to comply with *Precollection of Sales Tax on Fuel* (SG) program requirements.

INITIATION OF REVOCATION ACTION**751.030**

When a taxpayer fails to file a return (a periodic delinquency), the revocation is an automated process. If the sole cause for the delinquency is failure to file a tax return, the revocation will be cancelled when the tax return is filed on or before the revocation date, with or without payment.

For a “cause” delinquency, i.e., any cause other than failure to file a return (such as failure to post security, failure to comply, etc.), the revocation process is manually initiated by district office personnel through the delinquency control cycle in IRIS. (CPPM 550.020).

CONDUCTING THE HEARING**751.050**

Hearing notices cite the taxpayer’s account and require the taxpayer to appear for a hearing in a district office to show cause why the permit or license should not be revoked for the cause specified in the notice.

The responsibility for conducting the hearings is delegated to the business taxes administrators or their representatives.

EFFECTIVE DATE OF REVOCATIONS**751.060**

Revocations for sales and use tax permits are effective on the dates specified in the Calendar of Sales Tax Functions. The calendar is located on eBOE under the Sales Tax tab. The Special Taxes calendar can be viewed under the Special Taxes tab on eBOE. Where an effective revocation date is not shown, the effective date of revocation is 60 days following the mailing date of the hearing notice. (RTC section 7098).

EFFECT OF REVOCATION**751.070**

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

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

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

EFFECT OF REVOCATION**(CONT.) 751.070**

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

REVOCATIONS — INITIAL CLEARING PROCESS**751.075**

Working a revoked account begins with contacting the taxpayer by telephone to:

1. Discuss the consequences of operating with a revoked permit,
2. State the requirements to reinstate the permit, and
3. Obtain a commitment to promptly reinstate and comply with sales and use tax law.

If the taxpayer is contacted but fails to reinstate or perform as promised, the collector should telephone the taxpayer again and follow up by mailing Form BOE-420, *Notice to Appear*, requiring the taxpayer to appear within one week. However, if the taxpayer has a history of not responding to this type of action, it may be more productive to proceed with active collection methods.

If there is no contact with the taxpayer on the first call, make additional telephone calls to the business, to the residence, or to any other leads where the taxpayer might be reached. Calling at irregular hours may be required to reach a taxpayer(s) who are not available during normal business hours.

If telephone contact and attempts to reach the taxpayer(s) through the mail are unsuccessful, the case should be considered for a field call. Normally, only cases requiring personal contact warrant field work. However, if there is an existing assignment on an account that is currently being handled in the field, or if the taxpayer's history indicates that notification by telephone and mail will be unproductive, the revoked account should be scheduled for a field call at the earliest opportunity.

REVOCATIONS — FIELD CALLS**751.076**

CPPM 749.000 covered some of the basics of making effective field calls. It is essential to prepare before making any field call, but even more so when working a revoked account. Operating without a valid seller's permit is a misdemeanor and the account cannot be "partially" reinstated. The taxpayer's revoked account can only be reinstated through full compliance with all the conditions imposed upon the taxpayer by the BOE.

When working to reinstate a revoked account, devise a step-by-step plan when performing the initial case evaluation. For example, such a plan might look like the following:

Account appears on ACMS worklist on 01/01/XX:

1. Review the cause for the revocation, the account history in ACMS and IRIS and determine what is needed to reinstate the permit or license.
2. Make phone calls to the business location, the residence(s) of owners, partners, officers, nearby neighbors or businesses, personal references, landlord, etc., and note the results of the telephone calls in the case notes.

REVOCATIONS — FIELD CALLS

(CONT.) 751.076

3. On 01/05/XX, mail form BOE-465, *Notice to Withhold*, or form BOE-425-LA, *Notice of Levy*, to financial institutions if taxpayer has not responded to telephone calls.
4. If appropriate, request liens to be filed with the Secretary of State and appropriate counties where the taxpayer resides or has real property.
5. Send the taxpayer's suppliers form BOE-570-A, *Notice of Revocation to Principal's Suppliers*. This letter serves as notification that the taxpayer's permit is revoked and the supplier may not take a resale certificate from the taxpayer for purchases until the permit is reinstated.
6. On 01/15/XX, conduct a field call if the above measures are unsuccessful. Personally serve the taxpayer with a copy of form BOE-433-S, *Notice of Permit Cancellation* (available by reprinting from the DEL BV screen in IRIS), and remove the permit or license from the taxpayer's premises. Advise the taxpayer of the penalties for operating with a revoked permit or license and gather any information that might assist in compelling the taxpayer to comply. Ensure that a change of ownership has not occurred. If the business is under new ownership or is not operating, close out the account in IRIS to clear the revocation.
7. Obtain payment in full and reinstate the account. If payment in full is not possible, obtain a commitment from the taxpayer to enter into a short-term payment plan.
8. If reinstatement does not appear forthcoming and a taxpayer continues to operate without a valid permit, the purchase of an item from the taxpayer's business may be made to obtain evidence of sales after revocation. If State funds are used to make the evidence purchase, or the employee is reimbursed by the State for the purchase, the evidence must be handled in the following manner:
 - In most cases, the receipt is used as the evidence and not the item itself. The item purchased should be photographed and the receipt and photograph should be scanned and retained with the other documentary evidence to be used in support of a potential prosecution.
 - Once the items of evidence are no longer needed, a BOE employee must destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. For example, soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle.
 - The supervisor or manager should document the destruction in ACMS.

The list of actions above outlines a very basic plan for working a revocation and illustrates only a portion of the collection activities that may need to be taken to obtain compliance. Often a plan will not survive first contact with the taxpayer and will need to be adjusted according to the circumstances. However, having a plan allows staff to make appropriate and timely follow up calls and actions and, should the need arise to have the case transferred to another person, acts as a map for the person receiving the case to follow.

TRANSFER OF REVOKED ACCOUNTS**751.078**

Prior to making an inter-district transfer of a revoked account, all reasonable attempts to clear the revocation should be made. Reasonable attempts include, but are not limited to:

1. Making contact with the taxpayer to determine whether the business is operating.
2. If contact is made with the taxpayer, determining whether the cause for revocation can be cleared and the account reinstated prior to transferring the account to the new district.
3. Initiating an investigation by staff in the district where the taxpayer is believed to be operating by completing Form BOE-142, *District Request for Investigation*.

A revoked account may be transferred only with the proof that the taxpayer is actually operating in another district and the district of record cannot clear the cause of revocation and reinstate the account.

Prior to transferring the account to the new district in IRIS and ACMS, the originating district's Principal Business Taxes Compliance Supervisor will send a memo or an e-mail to the receiving district's Principal Business Taxes Compliance Supervisor indicating that a revoked account is being transferred.

The originating district should not send a new or replacement permit to the taxpayer but should forward all documents pertaining to the account to the receiving district. Any original documents that need to be mailed to the taxpayer and/or headquarters will be mailed by the receiving district when applicable. Transferring an account without following these procedures will cause the receiving district to return all documents and the file to the originating district. If the receiving district cannot complete the transfer of the account, all documents will be returned to the originating district.

PROSECUTIONS, OPERATING AFTER REVOCATION**751.080**

When all other remedies have been exhausted, aid of the court may be required to bring about compliance.

CONDITIONS OF REINSTATEMENT**751.090**

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

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

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

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

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

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

REINSTATEMENTS AFTER REVOCATION— FEES**751.100**

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

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

PAYMENTS RECEIVED DURING REVOCATION**751.120**

While the revocation is in force, the responsible collector should attempt to obtain cash, cashier's check, money order, or other certified funds in payment of liabilities and reinstatement fee(s). However, Government Code section 6157 requires BOE to accept personal checks if the person issuing the check furnishes proof of California residence and the check is drawn on a California banking institution, except where the taxpayer has previously given the BOE a check that was dishonored by the banking institution upon deposit.

If the taxpayer insists on paying with a personal or business check and does not have a history of returned checks, the check will be accepted. A compliance supervisor may accept, or refuse, a personal check when both of the following occur:

1. The taxpayer's account is revoked.
2. Within the preceding 36 months the taxpayer paid the BOE using a check that was subsequently dishonored by the bank.

If a personal or business check necessary to clear a revocation has been mailed to headquarters, the taxpayer normally should not be required to stop payment on the check and pay in certified funds. Such a delay could result in the assessment of additional penalty and interest charges (see CPPM 510.150).

If the taxpayer submits the reinstatement fee but the other requirements to reinstate the account are not met, the reinstatement fee is recorded using RSF OTM in IRIS. This action does not reinstate the permit; it merely shows that the reinstatement fee is paid, but the account retains its revoked status.

INOPERATIVE REVOCATIONS**751.130**

If IRIS indicates that a taxpayer's account is revoked, but it is determined that the taxpayer cleared the cause(s) prior to the effective date, the district office will cancel the action and notify the taxpayer using Form BOE-16, *Cancellation of Revocation*.

A revocation for failure to file and pay a return is considered inoperative only if:

1. The tax return(s) are filed on or before the effective date of the revocation.
2. The person has terminated his/her operations before the effective date of revocation. In this case, the online closeout process will clear the revocation from the BOE's records.
3. The business address was changed and the notice of revocation was mailed to the former address, provided the BOE received notice of the move prior to the effective date of revocation. If the BOE did not receive notice of the move prior to the effective date of revocation, then the revocation is operative and the conditions of reinstatement must be met. A letter informing the BOE of the address change, a Post Office Form 3573 received by staff, and tax or fee returns with the address crossed out and the forwarding address inserted are all valid forms of notification that a change of address has occurred.
4. Staff is notified, or discovers, that the taxpayer filed for bankruptcy protection.

**FORM LETTERS TO SUPPLIERS OF PERSONS
WITH REVOKED ACCOUNTS AND SWAP MEET OPERATORS**

751.140

Form BOE-570-A, *Notice of Revocation to Principal's Suppliers*, advises the supplier that a taxpayer's seller's permit has been revoked and a resale certificate may no longer be accepted from the specified taxpayer. The letter is particularly useful when dealing with revoked service stations, bars, restaurants, hotels, franchised businesses (fast foods, convenience stores, etc.) and other sellers having only one or a limited number of principal suppliers. This letter should only be sent to principal suppliers of the specified taxpayer. This letter should not be sent to a taxpayer's competitor unless there is evidence that the competitor is a principal supplier. Upon receipt of this letter, a supplier must begin collecting tax reimbursement from the indicated taxpayer. Some suppliers will cease making sales to the taxpayer altogether, thus persuading the taxpayer to reinstate.

Form BOE-570-B, *Notice of Reinstatement to Principal's Suppliers*, is mailed when the reinstatement is completed. Form BOE-570-B references Form BOE-570-A and advises the supplier they may again accept a resale certificate from the specified taxpayer. It is extremely important that Form BOE-570-B is mailed to the suppliers promptly when the revocation is cleared. .

To notify swap meet and special event operators that a taxpayer does not hold a valid seller's permit, use Form BOE-1584 in ACMS.

These form letters should be used in lieu of district forms of the same nature.

NOTICE TO WITHHOLD — FORM BOE-465**752.000****GENERAL****752.010**

Despite the title, Form BOE-465, *Notice of Withhold*, is not an earnings withholding order for taxes (see CPPM 755.010). The *Notice to Withhold* is used to prevent the transfer of a taxpayer's assets when those assets are under the control, or in the possession, of another person and the use of a *Notice of Levy* is not warranted. The *Notice to Withhold* attaches only the taxpayer's assets that are in another person's possession at the time of service and has no effect on assets that later come into the other person's control.

Any person who receives a *Notice to Withhold* and subsequently transfers or disposes of the taxpayer's assets during the effective period of the notice, without first receiving consent from the Board of Equalization (BOE), may be held personally liable up to the value of the assets transferred. However, the BOE can impose personal liability on the transferor only if the liability is not collectable solely because of the transfer or disposal of the assets.

The *Notice of Withhold* is not to be used routinely as the first step in the collection process. Collection staff should use the notice only after the taxpayer is given an opportunity to pay voluntarily but does not do so, or to stop the transfer of assets when the transfer would jeopardize the BOE's collection efforts.

SERVICE OF NOTICE — FORM BOE-465**752.020**

A *Notice to Withhold* may be served upon a person within three years from the date the liability became final or within ten years from the last recording of an abstract or a lien. The service may be made by first class mail, however, if the district office (or applicable division within the Property and Special Taxes Department) determines that it is in the state's best interest, service may be made in person or by certified or registered mail. When service is accomplished in person, a signed copy of the notice should be obtained from the recipient at the time of the service. At the same time, an effort should be made to obtain a report of the assets of the taxpayer being held pursuant to the notice. Depending upon the type of organization served or the type of assets being held, it is not always possible to obtain an immediate report of the assets. Therefore, appropriate follow-up is necessary to ensure that the recipient provides a report, regardless of the method chosen for serving the *Notice of Withhold*.

RELEASE OF NOTICES TO WITHHOLD AND LEVY**752.025**

Form BOE-465-F, *Authorization to Release Notice of Withhold*, in ACMS is used to release both a *Notice of Withhold* and a *Notice of Levy*, except in cases where it is necessary to release the asset(s) of a partnership account. Programming limitations in ACMS prevent printing a copy addressed to each partner. In this situation, print a copy of the original document, stamp the upper-right corner of the notice with the release stamp, complete the blanks (including "authorized signature") and prepare a photocopy for each of the partner's being served. Since this form is used to release both the *Notice of Withhold* and the *Notice of Levy*, be sure to select the appropriate form when preparing to print a BOE-465-F in ACMS.

REFUSAL OF PERSONAL SERVICE OF FORM BOE-465**752.030**

If the person served with a *Notice to Withhold* refuses to acknowledge service, a notation indicating the refusal should be made on the BOE-465. The date and time of service should be shown along with the name of the person with whom the notice was left. If a person refuses to accept personal service of a *Notice to Withhold*, an attempt should be made to have the notice served, either by certified or registered mail.

If this service is also refused, a *Notice of Levy* should be issued if the assets are in the form of money. If the assets are not money, a warrant should be obtained from the Special Procedures Section so that the sheriff, marshal, constable or California Highway Patrol can confiscate the identified assets from the person in control or possession of the assets.

REPORT OF ASSETS HELD**752.040**

After effective service is made, or when a report is received that assets are being held, the taxpayer should be contacted immediately and arrangements made for payment of the liability or to have the withheld assets released to the BOE.

Collection staff should use the levy or warrant process if the taxpayer is unwilling to make payment or to have the assets released to the BOE.

ASSETS TO BE HELD BY A PERSON SERVED FORM BOE-465**752.070**

A person served with a *Notice to Withhold*, other than a bank, is required to hold all of the assets belonging to the taxpayer over which control is exercised, regardless of their value or form and regardless of the amount set forth on the notice. Banks, federal and state savings and loan associations, and federal and state credit unions are required to hold up to two times the amount, including penalty and interest, shown on the Form BOE-465 with respect to deposits, credits or personal property in their possession or under their control.

To avoid placing an undue hardship on the taxpayer, collection staff may consider issuing an order authorizing the release of excess assets when the value of assets held exceeds the amount of the liability. Before authorizing the release of excess assets, it is first necessary to determine the amount of retained assets that will pay the total liability plus any costs that might develop if it becomes necessary to use warrant procedures. Releasing excess assets as described is normally applicable only when the person is withholding money, rather than non-money assets.

SERVICE OF FORM BOE-465 ON JOINT BANK ACCOUNTS**752.080**

Under RTC section 6702, the BOE-465 may be served on a bank, state or federal savings and loan association, or a state or federal credit union, where a delinquent taxpayer holds an account jointly with another person. When the BOE has served a financial institution with a *Notice to Withhold* on a jointly-held account, the financial institution is required to mail a notice to each person named on the account that indicates the amount and reason for the withhold. If, after receiving a response to the BOE-465 from the financial institution, there is uncertainty as to the extent of the taxpayer's interest in the account, a *Notice of Levy* should be served (See CPPM 753.010).

EFFECTIVE PERIOD OF FORM BOE-465**752.090**

The effective period of a *Notice of Withhold* is 60 days from the date of service unless released sooner by the BOE. When it is necessary to require the person to withhold in excess of the 60-day period, a new *Notice to Withhold* must be served prior to the expiration of the original notice. Service more than one time should occur infrequently since the *Notice of Withhold* is used for collection purposes.

SERVICE OF FORM BOE-465 ON EMPLOYERS**752.095**

A *Notice of Withhold* may not be served on employers to reach salaries, wages or commissions owed to the taxpayer. Salaries, wages or commissions must be garnished using Form BOE-425-E, *Earnings Withholding Order for Taxes*.

SERVICE OF FORM BOE-465 CREATES NO LIEN**752.100**

Service of the *Notice to Withhold* does not create a lien upon the withheld assets. To create a lien, a *Notice of Levy* or a levy under a warrant is necessary. As long as the assets are held pursuant to the *Notice of Withhold*, they are subject to the liens of other creditors who might levy under a Writ of Execution and thereby assert priority over the BOE's withhold. Therefore, a *Notice of Levy* should be promptly served to seize the assets and/or perfect the BOE's lien.

SERVICE OF FORM BOE-465 TO REACH RESERVE ACCOUNTS**752.110**

If service of a Notice to Withhold upon a bank or other depository institution reveals a reserve account against which there is a contingent liability, issue a *Notice of Levy*. A contingent liability is one which is difficult to quantify, or which may or may not come to pass, e.g., payments that may be awarded pending the outcome of a lawsuit. Usually, considerable time is required for the elimination of the contingent liability and other creditors can levy under a Writ of Execution during this period. Therefore, the *Notice of Levy* procedure should be used to establish a lien rather than repeatedly renewing the withhold period using the BOE-465.

DISTRICT OFFICE CONTROLS — FORM BOE-465**752.130**

Each district office should establish proper controls over the use of the *Notice to Withhold*. All employees must clearly understand who is authorized to sign and approve the use of the BOE-465 and those persons so authorized should have a thorough understanding of the situations and circumstances when utilization is proper. After service has been made, the person sending the notice has the responsibility for maintaining a follow-up and taking appropriate follow-up action to bring the matter to a successful conclusion.

WARRANTS AND LEVIES**753.000****GENERAL****753.010**

Use of a warrant is one of the Board of Equalization (BOE)'s most effective collection remedies. Warrants should be used with proper discretion and without unreasonable restrictions that might tend to discourage their use. There are many times when the use of a warrant or a notice of levy is necessary. When the use of these tools is indicated, there should be no hesitancy because of possible unpleasant reactions from the taxpayer. In practically all cases where the warrant or notice of levy is used, the taxpayer will have had an opportunity to clear the liability but failed to do so.

A warrant is a judicial writ authorizing an officer to make a seizure or to execute a judgment and is used to confiscate property in accordance with a legal judgment. The BOE may issue warrants to enforce liens and to collect amounts due. Warrants may be issued at any time within three years from the date on which the liability became final, or within ten years after the last recording of an abstract or lien (see RTC section 6776 and chart in CPPM 757.020). Before requesting a warrant, the case must be evaluated to ensure that such action will produce sufficient money to cover all costs and leave enough to pay the liability. Rather than using a warrant, a Form BOE-425-LA, *Notice of Levy*, is used to seize money, or right to money, held or controlled by the tax debtor or by a third party.

With the exception of wage levies (also known as Earnings Withholding Orders), a warrant to levy on tangible personal property is made by a sheriff, marshal, constable or officer of the California Highway Patrol (CHP). Upon receipt of the warrant, an officer is required to promptly serve it upon the taxpayer and take possession of the available assets according to the instructions that accompany the warrant. The officer will take possession and arrange for sale to the highest bidder at public auction. After deducting his fees, expenses and commissions from the proceeds of the sale, he will remit the remainder to the BOE to credit the taxpayer's account.

Before requesting a warrant to levy on personal property, the BOE must determine if the taxpayer is the legal owner of the property. Legal ownership can often be determined by examination of financing statements (Forms UCC-1 and UCC-3) filed with the Secretary of State. If financing statements are on file, the secured party should be contacted to see what amount, if any, remains due.

Sometimes a warrant is issued upon property in which a third party has an interest and the third party files a claim objecting to the seizure. Unless the amount of the claim is posted with the levying officer, or the levying officer is notified that the BOE opposes the validity of the third party claim, the levying officer must release the property to the claimant within five days after the claim is filed. (See CPPM 753.210.)

If it is in the best interest of the BOE to pay off a third party claim and seize the property, a request for funds to pay off the amount due will be sent to the Special Procedures Section (SPS) when the warrant is requested. These requests should be made only when the third party claim is relatively small in relation to the taxpayer's equity in the personal property.

WARRANTS**753.015**

Via the Automated Case Management System (ACMS), staff may request the issuance of a warrant by preparing Form BOE-200-W, Special Procedures Warrant Request. By virtue of a warrant:

1. A law enforcement representative (keeper) may be placed on the premises of a delinquent taxpayer for the purpose of taking possession of personal property. This procedure is most frequently used for, but is not restricted to, situations where the taxpayer is still operating a business. The officer may be instructed to levy upon the furniture, fixtures, and equipment owned by the taxpayer, the stock in trade, and cash in the register. A keeper will remain on the business premises during the hours specified on the warrant. Requesting a “keeper” warrant requires the BOE to pay advance fees to the law enforcement agency to which the warrant request is directed. (See section 753.050.)
2. An officer of the CHP can be instructed to enter a business for the purpose of taking possession of the cash in the cash register(s) on the business premises. This procedure is commonly referred to as a “till-tap.” No payment of advance fees is necessary when requesting a till-tap.
3. A warrant may be issued to levy upon motor vehicles. There is no requirement that the legal owner’s interest in the automobiles be recorded. The ownership of motor vehicles must be registered with the Department of Motor Vehicles (DMV) and any changes in the registered or legal ownership must be promptly reported to DMV. When consideration is given to levying upon a motor vehicle, DMV’s records must be checked, in all instances, to determine the correct ownership. If the DMV records show a legal owner other than the taxpayer, a warrant will not be issued. On rare occasions, however, as in the case of a “nearly clear” motor vehicle, arrangements can be made to provide the levying officer with sufficient advance fees to allow him to pay off the small interest of a legal owner. If such a course is anticipated, SPS must be advised of the exact amount needed in order to determine whether this course of action is advisable.
4. A levy pursuant to a warrant may be placed upon real property when the liability is \$5,000 or more. Before any levy is made on real property in which the delinquent taxpayer has an interest, the extent of the interest must first be established. To do this, the real property records should be searched to determine:
 - a. The manner in which title is shown.
 - b. Trust deeds or mortgages against the property.
 - c. If there are any other encumbrances such as liens, judgments, and attachments against the property.

These encumbrances must be recorded prior to the date on which the BOE’s lien certificate was recorded in order to have priority over the BOE’s lien. This search should also disclose whether the property is subject to a declaration of homestead.

As a matter of policy, the BOE does not levy upon and sell a taxpayer’s principal residence.

WARRANTS**(CONT.) 753.015**

In considering a warrant to levy on real property, the following steps must be taken:

- a. The fair market value of the property must be determined by a personal appraisal or by a qualified realtor familiar with the subject property. In certain cases, appraisers from the Property Taxes Department may be used.
- b. All title encumbrances, including the homestead exemption, must be deducted from the fair market value and the taxpayer's interest in the remainder must be established pursuant to the manner in which title to the real property is vested, i.e., sole owner, joint tenancy, etc.
- c. The anticipated amount received from the forced sale of the real property is calculated to ensure that taking such action is practical. A comprehensive report and recommendation should be submitted to SPS for a decision.

Additional information regarding the seizure and sale of real property can be found in CPPM 757.150.

KEEPER WARRANTS**753.018**

If directed to do so in the warrant instructions, levying officers may place a "keeper" on the premises of an operating business for the purpose of collecting incoming receipts while allowing the business to operate. When deciding whether to request a keeper warrant, the responsible collector should keep in mind that it may become necessary to eventually sell the taxpayer's property. The keeper's function is to preserve the property and prevent its disposal pending clearance of the liability or public sale of the property. The anticipated daily receipts from the operation of the business should be weighed against the daily costs paid for the keeper.

INTEREST ACCRUALS ON COLLECTIONS BY WARRANT**753.020**

Since the officer serving the warrant and making collection is acting in the capacity of an agent of the BOE, the date payment is received by the officer is considered to be the effective date of payment. Interest accruals, therefore, will depend upon the date the officer receives the funds and not on the date they are remitted to the BOE by the levying officer.

WARRANT REQUEST AUTHORITY — TILL-TAPS AND KEEPERS**753.025**

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

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

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

Till-Taps - Use of the California Highway Patrol

Requesting the California Highway Patrol (CHP) to serve a till-tap warrant can be costly.

Therefore staff is encouraged to utilize the Sheriff instead of the CHP whenever possible. However, using the Sheriff instead of the CHP is dependent upon the area for service and whether the CHP can more quickly or efficiently serve the till-tap warrant in comparison to the Sheriff.

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

The request for a warrant must include:

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

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

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

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

CALIFORNIA HIGHWAY PATROL DIVISION AND AREA LOCATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ISSUANCE OF WARRANTS AND INSTRUCTIONS**753.030**

All warrants, except those on wages, are issued by SPS upon request from staff. Requests will be reviewed by SPS to determine whether the use of a warrant is appropriate. Factors that will be considered are legality of action, anticipated results, and costs compared to amount expected to be collected.

SPS will prepare the warrant, and the instructions to the levying officer will be prepared at the same time. If, after the warrant and instructions are issued, additional assets are located, or the instructions are inadequate, administrators or persons who have been delegated authority are authorized to amend or supplement the instructions as necessary. In no case, however, will the period or amounts shown on the warrant be altered; in these instances, new warrants will be requested from SPS.

ADVANCE PAYMENT OF FEES AND EXPENSES**753.050**

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

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

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

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

Warrant Logs

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

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

Unused Cost of Collection Fees

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

STATEMENT OF COSTS REQUIRED**753.052**

Whenever the BOE is required to pay the costs of a levy for which no reimbursement was received as a result of the levy, a statement of charges is required. The statement must be submitted by the levying officer in triplicate and should be forwarded through the district office to SPS for approval and referral to the Accounting Office for payment, if not already paid in advance. No payment will be made until the statement, in triplicate and detailing the items, has been received. A statement is not necessary if an advance payment was made and full reimbursement is received as a result of the levy.

COSTS AS AN OBLIGATION OF THE TAXPAYER**753.054**

The advance payment required and any costs incurred in the use of a warrant become the obligation of the taxpayer and should be collected by the officer making the levy. Whenever costs are incurred through a levy from which no satisfaction is obtained, whether an advance was made or costs were later billed to BOE, the amount of the costs should be added to the tax liability and collected along with the tax when collection becomes possible.

LEVYING OFFICER'S RETURN OF WARRANT**753.056**

Within 60 days after making a levy pursuant to a warrant, the levying officer must make a report of any action taken and/or the results of the warrant. The warrant should be returned to the BOE with a report on the response from the person upon whom the levy was made, along with a statement on the amount collected, less costs and fees, and the net amount paid. If the warrant resulted in no collection, the officer must so report and, if costs were incurred by the BOE, a statement in triplicate must be submitted to SPS for transmittal to the Cashier in Headquarters. (The Cashier Manual contains the procedures for reimbursement of advanced warrant fees by levying officers).

CANCELLATION OF WARRANT SERVICE BY LEVYING OFFICER**753.058**

In rare instances, the BOE may cancel or withdraw the warrant for collection before the sheriff, marshal, constable or CHP has served the document on the taxpayer. Withdrawals or cancellation of warrants must be made only when careful examination of the circumstances dictates that the cancellation is proper such as when the taxpayer files bankruptcy before service is made, a payment to clear the liability is made prior to service, death of a taxpayer, etc. In these situations, a telephone cancellation followed immediately by written confirmation to the sheriff, marshal, constable or CHP, with a copy to SPS, is proper. Cancellation of a warrant may be made only by authorized persons.

CIGARETTE TAX LAW WARRANTS — NO ADVANCE FEES**753.060**

Since the Cigarette Tax Law does not provide for advance payment of fees and expenses, the officer who will make the levy should be contacted to learn whether the levy can be made without an advance payment. If arrangements cannot be made, SPS should be notified. SPS will then determine whether the matter should be referred to the Attorney General for action against the taxpayer.

MOTOR VEHICLE WARRANT PROCEDURE — PROTECTIVE BIDS**753.070**

The Department of General Services (DGS) has authorized the Attorney General (AG) to bid upon and purchase motor vehicles at a public sale conducted pursuant to a BOE warrant. In order to avoid the possibility of a motor vehicle being sold for an unreasonably small amount, the BOE may enter a “protective” bid. The AG will designate a BOE employee as the AG’s special representative to actually make the bid and SPS will coordinate this procedure. The maximum protective bid shall not exceed two-thirds of the low “as is” Kelly Blue Book value of the vehicle, or the amount of the tax, including all costs of levy, whichever is the lesser.

The responsible district office will furnish SPS with all pertinent information regarding an anticipated public sale. The information should include, but is not limited to:

1. Estimated value of the vehicle and amount of proposed bid.
2. All facts regarding third party claims.
3. Name of BOE employee who will represent the AG in making the bid.
4. Date of expected sale.

Upon reasonable prior notice, vehicles may be delivered to state garages maintained in Sacramento, San Francisco, Fresno, Los Angeles, and San Diego. As a successful bidder, the special representative will take possession of and deliver the vehicle to the nearest installation of DGS. SPS will notify DGS of all facts concerning the purchase and proposed resale of the vehicle and DGS will handle the storage and resale of the vehicle.

The responsible district office must furnish the Administrative Services Division, Accounting Section, with an itemized statement of expenditures in triplicate (letter form), including the amount bid for the motor vehicle. Upon proper notice, the Accounting Section will:

1. Issue a check for sheriff’s, marshal’s, constable’s or California Highway Patrol fees.
2. Obtain an advance from the State Controller in the amount needed for the revolving fund to credit the taxpayer’s account with the amount of the bid, less expenses.
3. Prepare a revolving fund check for the credit of the taxpayer’s account and transmit the check to the Cashier at Headquarters through SPS.

When a motor vehicle purchased by the BOE through bid-in procedures is subsequently resold by DGS, the proceeds from the sale that are transmitted to the BOE will be distributed as follows:

1. The revolving fund will be reimbursed for all funds advanced.
2. The remaining funds will be transferred to the general fund.

FRAUDULENT CONVEYANCES**753.095**

Generally, a fraudulent conveyance is a transfer of a property interest that is made for the purpose of preventing creditors from obtaining the asset(s) in satisfaction of claim(s).

To establish a fraudulent conveyance, one or more of the following elements must be substantiated:

1. **Fraudulent intent.** This is actual intent, as distinguished from the intent presumed in law, to hinder, delay or defraud creditors. An example of fraudulent intent is when corporate assets are transferred to the officers of the corporation, or their relatives or other persons associated with the corporation, to prevent creditors from obtaining the assets in satisfaction of claims. (Civil Code section 3439.04).
2. **Insolvency.** Every conveyance made and every obligation incurred by a person which is or will be thereby rendered insolvent is fraudulent as to creditors without regard to the actual intent if the conveyance is made or the obligation is incurred without fair consideration (Civil Code section 3439.05). Fair consideration is given for property conveyed when a fair equivalent value is received in good faith in exchange for such property (also see below).
3. **Lack of Fair Consideration.** Every conveyance made without fair consideration is fraudulent when the person making the conveyance of property either:
 - a. “Intended to incur, or believed or reasonably should have believed he or she would incur, debts beyond his or her ability to pay as they became due” (Civil Code section 3439.04.)
 - b. Is engaged in a transaction or business for which the remaining capital is unreasonably small (Civil Code section 3439.04).
4. **Bulk Transfers.** Any bulk transfer, such as a sale of a business, is fraudulent and void against any creditor of the transferor unless the transferee gives notice of the transfer in any recognized legal publication, such as McCords Daily, in the manner provided by Uniform Commercial Code section 6105 (see also UCC section 6105).

The supporting documentation for establishing a fraudulent conveyance should include a description of the property transferred and the name and address of the transferee. The transferee may be served with a notice of levy and/or a summons in a creditor’s suit under Code of Civil Procedures section 708.210, et seq.

NOMINEE LIENS**753.100**

There are three situations when either real or personal property not in the name of the taxpayer are subject to levy, lien, or some other enforcement procedure. These situations are:

1. Liability of the community property for debts of either spouse.
2. Property that was subjected to a lien when owned by the taxpayer.
3. Property that the taxpayer has fraudulently conveyed.

The last situation is where a nominee lien could be used.

A nominee is a person in whose name property is titled but who is not the actual owner. A nominee lien is an instrument recorded against certain property to allege the property is being held by another, the “nominee,” for the benefit and use of the taxpayer. The nominee, as recorded owner, has mere color of title while the taxpayer holds the equitable title. Filing a nominee lien gives notice that property is held by a nominee but really belongs to the taxpayer.

The filing of a nominee lien is proper procedure when a nominee third party holds title to the property as the result of a fraudulent conveyance by a delinquent taxpayer, or in cases where the circumstances of the transfer are similar to those of a fraudulent conveyance. The nominee lien is also used when the transferee is merely the alter ego of the taxpayer.

The filing of a nominee *Notice of Tax Lien* gives the transferee and potential purchasers of a specific property notice that the BOE asserts a lien on that property on the basis of the fraudulent transfer, and establishes the priority of the state’s lien under Government Code section 7171. Without the filing of a nominee *Notice of Tax Lien*, the state could lose priority if other lienors described in Government Code section 7170 (mechanics, judgment lien creditors, etc.) perfect their interests before the nominee lien is recorded.

The nominee lien procedure is easier to accomplish than a suit to set aside a fraudulent transfer or suit to establish transferee liability. The nominee lien enables the state to more securely encumber property of the taxpayer standing in the name of a third party.

The lien compels the taxpayer to take the action to remove the resulting cloud on the title of its property rather than the BOE having to initiate action to set aside a fraudulent conveyance. A cause of action with respect to a fraudulent transfer is subject to the provisions of Civil Code section 3439.09.

EVIDENCE TO SUPPORT NOMINEE LIENS**753.110**

To determine whether a conveyance is fraudulent involves the consideration of various elements and factors, such as the:

1. Intent of the parties.
2. Financial conditions of the transfer.
3. Consideration, or lack of consideration, for the transfer.
4. Relationship of the parties.

Regarding intent of the parties, and the financial conditions and considerations of the transfer, see Civil Code sections 3439.04 and 3439.05 respectively.

Indications of intent (to be considered in combination with 2 and 4 above as strong evidence of fraudulent intent) include:

1. Concealment or disappearance of the taxpayer.
2. Efforts to hide the facts of the transfer from creditors.
3. Secrecy surrounding the transfer.
4. Transfer of all the taxpayer's property.
5. Reservation of some benefit to the taxpayer.
6. Reliance by the taxpayer upon the transferred property for future support.

Actual intent to defraud must be proved by clear and convincing evidence, but circumstantial evidence often suffices to constitute such proof.

Regarding the financial conditions of the transfer, Civil Code section 3439.04 provides that every conveyance made and every obligation incurred by a person who is, or will be, thereby rendered insolvent is fraudulent as to creditors without regard to the actual intent if the conveyance is made or the obligation is incurred without fair consideration. Therefore, close scrutiny of the relationship of the parties is required where the transferee is closely related to, or controlled by, the transferor or debtor.

NOMINEE LIEN APPROVAL**753.120**

In each case, a memorandum must be sent by the district administrator or special taxes division administrator, through SPS, to the legal staff for review and approval prior to SPS forwarding the nominee *Notice of Tax Lien* for recordation. Do not send the memorandum directly to the Legal Department.

The memorandum should:

1. Outline the facts of the case.
2. List all criteria upon which the staff is relying to assert that the person who holds title is merely a nominee of the taxpayer.
3. Include copies of relevant documents.
4. Include a property address and parcel number or property legal description.

CHECKLIST FOR MAKING A NOMINEE LIEN REQUEST**753.130**

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

LEVY POLICY**753.200**

A BOE-425-LA, *Notice of Levy*, is a collection tool used when a taxpayer has not voluntarily resolved a liability after it becomes due and payable. The levy is used to collect the taxpayer's interest in or right to money controlled by the taxpayer or a third party. Funds held in a joint bank account are presumed to be community property under Probate Code section 5305(a), and subject to levy.

Levies are most commonly served on financial institutions (banks), but can also be served on merchant credit card processors, stock trading companies, third parties (e.g., to attach the taxpayer's commissions), tenants (to attach rents payable), or third-party customers (for accounts payable). The money remitted to the BOE pursuant to a levy represents money the entity owes and would have otherwise paid to the taxpayer.

The levy should be approved by the District Administrator, Special Tax and Fee Division Administrator, or a designee. This designation may be made to the level of Business Taxes Representative, Range B, who may also be the person serving the levy. With the exception of a tax debtor's interest in a decedent's estate, a levy notice will only be used to levy on money, or right to money, held or controlled by the taxpayer or by a third party. Warrants will continue to be requested for keepers or to reach any assets other than money or right to money (excepting wages). An addressed envelope should be included with the levy notice to ensure the reply is directed to the correct BOE office.

Notice To Withhold form BOE-465 may be used for any reason where use of the levy notice is not desired (see CPPM 752.000.)

Staff will delete the taxpayer's social security number from all copies of the *Notice of Levy* when the levy is being sent to entities other than financial institutions. The exception to this is a levy sent to a credit card (merchant card) processor. Social security numbers may be included on levies sent to credit card processors even though they are not included in the legal definition of financial institutions. In ACMS, click on the drop down menu near the bottom of the first page of the levy just after the statement, "You are notified in the capacity of a", and select "person in possession of monies owed to tax debtor." For levies to non-financial institutions, other than credit card processors, staff must delete the populated taxpayer's social security number in the Identification of Taxpayer window on the original levy notice.

Revenue and Taxation Code (RTC) section 6703, equivalent Special Taxes and Fees statutes, and related sections of the Code of Civil Procedures (CCP) authorize the BOE to use levies to take possession of tangible personal property in possession or under the control of a retailer, when served personally or by first class mail. This includes seizing money held or controlled by the tax debtor or by a third party (e.g., an employee), sometimes referred to as a till tap levy. The collector will take the BOE-425-LA generated in ACMS when making a field call to the business to personally serve the till tap levy. However, in the event of non-compliance with the till tap levy, a warrant may still be necessary (see CPPM section 753.025).

When a collector is uncertain whether the taxpayer or the taxpayer's employee is operating the business, two BOE-425-LA forms should be generated from ACMS. One should be addressed to the taxpayer and the other to the employee of the taxpayer. The BOE-425-LA is generated in ACMS under the Send Levy option. When staff is prompted to select an address source, the "Other" option should be selected. This allows the name and address of the person being served to be modified. Staff will input the taxpayer's name and business address for both copies of the levy, but will type "Employee of" in the attention line for a till tap levy being addressed to the taxpayer's employee.

In addition, the following information contained on the BOE-425-LA must be modified before finalizing the levy:

- From the ACMS Document Generation window displayed at the top of the document, staff should select the Blurb option. Under the Blurb Types drop-down menu, staff must select the Levy/Withhold option and then select the Till Tap Blurb from the list.
- After the statement "You are notified in the capacity of a," staff will select "person in possession of monies owed to tax debtor."
- Lastly, the taxpayer's social security number must be deleted.

All monies collected as a result of the till tap levy must be converted to a money order or cashier's check payable to BOE before staff returns to the district or branch office. See CPPM section 705.000 for additional information regarding processing funds received during a field call.

NOTICE OF LEVY**753.205**

The *Notice of Levy* contains two copies of the levy. The first copy is sent to the entity being levied (e.g., bank, credit card processor), who is known as the “garnishee.” The second copy is sent directly to the tax debtor informing them of the levy. The levy is created in ACMS and the Notice of Levy and accompanying forms are automatically printed and tracked.

Taxpayers are entitled to various exemptions provided in the United States Code and in the California codes, primarily the Code of Civil Procedure (CCP). Per CCP section 700.010, the BOE-425, *Exemptions from the Enforcement of Judgements*, must accompany the copy of the levy notice sent to the tax debtor. The BOE-425 must also be sent to the spouse when sending a levy to attach community property belonging to the spouse.

CCP section 700.010 also requires that the BOE-425-L3, *Notice of Levy - Information Sheet*, be included with the copy of the levy sent to both the tax debtor and the garnishee. The BOE-425-L3 must also be sent to the spouse when sending a levy to attach community property belonging to the spouse.

The BOE-425-L3 includes an Information Sheet for the tax debtor, person other than the tax debtor, and the person served, as well as an Exemption Claim Form, and an Individual Financial Statement (BOE-403-E). For additional information on claims of exemption, see CPPM section 753.260, and for information regarding third-party claims, see CPPM section 753.210.

Generally, a financial institution served with a levy will hold levied funds for ten days from the date it receives the levy before remitting the funds to BOE. The collector will mail the tax debtor’s copy of the levy, including the BOE-425, *Exemptions from the Enforcement of Judgements*, the BOE-425-L3, *Notice of Levy – Information Sheet*, and the BOE-403-E, *Individual Financial Statement*, to the tax debtor within ten calendar days after the levy has been mailed to the garnishee. This period will allow time for the financial institution, including banks with a centralized levy processing system, to receive and process a BOE levy.

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

CCP section 684.115 requires financial institutions with more than nine California branches to designate one or more in-state central levy processing centers and authorizes those with fewer than nine California branches to do the same. Financial institutions must submit their central levy processing center address to the Department of Business Oversight where these addresses will be available to the public.

Staff must send levies to the designated central processing center in order to be valid. If a financial institution fails to designate a central levy processing center, each branch of that institution located in California is deemed to be a central location. Also, the BOE remains authorized, pursuant to RTC section 6703, to direct the levy to a financial institution’s out-of-state processing branch. If staff fails to send the levy to the properly designated central levy processing center when one is established, the financial institution will have the discretion to either accept or reject the levy.

NOTICE OF LEVY

(CONT.) 753.205

A directory of the central processing locations for financial institutions is regularly updated in ACMS. When preparing a levy to be mailed to a financial institution that does not have a central processing center listed in ACMS, refer to the California Department of Business Oversight's webpage (www.dbo.ca.gov) under *Central Locations for Service of Legal Process* located under the Laws/Regulations tab, to determine if a central levy processing center has been designated to ensure proper service.

The notice of levy may not be used to levy on wages or on out-of-state entities that are holding property belonging to the tax debtor that is also located outside of California. However, the registration of an agent for service of process with the California Secretary of State is an established basis for California's jurisdiction over a foreign person or legal entity. When an out-of-state financial institution has no in-state branches or offices and no designated central levy processing center, a levy can be sent to the financial institution's agent for service of process if:

1. The taxpayer resides in California, or
2. There is evidence to support the taxpayer is withdrawing and depositing funds from ATMs or point-of-sale locations within California.

If a financial institution fails to honor the BOE's levy in the above situation, the Legal Department should be consulted to determine California's jurisdiction over the financial institution. Unless the BOE has successfully pursued a judgement in another state, a levy should not be used to access funds from an out-of-state maintained account if the taxpayer resides outside California.

The levy creates a lien for a period of two years on all property described in the notice that is held at the time of service, and the person in possession or control of the property is required to deliver it to the levying officer. (See CPPM section 753.250).

In addition, RTC section 6703 and equivalent Special Taxes and Fees statutes provide for a continuous levy. The *Notice of Levy* is effective until the amount specified in the notice, including accrued interest, is paid in full; until the levy is withdrawn; or until one year from the date the notice is received, whichever occurs first. There are two limitations to the continuous levy:

1. The continuous levy is applicable to sales or use tax liabilities and some Special Taxes and Fees programs; check each specific law.
2. Funds in a deposit account, as defined by Uniform Commercial Code section 9102, are not subject to a continuous levy. This section defines "deposit account" as a demand, time savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization other than accounts evidenced by a negotiable certificate of deposit. Therefore, only the funds available in the deposit account when the levy notice is served on a financial institution are subject to withhold and subsequent payment to the BOE.

THIRD-PARTY CLAIMS**753.210**

A third party may claim ownership or the right to possession of levied property pursuant to CCP section 688.030. Third parties claiming ownership or security interests may file a third-party claim on the property seized by the BOE following the service of a warrant or a notice of levy. A third-party claimant should file its third-party claim with the BOE office that issued the *Notice of Levy*.

Third parties affected by a BOE levy may not have received a copy of the *Notice of Levy* and the accompanying information. When collection staff receives inquiries from third parties, staff should immediately provide a copy of the BOE-425-L3, instruct the third party on how to file the claim, and stress that the claim must be received by BOE prior to any levied funds being deposited by the BOE. If a third-party claim is received after the BOE has deposited the funds, BOE staff should advise the claimant that the only recourse available is to follow the claim for refund process.

The levying office is responsible for advising the third-party claimant of all the requirements for a valid claim and determining whether a third-party claim conforms to the requirements of CCP section 720.130. The levying office is also responsible for analyzing the claim and, when appropriate, releasing the third-party property that was levied in error.

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

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

The Exemption Claim Form on the back of the BOE-425-L3 may be used to file a third-party claim (see CPPM section 753.265). Copies of supporting documentation should be attached to the third-party claim. However, documentation need not be provided in order for a third-party claim to be valid.

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

1. Notification of receipt of a third-party claim is to be sent via email to the Assistant Chief Counsel of the Litigation Division with copies to the appropriate program area division chief, administrator, principal compliance supervisor, and SOB.

THIRD PARTY CLAIMS

(CONT.) 753.210

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

The attorney in the Litigation Division that is assigned to the case will promptly determine if a third-party claim legal proceeding should be initiated, or if the third-party claim is justified. If the litigation attorney determines the claim is justified, or other circumstances warrant the levy's release, the litigation attorney will advise the collector to release the levy. Otherwise, the litigation attorney will request SOB to prepare the referral for the office of the Attorney General for commencement of a third-party claim legal proceeding

SERVICE OF FORM BOE-425-L4 TO REACH COMMUNITY**INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT****753.220**

RTC section 6703 and equivalent Special Taxes and Fees statutes authorize the BOE to serve a *Notice of Levy* on a third party holding property belonging to a tax debtor. Funds held in a joint bank account are presumed to be community property (Probate Code § 5305(a)) and funds in some bank accounts in the name of the taxpayer's spouse may be subject to levy as community property. To reach community property interests, staff must attach a spousal affidavit (BOE-425-L4) to the *Notice of Levy*.

Family Code section 910 provides:

- (a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.
- (b) "During marriage" for purposes of this section does not include the period during which the spouses are living separate and apart before a judgment of dissolution of marriage or legal separation of the parties."

Family Code section 911 provides:

- (a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.
- (b) As used in this section:
 - (1) "Deposit account" has the meaning prescribed in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.
 - (2) "Earnings" means compensation for personal services performed, whether as an employee or otherwise."

**SERVICE OF FORM BOE-425-L4 TO REACH
COMMUNITY INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT**

(CONT.) 753.220

Before staff sends a levy for community property, a thorough investigation must be done to determine whether the funds of the non-debtor spouse or registered domestic partner are community property. The findings of this investigation should be documented in ACMS. Various sources are available that staff can access to assist in determining this, including:

- Income tax returns filed jointly within the last two years
- County marriage license information/marriage certificate
- County family court index cases involving dissolution of marriage or legal separation
- Dissolution of the marriage/divorce decree
- Legal separation agreement
- Prenuptial agreement establishing sole and separate property
- Credit report or loan application showing marital status
- Evidence of living apart (lease agreement)
- Insurance policy (auto, property, and life insurance)
- Copies of checks to verify names on an account
- Information obtained and documented in ACMS from the taxpayer or a third party regarding marital status

While all of these sources are not required, or may not be available prior to sending the levy for community property, it is the responsibility of the assigned collector to determine that sufficient evidence has been obtained. In addition to verifying the spouse/domestic partner information, a current address should be documented to ensure the spouse/domestic partner receives a copy of the levy, copy of the BOE-425, and a copy of the BOE-425-L3.

The following community property blurb should be included when levying a joint account held in the names of the tax debtor and the tax debtor's spouse/registered domestic partner, or when the intent is to reach the community property interest that the taxpayer may hold in an account in the name of the spouse/registered domestic partner:

“Service of this Notice also intended to reach any and all community property interest of defendant in any account held in the name of the spouse/registered domestic partner, *****, SSN *****. (Cal. Family Code section 910[a]).”

For privacy protection purposes, the social security numbers included in the “Identification of Tax Debtor” area of the levy are automatically censored in ACMS on the taxpayer's copy of the *Notice of Levy*. Because the community property blurb contains the social security number of the spouse/registered domestic partner, it should be entered in the “Identification of Tax Debtor” area of the levy. Do not enter the blurb within the “Property to be levied upon is described as:” area of the levy because the social security number will not be censored.

If the entity is a partnership, ensure only the name of the partner for whom a community property interest is reachable is listed in the “Identification of Tax Debtor” area of the levy.

Should the necessity arise to levy via a warrant on the asset, send SOB a BOE-200-W and include the name and social security number of the spouse or registered domestic partner.

COMMUNITY PROPERTY AND SEPARATE PROPERTY**753.230**

Family Code section 760 provides that all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property. In addition, under Family Code section 761, community property transferred into a revocable trust during the marriage remains community property as long as the rights and interest of the property held in trust require the consent of both spouses.

The most common types of community property are:

1. Earnings of either spouse.
2. Personal injury damages for:
 - a. The wrongful death of, or injuries to, a child. NOTE: The recovery of the wrongful death of a spouse belongs to heirs, and is not community property [Fiske v. Wilke, 67 C.A.2d 440, 444 (1945)].
 - b. A Workman's Compensation award.
3. The proceeds of community property and proceeds of earnings, including pension and retirement benefits.
4. A proportionate share of the profits of a separate property business to which a spouse contributes labor or skills.
5. A loan on personal credit. NOTE: Money borrowed on the credit of separate property is separate property. An example of this is when separate property is used as security (mortgaged) so that money can be borrowed.

Separate property includes the following:

1. Property owned by either spouse before marriage.
2. Property acquired during marriage by gift, devise, bequest, or descent.
3. The rents, issues and profits of separate property.
4. Property acquired during marriage with the proceeds of separate property.
5. Personal injury damages acquired from an inter-spousal action.

LIABILITY OF SEPARATE AND COMMUNITY PROPERTY FOR DEBT**753.240**

In general, community property is liable for a debt incurred by either spouse before or during marriage. The following approach should be applied to any community property question:

1. Determine whether the property to be secured is community property, the separate property of the taxpayer, or the separate property of the taxpayer's spouse.
2. Did the taxpayer or the spouse incur the debt.
3. Was the debt incurred before, during, or after the marriage.

The earnings of a married person during marriage are not community property until such earnings are deposited in an account in which the person's spouse has a right of withdrawal or are commingled with other community property. At that time, the earnings become liable for payment of a debt or debts incurred by the person's spouse.

Debt incurred by a person after the dissolution of marriage is his or her own. Separate property of the tax debtor, and property received in the division of property at dissolution of marriage that was community property during the marriage, is liable for a debt or debts incurred by the person before or during marriage, even if the debt was assigned to the person's spouse for payment. Such property is not liable for a debt or debts incurred by the person's spouse before or during marriage unless the debt was assigned for payment by the person in the division of the property. (This does not affect the liability of property for the satisfaction of a lien on the property.)

FAILURE OF GARNISHEE TO DELIVER**753.245**

Although an officer who makes a levy to reach personal property belonging to the taxpayer will demand that the property be delivered to the levying officer, the levying officer is under no obligation to take any further action to press the garnishee for delivery.

If the garnishee fails to deliver, the responsibility for taking further action rests with the BOE. In these cases, staff should contact the person and attempt to have delivery made to the officer or, where appropriate, directly to the BOE. If the garnishee refuses to make the delivery voluntarily, the only recourse available is to file an action (creditor's suit) for delivery or for damages if the property has been disposed of. A prompt report should be made to SPS when a situation of this type develops.

NOTICE OF LEVY TO CREATE A LIEN**753.250**

Situations exist in which the taxpayer has an interest in personal property held by another person but against which there is a contingent liability, or for some other reason the property cannot be turned over to the levying officer. For example, a reserve account with a bank or finance company, against which there remains unpaid installment contracts on merchandise sold while the person was in business and where a number of months or even years are required before the contracts will pay off.

In such a situation, a *Notice of Levy* should be sent to the bank or finance company in order to perfect a lien upon the reserve account as protection against other executing creditors. Code of Civil Procedures (CCP) section 697.710 provides that liens created by levies of this type are valid for two years from the date appearing on the levy document. The lien may be extended by making a renewal levy before the expiration of the two-year period. The holder of the reserve account or property should be contacted from time to time regarding the status of the matter. (Liens created by levy on a judgment debtor's interest in personal property of a decedent's estate are valid for one year after the decree distributing the interest has become final. (CCP section 700.200.)

LEVY ON PROPERTY SUBJECT TO FEDERAL LIENS**753.253**

When the Federal Government issues an assessment, a lien is created on all property, real and personal, belonging to the person against whom the assessment is made. The BOE's assessment lien has equal priority, based on time of assessment. As far as the effect of the federal lien against money is concerned, BOE levies can be made upon the holder of funds and collection made, if the holder is unaware of the existence of the federal lien at the time the funds are paid over. The federal authorities can intervene and assert their priority at any time before the funds come into the possession of the BOE.

LEVY ON PERSONAL PROPERTY LOCATED IN A PRIVATE PLACE

753.255

CCP section 699.030 provides a mechanism whereby the BOE may apply to the court for an order directing the levying officer to seize property in a private place such as a garage, store and lock facility (mini storage), etc. An important feature of this code section is that the BOE is allowed to apply for a court order to seize the property in a private place “ex parte.” Ex Parte is defined as:

On one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be “ex parte” when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

If it appears that the taxpayer will remove the property in question if given advance notification, and the judge concurs, the order to seize the property will be granted without notification to the taxpayer.

This procedure requires an Attorney General referral and a declaration by the person investigating the case. Documentation for requesting a levy ex parte is sent to SPS for referral to the Attorney General. A sample declaration follows.

Sample Ex Parte Application for Levy

EDMUND G. BROWN, JR., Attorney General
of the State of California

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Board of Equalization
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF [Name]

BOARD OF EQUALIZATION,)	No.
)	
Plaintiff,)	APPLICATION FOR ORDER
)	DIRECTING SEIZURE OF PROPERTY
v.)	IN A PRIVATE PLACE
)	(Code of Civ. Proc. section 699.030)
)	
[Name 1] - and [Name 2])	
)	
Defendants)	

Introduction

The Board of Equalization applies ex parte pursuant to Code of Civil Procedure section 699.030 for an order directing the California State Police or any other California law enforcement agency to seize certain vehicles owned by respondents [Name 1] and [Name 2] in satisfaction of their outstanding tax liability. The application is made ex parte because, if given notice, respondents may remove the vehicles. An ex parte application is specifically authorized by section 699.030.

Argument

The following are the facts and legal principles on which the application is based:

1. Respondents, [Name 1] and [Name 2] owe, but refuse to pay, their sales tax liability of \$325,873.90 for the period July 1, 19XX to June 30, 19XX;
2. The Board's numerous attempts to obtain voluntary payment from respondents have been unsuccessful;
3. According to DMV records respondents are the individual or joint owners of the following vehicles:

YEAR	MAKE	LICENSE NO.	VEHICLE I.D. NO.
1985	-- Motorhome	1RCVXXX	1FDEE14FOFHC3XXXX
1983	-- Pickup	PADMXXX	1FTHF47613DPAXXXX
1984	-- --	PADMXXX	WDBDB66A9EA06XXXX
1956	-- Pickup	1G90XXX	F10D4R4XXXX
1947	-- Pickup	427XXX	71GC35XXXX
1951	-- House Car	2AEMXXX	4392XXXX
1957	-- House Car	2AMEXXX	TGH31XXXX
1985	-- Pickup	2P87XXX	1FDKF5634FBP7XXXX
1978	--	MYTXXX	6L47S8Q97XXXX

These vehicles have been observed parked at respondents' residence XXXX -- Court, Beantown or according to information received by the Board may be parked either in a garage adjacent to the above address or stored at -- -- Mini Storage, XXXXX -- --, --, in room numbers 52, 90, 126, 164, 174, 175, 176, 177, 231 and 300.

4. The Board has issued respondents a warrant for the collection of the tax. The Board is authorized to issue such a warrant, which has the same force and effect as a writ of execution. (Rev. & Tax Code section 6703);
5. A state agency which may lawfully issue a warrant may use any of the remedies available to a judgment creditor, including those set forth in Code of Civil Procedure section 699.030. (Code of Civ. Proc. section 688.020);
6. A judgment creditor may apply ex parte for an order directing the seizure of property in a private place. (Code of Civ. Proc. section 699.030.)

Conclusion

For the reasons set forth above, this Court should issue an order directing the California Highway Patrol or any other California law enforcement official to seize respondent's automobiles from their residence or storage areas.

DATED: December 31, 1988
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Board of Equalization

RELEASE AFTER LEVY**753.257**

In some instances, a levy may need to be modified or released. Other than the authority of the Taxpayers' Rights Advocate to release a levy as set forth in RTC section 7094 and equivalent Special Taxes and Fees statutes (see CPPM section 155.022), the BOE office or Headquarters section serving the levy retains the responsibility for determining if it should be released or modified. If the taxpayer who has been served a levy contacts an office or section that did not issue the levy, the contacted office will assist the taxpayer in contacting the responsible office. If the taxpayer physically goes into a BOE office other than the office that served the levy, the contacted office will immediately notify the office or section responsible for the levy and both offices will attempt to resolve the account while the taxpayer is in the office. The collector that issued the levy or a collection supervisor will determine if it is appropriate to release or modify the levy.

The levy(s) must be released if the taxpayer pays the liability in full with certified funds (cashier's check or money order). The taxpayer may make this payment in cash if they have received an exemption from the "no cash" policy.

The following examples illustrate other situations where the BOE will release or modify a levy. This list is not all-inclusive and requests to release or modify the levy should be reviewed on a case-by-case basis.

- The levy is served during a bankruptcy while the automatic stay is in effect or after a bankruptcy where the liability is subject to discharge.
- Levied funds are exempt pursuant to the United States Code or the California Code of Civil Procedures as notated on the BOE-425, *Exemption from the Enforcement of Judgements*.
- Delinquent or amended returns have been accepted and processed that will reduce or eliminate the liability.
- The liability that remains due is less than the amount of the levy.
- The BOE determines that the funds attached by the levy are not the taxpayer's funds and are not community property.
- The BOE erroneously served a levy upon a corporate officer's personal bank account for a corporate liability and a dual determination has not yet been billed.
- The BOE determines that the levy is creating a significant financial hardship for the taxpayer.

When BOE staff determines a levy should be released or modified, a BOE-465-F, *Release/Modify Notice of Levy*, generated in ACMS will be sent to the garnishee.

Although a levy is generally released by sending the BOE-465-F, there may be situations requiring the use of a photocopy of the original *Notice of Levy*. In this case, the levy release information is stamped on the front of the document. The original stamped document is then sent to the garnishee and a copy is sent to the taxpayer.

In all cases, staff will document the reason for the levy release in ACMS.

CLAIMS OF FINANCIAL HARDSHIP**753.259**

BOE collection staff is responsible for reviewing any claims of financial hardship. Staff must be aware of the taxpayer's health and welfare if the taxpayer claims that the levy will create irreparable harm. The outcome of staff's analysis of the taxpayer's financial condition may require the levy to be modified. Early resolution affords the taxpayer an opportunity to make other arrangements to resolve their liability, such as entering into a payment plan with the BOE.

A completed BOE-403-E, *Individual Financial Statement*, along with supporting documentation must be submitted by the taxpayer to determine whether a modification of the levy is appropriate. Staff must promptly evaluate the financial statement and documentation submitted by the taxpayer before modifying the levy. Analysis of the financial information will disclose the taxpayer's complete financial condition and provide a basis to make a decision whether the levy should be modified to a lesser amount or released.

If the collector recommends that the levy be modified, the collector will obtain the approval from the supervisor who is delegated the responsibility to review the financial documentation. If possible, the reviewing supervisor should not be the assigned collector's direct supervisor. The decision should be clearly documented in ACMS. In addition, the collector will also enter comments in ACMS concerning the asset information based on the collector's findings.

However, if the review of the taxpayer's financial condition reveals the taxpayer has sufficient assets such that the amount held pursuant to the levy does not create a significant hardship, the collector will inform the taxpayer that the levy will not be modified or released. Staff will enter appropriate comments in ACMS concerning the discussion with the taxpayer.

Pursuant to RTC section 7094 and equivalent Special Taxes and Fees statutes, the Taxpayers' Rights Advocate (TRA) has the authority to release any levy, or order the return of levied funds up to \$2,300 received within the last 90 days upon the TRA's finding that the collection action threatens the health or welfare of the taxpayer or the taxpayer's spouse or family (see CPPM section 155.022).

EXEMPTIONS AVAILABLE TO TAXPAYERS**753.260**

Code of Civil Procedure (CCP) sections 703.010 through 704.210 allow taxpayers to claim their property is exempt from levy. The taxpayer's copy of the Notice of Levy includes a BOE-425, Exemptions from the Enforcement of Judgements, a BOE-425-L3, Notice of Levy – Information Sheet, and a BOE-403-E, Individual Financial Statement. Exemption claims must be made within ten days after the date the taxpayer was served a copy of the levy.

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

CCP Section	Type of Taxpayer Property	Exemption Amount
704.010	Motor vehicle	\$2,900
704.030	Material for the repair or maintenance of a residence	\$3,050
704.040	Jewelry, heirlooms, art	\$7,625
704.060	Personal property used in taxpayer's or taxpayer's spouse's business or profession	\$7,625
704.060	Commercial motor vehicle used in taxpayer's or taxpayer's spouse's business or profession	\$4,850
704.060	Personal property used in taxpayer's and spouse's common business (co-ownership) or profession	\$15,250
704.060	Commercial motor vehicle used in taxpayer's and spouse's common business (co-ownership) or profession	\$9,700
704.080	Deposit account with direct payment of social security benefits with one depositor as payee	\$3,050
704.080	Deposit account with direct payment of social security benefits with two or more depositors as payee	\$4,575
704.080	Deposit account with direct payment of public benefits with one depositor as payee	\$1,525
704.080	Deposit account with direct payment of public benefits with two or more depositors as payee	\$2,275
704.090	Inmate trust account (spouse also entitled to exemption)	\$1,525
704.090	Levy of funds on inmate trust account per a restitution order	\$300
704.100	Non-mature life insurance or annuity policies, excluding the loan value (spouse also entitled to exemption)	\$12,200

As explained in CCP section 704.080, certain types of property are not subject to levy and a Claim of Exemption does not need to be filed for them. Included in this category are "social security benefits" and "public benefits." The amounts listed in the above table for social security and public benefits are automatically exempted from the enforcement of judgments (levies), provided the benefits are directly deposited by the government or its agent.

Social Security and Public Benefits Directly Deposited

Within ten days, the financial institution shall provide the levying officer with a written notice stating that the deposit amount is one in which payments of social security benefits or public benefits are directly deposited by the government or its agent, and whether there are funds in the deposit account that exceed the automatic exemption. If so, it is the responsibility of the collector to determine whether the excess funds are social security or public benefits. The collector should contact the taxpayer immediately and request the last three bank statements for the account and information regarding the deposit amounts of the benefits. The collector may also request income tax information through the External Access Tracking (EAT) resource person (see CPPM section 720.030) to determine if all or most of the taxpayer's income is from social security or public benefits. The collector should examine all information available for an indication there is another source of deposits into the account (e.g., wages from a spouse, rental property income not yet levied).

If the collector determines that the excess funds are not social security or public benefits or otherwise exempt from levy, a court hearing is required to reach the excess funds. Because CCP section 704.080 states that an affidavit must be filed with the court within five days of the date that the notice was received from the financial institution, the collector should immediately refer the matter to his or her immediate supervisor, who will refer the claim to the Litigation Division of the BOE's Legal Department as follows:

1. Notification of receipt of the social security or public benefits information from the financial institution should be sent via email to the Assistant Chief Counsel of the Litigation Division with a copy to the program area division chief, administrator, and compliance principal supervisor.
2. The information from the financial institution must be immediately faxed or scanned and emailed to the Assistant Chief Counsel of the Litigation Division.
3. A copy of the warrant or notice of levy, including affidavits, and a brief summary of action taken to levy on the property should be forwarded to the Litigation Division. The summary should include any known information that may assist the Litigation Division in evaluating the claim.
4. Hard copies of the documents must follow via inter-office mail to the Litigation Division.

If the excess funds are determined to be social security or public benefits or otherwise exempt, a BOE-465-F, Release/Modify Notice of Levy must be promptly sent to the financial institution to release the funds.

Social Security and Public Benefits Deposited by Check

Because financial institutions cannot differentiate social security and public benefits deposited by check from any other deposits, exempt benefits may be withheld as a result of a levy. If this occurs, it is up to the tax debtor to file a claim of exemption with the collector (see CPPM section 753.265 for elements required for claims of exemption).

If the documentation provided supports the claim that the funds are exempt social security or public benefits, a BOE-465-F, *Release/Modify Notice of Levy* must be promptly sent to the financial institution to release the funds.

Life Insurance Policy

The basic purpose of life insurance is to provide some form of financial security for a deceased person's beneficiaries. Life insurance can, with certain types of policies, serve as a savings function. Thus, various types of life insurance products offer different levels of protective functions (e.g., funds for family members of the deceased) and savings functions (e.g., the ability to borrow against the savings or to obtain a cash surrender value of the policy) as a financial tool.

According to the CCP section 704.100, unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim. The loan value is the cash value that can be borrowed on a policy. When there is a loan value to the life insurance contract, BOE may be able to levy on any amounts over the current exemption amount (see table at beginning of CPPM section 753.260).

CCP section 699.720 prohibits levies on unmatured life insurance contracts, endowment, and annuity policies. The statute recognizes that creditors are able to garnish only those monies which are payable without any conditions. Even though a life insurance policy has a potential "cash surrender" value that could be available to the insured person at his or her option, when the insured has not opted to surrender the policy to receive the cash surrender value, the creditor of the insured can obtain nothing. The creditor cannot force the insured to surrender the life insurance policy.

However, if the life insurance contract has managed to become fully "matured" and there are no more contingencies, then it may be levied upon if the proceeds are more than what is reasonably necessary for living expenses. A matured policy can be found where the insured has an enforceable right to receive payments and there is an absence of conditions to the insurance company's obligation to pay. Fully matured life insurance contracts with a definite payout may be levied upon, but such occurrences are uncommon.

The types of life insurance products available on the marketplace vary in terms and conditions. In attempting to levy on a taxpayer's life insurance contract, staff should work to obtain a copy of the policy and review the terms and conditions of the contract.

CLAIMS OF EXEMPTION**753.265**

If the taxpayer claims that he or she is entitled to an exemption under sections of the Civil Code of Procedure (CCP) or United States Code (including as a third party), the collector will instruct the taxpayer to file a claim of exemption by completing the Exemption Claim Form provided with their copy of the Notice of Levy and, if the applicable statute requires it, submitting a completed BOE-403-E, Individual Financial Statement. Pursuant to CCP section 703.520, the claim must be made within ten days after the notice of levy was served on the taxpayer. The "date of service" is considered to be the date the notice of levy is placed into the mail.

The taxpayer, or a person acting on behalf of the taxpayer, may file a claim of exemption. In cases of community property, a taxpayer's spouse may also file a claim of exemption. While these forms are included with the taxpayer's copy of the levy, the taxpayer may also obtain an exemption claim form and current dollar amounts of exemptions from enforcement of judgements online at www.courts.ca.gov/forms.

CLAIMS OF EXEMPTION**(CONT.1) 753.265**

A claim of exemption must conform to the provisions of CCP section 703.520. For a claim to be valid it must be filed timely, be executed under oath (signed under penalty of perjury) and include all of the following:

- The name of the claimant and the mailing address where the notice of our opposition to the claim can be mailed;
- The name and last known address of the taxpayer (judgment debtor) if the claimant is not the taxpayer (judgment debtor);
- A description of the property claimed to be exempt. If an exemption is claimed pursuant to CCP section 704.010 (motor vehicles) or 704.060 (tools), the claimant shall describe all other property of the same type (including exempt proceeds of property of the same type) owned by the taxpayer alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied. If the claimed exemption is under CCP section 704.100 (insurance policies), the claimant shall state the nature and amount of all other property of the same type owned by the taxpayer or the taxpayer's spouse alone, or in combination with others, on the date of levy;
- A financial statement if required by CCP section 703.530. The financial statement must show that the levied property is necessary for the support of the taxpayer, their spouse, and their dependents. The financial statement must include all sources and amount of earnings and assets of the taxpayer, their spouse, and their dependents. It must also show their outstanding obligations. The financial statement must be signed under penalty of perjury.
- A citation of the statute upon which the claim is based; and
- A statement of facts necessary to support the claim.

If the tax debtor contacts the BOE and claims an exemption within the ten days but has not filed an exemption request, staff will allow the tax debtor another three days to give the tax debtor an opportunity to file the exemption. Staff will contact the bank to hold the funds an additional three days pending a review of any potential filed claim of exemption.

If a claimant files a timely (within the ten days) claim of exemption, but the funds have already been received, staff will commence an expedited review of the claim of exemption. Staff will inform the taxpayer that if the claim of exemption is found to be valid, the taxpayer will need to complete a claim for refund (BOE-101) to allow BOE to return the funds. In this case, if the claim of exemption is accepted, staff will request expedited processing of the claim for refund. If the claim of exemption is not timely, and is filed subsequent to BOE receiving the levied funds, collection staff is not obligated to review the claim of exemption and the claimant's only recourse is to file a claim for refund with BOE.

If there is not enough evidence to support the claim, the collector must decide whether filing a notice of opposition to the claim is in the best interest of the BOE. Pursuant to CCP section 703.550, a notice of opposition must be filed with the court within ten days after service of the claim of exemption. Therefore, if the claim is to be opposed, the collector must immediately refer the claim to his or her immediate supervisor, who will refer it to the Litigation Division as follows:

1. Notification of receipt of a claim of exemption should be sent via email to the Assistant Chief Counsel of the Litigation Division with a copy to the program area division chief, administrator, and compliance principal supervisor.
2. The exemption claim along with documentation, if any, must be immediately faxed or scanned and emailed to the Assistant Chief Counsel of the Litigation Division.
3. Hard copies of the document(s) must follow via inter-office mail to the Litigation Division.

If the notice of opposition is not filed within the ten-day period, the funds claimed as exempt must be released by the responsible collector. If a valid claim is received after the financial institution has sent the money to BOE, the taxpayer should be advised to file a claim for refund.

As with any other collection activity, these actions should be documented in ACMS.

GENERAL PROBLEMS IN CONNECTION WITH LEVIES

753.270

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

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

1. Returning the check to the financial institution along with a modified levy, if the remaining balance due is less than the amount of the check received.
2. Returning the check to the financial institution with an explanation that the levied amount has been satisfied, if that is the case.
3. Contacting the financial institution to request that a stop payment be placed on the levy check, if the BOE has recently deposited the levy check.
4. Contacting the financial institution to request that they waive any levy processing fee charged to the taxpayer in connection with the levy that caused the over collection. If the financial institution declines to waive the charge, staff must advise the taxpayer they may file a claim for reimbursement of the bank charge (see CPPM section 155.025).

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

The manner in which assets are levied may vary. Therefore, the problems that can arise in connection with serving levies may also vary. For this reason, to describe all of these situations and attempt to set forth instructions covering all possible contingencies is not practical. When unusual situations arise, staff is expected to use sound judgment in handling the matter and, when necessary, obtain supervisory approval to contact SOB for assistance with resolution.

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

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

Claim for Reimbursement of Bank or Third-Party Charges

Under Revenue and Taxation Code (RTC) section 7096 and equivalent Special Taxes and Fees statutes, a taxpayer may file a claim for reimbursement of bank charges and any other reasonable third-party charges or fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank charges include a financial institution's customary processing fees and charges for overdrafts and non-sufficient funds that are a direct consequence of the erroneous levy, erroneous processing action, or erroneous collection action. Third-party charges are fees charged by payees, such as retailers, utility companies or service providers, for returned checks or dishonored electronic payments. The charges subject to reimbursement are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. These claims must be filed in writing within 90 days from the date the bank or third-party charges were incurred by the taxpayer.

Please see CPPM section 155.025 for procedures for claims for reimbursement of bank or third-party charges.

CALIFORNIA RIGHT TO PRIVACY ACT

753.280

The California Right to Privacy Act restricts state agencies from obtaining certain information from banks and other financial institutions in regard to taxpayer's affairs, unless the agency has prior written permission from the taxpayer. (See CPPM 135.070). SPS should be consulted whenever questions arise on this topic.

WAGE GARNISHMENTS**755.000****GENERAL****755.010**

The state is the levying officer for wage garnishments (Code of Civil Procedure (CCP) section 706.074). Earnings owed to a taxpayer by his or her employer are only reachable by:

1. Earnings Withholding Order for Taxes (EWO), (Form BOE-425-E).
2. Jeopardy Earnings Withholding Order for Taxes (Form BOE-425-E).

EWOs may only be served on out-of-state employers in certain circumstances (see CPPM section 731.025). Following is a description of each of these instruments, as well as instructions for their use.

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**755.020**

Receipt of an EWO generally requires the employer to begin withholding earnings on the first workday occurring ten or more days after service of the EWO. Under CCP 706.074 and USC Title 15, section 1673, the maximum amount that may be withheld from the aggregate disposable earnings of an individual for any workweek is the lesser of:

1. Twenty-five percent (25%) of weekly disposable earnings, or
2. The amount of weekly disposable earnings that exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable.

The EWO remains in effect until the total amount indicated in the EWO is paid or the EWO is withdrawn. If the taxpayer terminates his or her employment, the EWO continues in effect for one year after such termination. If employment resumes (with the same employer) within the year following termination, the EWO remains in effect.

Priority

Priority for Earnings Withholding Orders is as follows:

1. Court Order Assigning Salary/Wages (for support), and Earnings Withholding Order for Support
2. Earnings Withholding Order for Taxes
3. Earnings Withholding Order

An EWO served by court order takes precedence over other wage garnishments. However, if a residual amount of disposable earnings remains after the employer withholds the amounts required by the court-ordered EWO, then BOE's EWO may reach the residual amount.

Regarding EWOs for taxes, the rule is "first in time is first in right." Only one EWO for taxes may be in effect at any given time. If an employer is withholding under a prior EWO for taxes, any subsequent EWO for taxes is ineffective and must be withdrawn until the prior has been satisfied or withdrawn. This is true even if the prior EWO for taxes was modified to require less than the amount allowed under the law.

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**(CONT. 1) 755.020****Service**

Service of an EWO may be made by first class mail or in person by any BOE employee. The follow-up will be set in such a way as to ensure:

1. The employer responds within 15 days of service, as required by law.
2. The employer remits amounts withheld from the employee's earnings. At any time after service of the EWO, the taxpayer/employee may request an administrative hearing for reconsideration or modification of the amount to be withheld by the employer.

Administrative Hearing

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

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

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

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

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

Attempt to Evade by Employer

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

The BOE is authorized to hold a taxpayer's employer liable for earnings the employer withheld pursuant to an earnings withholding order (wage garnishment), but failed to remit to the BOE.

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

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**(CONT. 2) 755.020**

The tax determination issued against the employer will include the amount of the withheld payments the employer failed to remit and will be billed as a tax liability, regardless of the composition of the taxpayer's liability. For example, the missing wage garnishment payments will be billed to the employer as a tax liability even if the taxpayer's account balance is only comprised of penalty and/or interest amounts. If several wage garnishment payments were not remitted by the employer, they can be billed as one tax liability with interest accruing on the entire amount billed from the date the first unremitted payment was withheld from the taxpayer's earnings. (A determination can be issued against an employer up to seven years from the date the first unremitted wage garnishment payment was withheld from a taxpayer.) As with other tax determinations, a 10% finality penalty will accrue if the liability is not paid prior to the finality date. The same appeal rights available for other determinations issued by the BOE apply to determinations issued to employers under RTC section 6704.

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

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

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

Payment Verification

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

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

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**(CONT. 3) 755.020**

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

Request Payment from Employer

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

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

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

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

Holding Employer Liable

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

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

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**(CONT. 4) 755.020**

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

Taxpayer's Liability

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

Responsible Office

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

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

Special Operations Branch Responsibilities

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

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

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

Return Analysis Unit (RAU) Responsibilities

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

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

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)**(CONT. 5) 755.020**RAU staff will:

1. Create a One-Time (OTM) Financial Obligation (FO) on the employer's account using the REV FM screen. The revenue and payment due dates for the FO are the same date, the earliest date on which the employer first withheld amounts from the taxpayer's earnings.
2. Input revenue information on the REV RE screen for the one-time FO. The district and local tax allocation found on the taxpayer's account must be duplicated on the employer's revenue information to ensure payments received from the employer are correctly allocated according to the taxpayer's business location(s). RAU staff may need the assistance of Local Revenue and Allocation Section staff to duplicate local tax allocation information.
3. Accept the revenue as "primary revenue" using the "EWO" difference adjustment reason code.
4. Create the employer's notice of determination using the DIF NN screen. Include Bill Note #138 which references the taxpayer's name, BOE account number, and mentions RTC section 6704. This bill note also references the date on which the BOE notified the employer in writing of the missing payments (BOE-425-EM) and identifies the telephone number of the BOE office the employer should contact for assistance. Staff will also include Bill Note #999 (free form text) to identify the wage garnishment payments (dates and amounts) the billing represents.

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

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

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

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

Petitions Section Responsibilities

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

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

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

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

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

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

Spouse's Wages

CCP section 706.109 prohibits the BOE from attempting to reach the wages of a tax debtor's spouse without first obtaining a court order. This CCP section states:

"An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion."

If staff decides to pursue collection of amounts due by serving an EWO on wages of a judgment debtor's spouse, the case must be referred to SPS. This will be done only when there is no possibility of a dual and there is a substantial liability (over \$2,000). SPS will prepare a referral and coordinate the case with the Attorney General. These cases, once referred, are entered in LGL AG in IRIS using Legal Type Code "EWO."

Because of the time, cost and lengthy delays which may occur in the process, it is vital that as much information as possible, for the period when the liability was incurred and also for the current period, be obtained and listed substantially in the format shown below. This will assist SPS in preparing the referral.

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)

(CONT. 7) 755.020

Memorandum Requesting Spousal EWO

State of California Board of Equalization
 M e m o r a n d u m

To: Supervisor of Special Procedures Date:
 From: District - Compliance
 Subject: Attorney General Referral

This is a request to refer a case to the Attorney General's Office to obtain a court order for issuance of an Earnings Withholding Order on Wages of the tax debtor's spouse.

Account Number -
 Name of Tax Debtor SS#
 Name of Spouse SS#
 Employer: Name:
 Address:

Amount of Liability:
 Married and Living together? Yes _____ *No _____

Evidence of marital status (check all that are appropriate)

Evidence	For Current Period Yes/No - Attached(√)	For Period Liability Incurred Yes/No - Attached(√)
Filed Joint income tax returns(s) for years:		
Real Property search shows joint ownership		
Joint ownership of vehicles		
Credit report shows married status		
Tax debtor states he/she is married		
Spouse states he/she is married to tax debtor		
Lease or rental of residence shows he/she is married		
Bankruptcy filed by tax debtor and spouse		

Comments:

*If the answer is no, wages are separate property and not subject to levy for debts of the community. DO NOT REFER.

JEOPARDY EARNINGS WITHHOLDING ORDER FOR TAXES**755.030**

A jeopardy EWO will only be used when, in the opinion of the levying office, the BOE's interest will be jeopardized because of the ten day delay between service and actual withholding. As an example: On January 5, 1990, the responsible collector discovers that a taxpayer has terminated his or her employment and will receive his final paycheck on January 10, 1990. The only way to reach that paycheck is to serve a jeopardy EWO because a non-jeopardy EWO will not reach any earnings due to the taxpayer within ten days of service.

For all jeopardy EWOs, the word "Jeopardy" will be prominently entered on the face of all copies of the Form BOE-425-E, *Earnings Withholding Order for Taxes*. Other provisions applying to non-jeopardy EWOs apply equally to a Jeopardy EWO.

TEMPORARY EARNINGS WITHHOLDING ORDER FOR TAXES (TEO)**755.040**

In certain rare circumstances, the levying officer may wish to attach more than 25% of the taxpayer's disposable income. The TEO requires that the employer hold all earnings owing to the employee, unless a lesser amount is specified on the form. Since SPS and the Attorney General's Office must become involved, this can be a costly, time consuming process. Therefore, before staff proceeds, the matter should be discussed with SPS.

When notified that this action is proper, the levying office will serve a TEO on the employer. The TEO expires 15 days after service, unless extended by a court of record in the county where the taxpayer was last known to reside. The levying office will immediately send a copy of the TEO and a report to SPS requesting the filing of an Application for Issuance of Earnings Withholding Order for Taxes with a court in the taxpayer's last known county of residence. Copies of the TEO and report will also be sent to the office of the Attorney General nearest the court where the application is to be filed.

SPS will coordinate the case with the Attorney General's Office and prepare a referral. The Attorney General's Office will prepare the Application for the Order and a declaration that the taxpayer was served with:

1. A copy of the application.
2. Notice informing the taxpayer of the purpose of the application.
3. Informing the taxpayer of his or her right to appear at the court hearing on the application.

The court will set the matter for hearing. At least ten days before the date set for hearing, the clerk of the court will send the tax debtor a notice indicating the time and place for the hearing. If, after the hearing, the Attorney General is successful on the BOE's behalf, the court will issue the Earnings Withholding Order for Taxes, requiring the employer to withhold and pay over all earnings other than that amount proved exempt, but in no event less than 25%. Follow-up on payments remitted by the employer, under court service of the EWO, will be set in the same manner as follow-up would be set if service were made by the BOE.

EARNINGS WITHHOLD ORDERS AGAINST U.S. POSTAL EMPLOYEES**755.050**

The Postal Service has one designated Authorized Agent to receive postal employee wage garnishment orders under Public Law 103-94 section 9, *Authority to Garnish Federal Employee's Pay*. This federal law supersedes state law with regard to service of garnishment process. Accordingly, regardless of state law, legal process must be sent directly to, or served in person upon, the Authorized Agent named in these regulations. There will be only one agent for receipt of process for all garnishments of an employee's pay arising under state law. Other Postal Service employees are not authorized to receive process, nor are they permitted to transmit process to the Authorized Agent.

The Authorized Agent for service of EWO's directed to the wages of Postal Service employees and employees of the Postal Rate Commission (employees) is:

PAYROLL BENEFITS BRANCH
 INVOLUNTARY DEDUCTIONS UNIT
 2825 LONE OAK PARKWAY
 EAGAN, MN 55121-9650

Service of the EWO on the Authorized Agent shall be made by certified or registered mail with return receipt requested at the above address.

EARNINGS WITHHOLD ORDERS AGAINST FEDERAL EMPLOYEES**755.060**

The Hatch Act provides for the garnishment of most federal employee wages in the same manner and to the same extent as if the federal agency were a private person.

However, federal regulations regarding the involuntary allotment of active duty military pay restricts the use of an EWO to civilian federal employees. The involuntary allotment of active duty military pay involves an entirely separate application process outlined at section 755.070.

Federal Law Provisions

The following are pertinent points of the federal law allowing such garnishments. For the full text of federal wage garnishment provisions, see Exhibit A.

"Agency" means every agency of the federal government. "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment that is issued by a court of competent jurisdiction within any state, territory, or possession of the United States, or an authorized official pursuant to state or local law.

Service of the EWO

Service of the garnishment may be accomplished by certified or registered mail, return receipt requested, or by personal service on the appropriate agent designated for service of process or the head of such agency, if no agent has been designated. The person served with the garnishment shall respond within 30 days after the date effective service is made.

It is anticipated that virtually all EWO's will be served by certified or registered mail, return receipt requested. In addition to the EWO itself, each garnishment served on a federal agency will also include Form BOE-425-E2, *Authority to Garnish Federal Employees' Pay* (see Exhibit C.)

The Office of Personnel Management (OPM) has issued interim regulations regarding service of process for wage garnishments. They specify that the agent for service for child support and alimony court orders will also be the agent for service for BOE EWOs. However, these regulations are more in the nature of guidelines that the agencies are free to modify to meet their needs.

COLLECTIONS

EARNINGS WITHHOLD ORDERS AGAINST FEDERAL EMPLOYEES

(CONT.1) 755.060

For example, the Department of Defense has given notice that all wage garnishments for Department of Defense civilian employees, with certain exceptions, should be submitted to the Defense Finance and Accounting Service — Cleveland Center, Office of General Counsel, Code L, 1240 East 9th Street, P.O. Box 998002, Cleveland OH, 44199-8002. For the exceptions (see Exhibit B.)

In addition, the law requires that we adequately identify the tax debtor. The OPM regulations state that we should provide name, address, social security number, date of birth, official duty station or worksite, and component of the agency for which the tax debtor works. However, some of the larger federal agencies have stated that our normal practice of providing name, address, and social security number is sufficient to identify the tax debtor.

5 USCS §5520a. Garnishment of pay

"(a) For purposes of this section--

"(1) 'agency' means each agency of the Federal Government, including--

"(A) an executive agency, except for the General Accounting Office [Government Accountability Office];

"(B) the United States Postal Service and the Postal Rate Commission [Postal Regulatory Commission];

"(C) any agency of the judicial branch of the Government; and

"(D) any agency of the legislative branch of the Government, including the General Accounting Office [Government Accountability Office], each office of a Member of Congress, a committee of the Congress, or other office of the Congress;

"(2) 'employee' means an employee of an agency (including a Member of Congress as defined under section 2106) [5 USCS § 2106]);

"(3) 'legal process' means any writ, order, summons, or other similar process in the nature of garnishment, that--

"(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to State or local law; and

"(B) orders the employing agency of such employee to withhold an amount from the pay of such employee, and make a payment of such withholding to another person, for a specifically described satisfaction of a legal debt of the employee, or recovery of attorney's fees, interest, or court costs; and

"(4) 'pay' means--

"(A) basic pay, premium pay paid under subchapter V [5 USCS §§ 5541 et seq.], any payment received under subchapter VI, VII, VIII [5 USCS §§ 5591 et seq.], severance and back pay paid under subchapter IX [5 USCS §§ 5591 et seq.], sick pay, incentive pay, and any other compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus pay or otherwise; and

"(B) does not include awards for making suggestions.

"(b) Subject to the provisions of this section and the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person.

"(c) (1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail; return receipt requested, or by personal service, upon--

"(A) the appropriate agent designated for receipt of such service or process pursuant to the regulations issued under this section; or

"(B) the head of such agency, if no agent has been so designated.

"(2) Such legal process shall be accompanied by sufficient information to permit prompt identification of the employee and the payments involved.

COLLECTIONS

EARNINGS WITHHOLD ORDERS AGAINST FEDERAL EMPLOYEES

(CONT. 3) 755.060

- "(d) Whenever any person, who is designated by law or regulation to accept service of process to which an agency is subject under this section, is effectively served with any such process or with interrogatories, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is made, send written notice that such process has been so served (together with a copy thereof) to the affected employee at his or her duty station or last-known home address.
- "(e) No employee whose duties include responding to interrogatories pursuant to requirements imposed by this section shall be subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by such employee in connection with the carrying out of any such employee's duties which pertain directly or indirectly to the answering of any such interrogatory.
- "(f) Agencies affected by legal process under this section shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.
- "(g) Neither the United States, an agency, nor any disbursing officer shall be liable with respect to any payment made from payments due or payable to an employee pursuant to legal process regular on its face, provided such payment is made in accordance with this section and the regulations issued to carry out this section. In determining the amount of any payment due from, or payable by, an agency to an employee, there shall be excluded those amounts which would be excluded under section 462(g) of the Social Security Act (42 U.S.C. 662(g)).
- "(h)
- (1) Subject to the provisions of paragraph (2), if any agency is served under this section with more than one legal process with respect to the same payments due or payable to an employee, then such payments shall be available, subject to section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673), to satisfy such processes in priority based on the time of service, with any such process being satisfied out of such amounts as remain after satisfaction of all such processes which have been previously served.
- "(2) A legal process to which an agency is subject under sections 459 of the Social Security Act (42 U.S.C. 659) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any legal process to which an agency is subject under this section.
- "(i) The provisions of this section shall not modify or supersede the provisions of sections 459 of the Social Security Act (42 U.S.C. 659) concerning legal process brought for the enforcement of an individual's legal obligations to provide child support or make alimony payments.

“(j)

- (1) Regulations implementing the provisions of this section shall be promulgated--
 - “(A) by the President or his designee for each executive agency, except with regard to employees of the United States Postal Service, the President or, at his discretion, the Postmaster General shall promulgate such regulations;
 - “(B) jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives; or their designee, for the legislative branch of the Government; and
 - “(C) by the Chief Justice of the United States or his designee for the judicial branch of the Government.
- “(2) Such regulations shall provide that an agency’s administrative costs in executing a garnishment action may be added to the garnishment, and that the agency may retain costs recovered as offsetting collections.

“(k)

- (1) No later than 180 days after the date of the enactment of this Act [enacted Oct. 6, 1993], the Secretaries of the Executive departments concerned shall promulgate regulations to carry out the purposes of this section with regard to members of the uniformed services.
- “(2) Such regulations shall include provisions for--
 - “(A) the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with procedural requirements of the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.); and
 - “(B) consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty.
- “(3) The Secretaries of the Executive departments concerned shall promulgate regulations under this subsection that are, as far as practicable, uniform for all of the uniformed services. The Secretary of Defense shall consult with the Secretary of Homeland Security with regard to the promulgation of such regulation that might affect members of the Coast Guard when the Coast Guard is operating as a service in the Navy.”

COLLECTIONS

EARNINGS WITHHOLD ORDERS AGAINST FEDERAL EMPLOYEES
EXHIBIT B

(CONT. 5) 755.060

The Defense Finance and Accounting Service (DFAS) has given notice that all garnishments authorized under Section 9 of Public Law No. 103-94, Hatch Act Reform Amendments of 1993, for all Department of Defense Civilian Employees, except those noted below, shall be submitted to the Defense Finance and Accounting Service — Cleveland Center, Office of General Counsel, Code L, 1240 East 9th Street, P.O. Box 998002, Cleveland, OH 44199-8002.

<p>For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, contact the following offices:</p>	<p>For civilian employees of the Army, Navy, and Marine Corps who are employed outside the United States, contact the following offices:</p>
<p>Army Corps of Engineers U.S. Army Corps of Engineers, Omaha District Central Payroll Office, Attn: Garnishments P.O. Box 1439 DTS Omaha, NE 68101-1439</p>	<p>Army Civilian Employees Europe 266th Theater Finance Command ATTN: AEUCF-CPF APO New York 09007-0137</p>
<p>National Security Agency General Counsel, National Security Agency Central Security Service 9800 Savage Road, Ft. G. Meade, MD 20755-6000</p>	<p>Army NAF Civilian Employees in Japan Commander, US Army Finance and Accounting Office, Japan Unit 45005 ATTN: APAJ-RM-FA-E-CP APO AP 96343-0087</p>
<p>Defense Intelligence Agency Office of General Counsel, Defense Intelligence Agency Pentagon, 2E238 Washington, DC 20340-1029</p>	<p>Army Civilian Employees in Korea 175th Finance and Accounting Office, Korea Unit 15300, ATTN: EAFC-FO (Civilian Pay) APO AP 96205-0073</p>
<p>Air Force Non-Appropriated Fund Employees Office of General Counsel, Air Force Services Agency 10100 Reunion Place, Suite 503 San Antonio, TX 78216-4138</p>	<p>Army Civilian Employees in Panama DCSRM Finance and Accounting Office, Unit 7153, ATTN: SORM-FAP-C APO AA 34004-5000</p>
	<p>Navy and Marine Corps Civilian Employees Overseas Director of the Office of Civilian Personnel Management Office of the General Counsel, Navy Department 800 N. Quincy St. Arlington, VA 22203-1998</p>

STATE OF CALIFORNIA
Board of Equalization



EXHIBIT C

Authority to Garnish Federal Employees' Pay — Public Law 103-94

The California State Board of Equalization's authority to garnish federal employees' wages derives from Section 9 of Public Law No. 103-94 (5 USC 5520a). Specifically, the pertinent parts of the enactment read as follows:

SEC. 9. GARNISHMENT of FEDERAL EMPLOYEES' PAY

(a) Subchapter II of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

5520a. Garnishment of pay

(a) For purposes of this section-

(1) "agency" means each agency of the Federal Government-

(3) "legal process" means any writ, order, summons,

or other similar process in the nature of a garnishment that-

(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to state or local law.

(c) (1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail, return receipt requested, or by personal service, upon-

(A) the appropriate agent designated for receipt of such service of the process pursuant to the regulations issued under this section, or

(B) the head of such agency, if no agent has been so designated.

The enclosed Earnings Withhold Order for Taxes has been issued as provided by the California Code of Civil Procedure, Sections 706.072 - 706.075, and 706.080 - 706.082.

BOE-425-E2 (4-94)

INVOLUNTARY ALLOTMENT OF ACTIVE DUTY MILITARY PAY**755.070**

The process for implementing an involuntary allotment of pay for active duty military personnel is somewhat encumbered by the Servicemember's Civil Relief Act, 50 USCS App § 501 et seq., which requires that certain affidavits must accompany the application form supplied by Department of Defense (DOD). Therefore, the following guidelines and procedures have been established:

1. Involuntary allotment may only be pursued if the delinquent balance is equal to or greater than \$5,000.00 and the member is on active duty in California. If the member is on active duty and currently stationed outside California, the delinquent balance must be equal to or greater than \$10,000.00.
2. Complete the latest version of DD Form 2653, *Involuntary Allotment Application*, and send to SPS. The DD Form 2653 is available on the Internet at: <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2653.pdf>. (Complete only front Section I — Identification, Parts 1., 2., and 3.c.)
3. SPS will review the application and, if approved, prepare a Certificate of Delinquency to be filed by the Legal Department with a Request for Judgment in the office of the County Clerk of Sacramento County. In addition to the Certificate of Delinquency, the Request for Judgment must be accompanied by an affidavit stating whether or not the defendant is in military service and containing supporting information. If the defendant's military status is unknown, the affidavit must state that the defendant's military status is not known.
4. The affidavit must also state that the court should appoint an attorney to represent the member/defendant prior to issuing a default judgment. If the judge decides that appointing an attorney for the member/defendant is not necessary or would serve no purpose and a default judgment is issued, there is compliance with the Servicemembers' Civil Relief Act and the judgment should so state. A certified copy of the judgment should then be attached to the completed Involuntary Allotment Application.
5. SPS will submit the original and three copies of the Involuntary Allotment Application and all supporting documents to the Legal Department. After review and approval of the Involuntary Allotment Application, the Legal Department will prepare and submit the Request for Judgment. Once the judgment has been issued, The Legal Department will send the entire package via certified mail to the appropriate federal agency according to the instructions on DD Form 2653, (see Exhibit D.)

SECTION II - APPLICANT CERTIFICATION			
4. I HEREBY CERTIFY THAT:			
a. <i>(X as applicable)</i>			
<input type="checkbox"/>	(1) The judgment has not been amended, superseded, set aside, or satisfied;		
<input type="checkbox"/>	(2) If the judgment has been paid in part, the total amount remaining to be paid is \$ _____		
b. <i>(X as applicable)</i>			
<input type="checkbox"/>	(1) The judgment was issued while the member was not on active duty; or		
<input type="checkbox"/>	(2) If the judgment was issued while the member was on active duty, that the member was present or represented by an attorney of the member's choosing in the proceedings; or		
<input type="checkbox"/>	(3) If the member was not present or represented by an attorney at the judicial proceedings, that the judgment complies with the Servicemembers Civil Relief Act, 50 U.S.C. App. Sections 501-596 (2003). (If you obtained a default judgment and it does not contain language that indicates that the plaintiff complied with 50 U.S.C. App. 501-593, then you must submit proof that an affidavit stating the member's military service status, as required by 50 U.S.C. App. 520, was filed with the court prior to entry of the judgment.)		
c. The member's pay could be garnished under applicable State law and 5 USC 5520a if the member were a civilian employee;			
d. To the best of my knowledge, the debt has not been discharged in bankruptcy nor has the member filed for protection from creditors under the bankruptcy laws of the United States;			
e. I will promptly notify you to discontinue the involuntary allotment at any time the judgment is satisfied prior to the collection of the total amount of the judgment through the involuntary allotment process;			
f. If the member overpays the amount owed on the judgment, I will refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever is earlier, and that if I fail to repay the member, I understand that I may be denied the right to collect by involuntary allotment on other debts reduced to judgments.			
5. I HEREBY ACKNOWLEDGE THAT:			
As a condition of application, I agree that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable with respect to any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to this application.			
6. CERTIFICATION			
I make the foregoing statement as part of my application with full knowledge of the penalties involved for willfully making a false statement (U.S. Code, Title 18, Section 1001, provides a penalty as follows: Shall be fined under this title or imprisoned not more than 5 years, or both.			
a. TYPED NAME <i>(Last, First, Middle Initial)</i>	b. TELEPHONE NO. <i>(Include area code)</i>	c. SIGNATURE	d. DATE SIGNED <i>(YYYYMMDD)</i>

COLLECTIONS

INVOLUNTARY ALLOTMENT OF ACTIVE DUTY MILITARY PAY

(CONT. 2) 755.070

INVOLUNTARY ALLOTMENT APPLICATION		OMB No. 0704-0367 OMB approval expires Nov 30, 2010			
The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate, Information Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155 (0704-0367). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
<p>PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. SEND YOUR COMPLETED FORM TO THE ADDRESS IN THE INSTRUCTIONS BELOW.</p>					
INSTRUCTIONS					
1. These instructions govern an application for involuntary allotment payment from Military Service (or Coast Guard) member's active or reserve/guard's pay under 5 USC Section 5520a. 2. In order to be processed, this form must be filled out completely, signed, and the following supporting documents attached: a. A copy of the judgment, certified by the clerk of the appropriate court; b. If the applicant is other than the original judgment holder, proof of the applicant's right to succeed to the interest of the original judgment holder. 3. Submit the original and two copies of this application and all supporting documents to: <table style="width:100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code GAG PO Box 998002 Cleveland, OH 44199-8002 http://www.dfas.mil/money/gamish/ </td> <td style="width: 50%; vertical-align: top;"> For Coast Guard: Commanding Officer U.S. Coast Guard Personnel Service Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591 </td> </tr> </table>				For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code GAG PO Box 998002 Cleveland, OH 44199-8002 http://www.dfas.mil/money/gamish/	For Coast Guard: Commanding Officer U.S. Coast Guard Personnel Service Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591
For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code GAG PO Box 998002 Cleveland, OH 44199-8002 http://www.dfas.mil/money/gamish/	For Coast Guard: Commanding Officer U.S. Coast Guard Personnel Service Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591				
SECTION I - IDENTIFICATION					
1. APPLICANT					
I hereby request that an involuntary allotment be established from the pay of the following identified member of the Military Services/ Coast Guard pursuant to the provisions of Pub. L. No. 103-94, the Hatch Act Reform Amendments of 1993. The debt in question has been reduced to a judgment. A copy of the judgment, as certified by the appropriate Clerk of Court, is attached.					
a. APPLICANT NAME <i>(Provide whole name whether a person or business)</i>		b. TELEPHONE NUMBER <i>(Incl. Area Code)</i>			
c. ADDRESS					
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE <i>(9 digit)</i>		
2. SERVICE MEMBER					
a. NAME <i>(Last, First, Middle Initial)</i>	b. SSN	c. BRANCH OF SERVICE			
d. CURRENT DUTY ASSIGNMENT <i>(If known)</i>					
e. CURRENT ADDRESS <i>(If known)</i>					
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE <i>(9 digit)</i>		
3. CASE					
a. CASE NUMBER <i>(As assigned by court)</i>	b. NAME OF ORIGINAL JUDGMENT HOLDER <i>(If different from applicant)</i>	c. ACCOUNT NUMBER OF DEBTOR			
d. JUDGMENT AMOUNT					
(1) DOLLAR AMOUNT OF JUDGMENT	(2) DOLLAR AMOUNT OF INTEREST OWED TO DATE OF APPLICATION	(3) TOTAL DOLLAR AMOUNT DUE <i>(Total of sub-blocks (1) and (2))</i>			
\$	\$	\$ 0.00			

NOTICES OF STATE TAX LIENS, ABSTRACTS OF JUDGMENT AND LIENS

757.000

GENERAL

757.010

Under Government Code section 7150, et seq., on the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus penalties, interest and costs, under the following laws:

Sales and Use Tax, section 6757

Motor Vehicle Fuel Tax, section 7872

Use Fuel Tax, section 8996

Cigarette and Tobacco Products Tax, section 30322

Alcoholic Beverage Tax, section 32363

Emergency Telephone Users Surcharge, section 41124.1

Energy Resources Surcharge, section 40158

Hazardous Substance Tax, section 43413

Solid Waste Disposal Site Cleanup and Maintenance, section 45451

Underground Storage Tank Maintenance Fee, section 50123

Diesel Fuel Tax Law, section 60445

Electronic Waste Recycling, section 55141

Integrated Waste Management, section 45151

California Tire Fee, section 55141

Fee Collection Procedures Law, section 55141

Government Code section 7170 states, “a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property belonging to the taxpayer and located in this state.”

The lien is in force for ten years and may be extended by re-recording the lien with any county recorder’s office or re-recording a *Notice of State Tax Lien* with the office of the Secretary of State within the ten-year period.

The lien attaches to all property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. However, Government Code section 7170 requires the following action in order for a lien to be valid against specific interests in the same property:

As to real property, a *Notice of State Tax Lien* must be recorded in each county where the taxpayer’s real property is located prior to the time that the four classes of persons listed in Section 7170(b) perfect their right, title, or interest in the property, in order for the lien to be valid against the property.

As to personal property, a *Notice of State Tax Lien* must be filed with the Secretary of State. The prior filing of a *Notice of State Tax Lien* with the Secretary of State defeats the claims of three classes of persons listed in Section 7170 (c), but cannot defeat the claims of numerous other classes of persons listed in the section.

An additional method of recording a lien against real property under the Sales and Use Tax Law and the Alcoholic Beverage Tax Law, is to follow the summary judgment procedure of RTC sections 6736, et seq., and 32361, et seq., and record an abstract of judgment in any county where the person owns or may be expected to own real property.

The abstract of judgment has the force, effect, and priority of a judgment lien and is effective for ten years from the time of filing with the county clerk for recordation unless sooner released by the Board of Equalization (BOE). The time limit for requesting summary judgment is within three years after an amount becomes delinquent.

RTC section 6702 requires that a Form BOE-465, *Notice of Withhold*, must be issued not later than:

1. Three years from the date a payment becomes delinquent.
2. Within ten years after the last recording of an abstract of judgment or the recording or filing of a *Notice of State Tax Lien*.

RTC section 6776 stipulates that all warrants be handled in the same manner, i.e., issued within three years from the date of delinquency or within ten years from the last lien recordation date. A certificate of lien (*Notice of State Tax Lien*) may be filed or recorded in any county or with the Secretary of State at any time during the ten-year automatic or statutory lien period established by RTC section 6757, following the date of delinquency.

In order for the BOE to take court action against a debtor, such as an Attorney General referral for an out-of-state judgment, the lien must have been filed or recorded within three years from the delinquency date (see RTC Sec. 6711). For this reason, current policy requires that liens are filed or recorded within this three-year period. Liens may be renewed twice, each for ten-year terms, after the initial ten-year lien period has expired (see Government Code section 7172). The chart in CPPM 757.020 provides a quick reference for the time periods within which all of these summary procedures may be used.

According to the BOE's Legal Department, the three-year restriction does not apply to the issuance of levies pursuant to RTC 6703, as long as the statutory lien from the operation of law (RTC section 6757) is in place.

LIMITATION PERIODS FOR SUMMARY PROCEDURES

757.020

Revenue Law	Period Within Which Notice to Withhold May Be Used	Period Within Which Warrant May Be Used	Effective Period of Liens and Abstracts
Sales and Use Tax	After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last lien recording. Reference RTC 6702	While an amount is delinquent but not later than three years after the delinquency date of the payment, or within ten years after the last lien recording. Reference RTC 6776	Ten years (Renewable) Reference Gov. Code 6757 and RTC 7172
Cigarette and Tobacco Products Tax			
Use Fuel Tax			
Alcoholic Beverage			

TYPE OF RECORDATION ALLOWED BY STATUTE

757.030

Revenue Law	Notice of State Tax Lien	Abstract of Judgment
Sales and Use Tax	Allowed	Allowed
Cigarette and Tobacco Products Tax	Allowed	Not Allowed
Use Fuel Tax	Allowed	Not Allowed
Alcoholic Beverage	Allowed	Allowed

RESPONSIBILITY FOR RECORDING AND FILING LIENS

757.040

The Special Procedures Section (SPS) is responsible for preparing the *Notice of State Tax Lien* or the abstract of judgment, forwarding these documents to the appropriate county recorder or to the office of the Secretary of State, and mailing a copy to the taxpayer.

EXTENSIONS OF LIENS

757.050

The original lien may be extended by recording a new notice or abstract of judgment in any county or, if a statewide personal property lien was previously acquired and is to be extended, by filing an extension notice with the office of the Secretary of State. The new recording or filing must be made prior to expiration of the original lien. The responsibility for filing a lien extension, as well as the original filing of a lien, lies with SPS.

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN

757.060

Filing a lien protects the state’s interest in a taxpayer’s assets. The use of the *Notice of State Tax Lien* is an effective collection tool that often results in payment of accounts that would have been difficult, if not impossible, to collect.

Taxpayers should be advised that a lien may be filed and its effects (decreases credit rating and attaches to property currently owned and later acquired.) With the exception of a jeopardy lien, a tax lien should not be filed unless there have been documented efforts made to contact the taxpayer by phone and in writing.

Per statute, a lien can be filed 30 days after the taxpayer is advised in writing that a lien may be filed. If it is determined that a lien is necessary, staff should complete a thorough search for real property to ensure that liens are filed in the appropriate county or counties specific to each taxpayer.

To prevent inappropriate liens, BOE staff should only file a lien in counties where the taxpayer resides, where the business or taxpayer is/was located, and where property is owned or may have previously been owned. If it is determined that a state tax lien should be filed staff must:

1. Investigate sources such as income tax returns, RealQuest, credit reports, and information documented in IRIS/ACMS to obtain county-specific information.
2. Document in ACMS by utilizing the external real property summary, all actions regarding property searches or other methods used to determine whether the taxpayer owns, has owned, or may own real property, specifically noting each county.
3. Complete a "Lien Review Summary" in ACMS. List the county or counties to be included in the lien filing and specifically state why each county is included in the request.

Generally, a lien is not filed for liabilities that do not include tax because an adjustment or request for relief may be pending, but it can be done if the total amount due is greater than \$2,000 and verification is made that there are no adjustments or requests for relief pending.

BOE policy is to file a lien 30 days after the demand date, if there is a valid business reason for such action. Otherwise, a lien will not normally be filed until after 180 days have expired. Supervisory approval of all lien requests initiated prior to the expiration of the 180 days is required and must be documented in ACMS.

A lien should be filed after 180 days if either of the following circumstances apply:

1. Requests for payment in full, installment payments and financial documentation have gone unanswered.
2. The taxpayer has not responded to phone calls or notices.

NOTE: Accounts on an Installment Payment Agreement (IPA) are not subject to the 180-day policy, and liens should not be requested 180 days after the liability is established for IPA accounts. Rather, the process to initiate a lien request on an account in an IPA begins when the liability becomes 30 months old. When this occurs, staff will send the taxpayer Form BOE-407-L, *Notice of Intent to Lien*. Staff will then wait 45 days after sending the BOE-407-L before initiating the lien request through ACMS.

In most cases, a *Notice of State Tax Lien* is filed for accounts with delinquent amounts of \$2,000 or more in the appropriate county or counties:

1. 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination, or
2. 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment, or for penalty and interest because of late payment, or
3. 180 days after a successor's billing is issued

A lien should not be filed after 180 days if any of the following conditions exist:

1. There are outstanding levies. Exceptions to this procedure can occur. For example, in cases where the taxpayer has a large balance due and outstanding levies that are generating minimal payments. If payment in full is not anticipated and additional collection action is warranted, it is appropriate to file a lien. In addition, if a levy is sent to secure some assets that may not be liquidated until sometime in the future or that may have a secured interest against them, filing a lien is appropriate.
2. Payments are being received per an installment payment agreement and financial documentation indicates a lien is not necessary to secure the state's interest.

3. The installment payment agreement will satisfy the liability within one year and the taxpayer has not been a previous collection problem.
4. If the taxpayer has been extended additional time to pay.

A lien will be filed after the collection item becomes aged 30 months unless payment in full is expected within 30 days.

Liens should not be filed at any time in any of the following situations:

1. The action violates the automatic stay afforded by the bankruptcy code.
2. The liability has been discharged in bankruptcy.
3. An Offer-in-Compromise is pending and the Offer-in-Compromise Section has not been previously advised.
4. The action violates an Indian tribe's sovereign immunity (see Business Taxes Law Guide Annotation 170.0002.750, (8/22/96).)

For delinquent amounts exceeding \$5,000, a lien will also be filed with the office of the California Secretary of State. SPS will file the lien:

1. Upon receipt of a request for such action by the district office.
2. If SPS's review of the file indicates such action is appropriate.

A lien will be filed with the office of the Secretary of State for all Attorney General referrals for Intervenor Actions (see CPPM 757.130, *Lien on Cause of Action*).

RTC section 7097 requires that the BOE give notice to the taxpayer that a lien may be filed at least 30 days prior to filing or recording a lien. This notification is routinely included on the demand billing, which is sent to the taxpayer approximately 15 days after the liability becomes final.

If it becomes necessary to record or file a lien before the 180-day period expires, or if the lien covering real property should be extended to other counties, a request should be forwarded to SPS by the referring office using Form BOE-200, *Special Procedures Action Request*. The request for issuing an early lien should contain a reason for the action. The reason, as well as the request, must be documented in ACMS notes and have received supervisory approval. If it is discovered that the existing lien was filed prior to July 1, 1983 and a homestead exemption was previously recorded on the property, the referring office should request a new lien from SPS.

If a taxpayer is a multiple-outlet business, SR Y for example, the referring office should request SPS to record liens in any county in which real property is found. If no real property is found, a lien will be recorded only in the county where the "master" business location is located. If an out-of-state taxpayer qualifies for a lien but owns no California property, a real property lien should be requested to be filed in Sacramento County.

For taxpayers who file bankruptcy, liens cannot be filed until after the automatic stay has been lifted. Post-petition liens on pre-petition liabilities will only be filed where:

1. The debtor filed for bankruptcy relief and the tax liability was not discharged.
2. The bankruptcy case was dismissed.

In limited circumstances, the BOE may be required to file an abstract of judgment rather than filing a lien. Current policy dictates that the filing of an abstract of judgment is limited to renewing a previously recorded abstract prior to its expiration date. This procedure is mainly used for extending the period of the lien acquired by recording of the original abstract. SPS is responsible for the timely renewal of abstracts.

UNITED STATES COAST GUARDS LIENS**757.065**

Liens filed with the United States Coast Guard (USCG) must be timely and meet the provisions contained in U.S. Code Title 46, section 31343. Based upon this section, the Notice of Claim of Lien expires three years after the date the state tax lien was established, which is reflected on the Notice of State Tax Lien in the column identified as the “Assessment” date. USCG Documentation Center will return BOE requests unrecorded if the assessment date is over three years old.

Staff must determine the names and mailing addresses of all lien holders and mortgagees of a vessel before requesting a USCG lien. These names and addresses should be entered in ACMS comments. Lien holder and mortgagee information is obtained by reviewing the USCG vessel abstract on file for all vessel use tax accounts. For sales tax accounts, collection staff should contact the Centralized Collection Section (CCS) for instructions on how to order the abstracts, or related documents, from the USCG. If mailing address information on the abstract is incomplete or missing, staff should order a copy of the lien/mortgage document from the USCG. If no lien holder or mortgagee exists, staff should make a note in ACMS comments.

When requesting a USCG lien, staff will use Form BOE-426-CG, *Notice of State Tax Lien for U.S. Coast Guard* because it contains the declaration required under U.S. Code Title 46. Under this section, the BOE is required to include a signed declaration that contains the taxpayer’s name and account number, vessel name and documentation number, and the lien holder or mortgagee’s names and addresses. The declaration and lien must be signed by the same person. Section 31343 also requires the BOE to mail copies of the signed declaration and the lien document to each lien holder and mortgagee that has been identified. Staff must enter ACMS comments when the copies have been sent.

REVOCABLE TRUST LIENS**757.066**

A settlor (also known as a “donor” or “trustor”) is one who creates a trust by giving real or personal property “in trust” to another (the trustee) for the benefit of a third person (the beneficiary).

Assets of a revocable trust are subject to the claims of creditors of the settlor(s) of the trust, during the settlor(s) lifetime. Conversely, the settlor of a revocable trust is liable for the debts of his or her revocable trust.

A Notice of State Tax Lien against a revocable trust should contain the name of the living settlor(s). A Notice of State Tax Lien against a settlor should contain the name of the trust. Requests should be forwarded to SPS on Form BOE-200-A, *Special Procedures Action Request*. Staff will check the box labeled “Other Requests,” and must provide the settlor(s) name and current address, and documentation that the trust is revocable.

PRIORITY OF LIENS**757.080**

A lien on real and personal property is created as a result of a delinquent tax liability. A tax lien on real property may be perfected by:

1. Recording a notice of state tax lien with an office of the county recorder.
2. Recording of a notice of state tax lien.
3. Filing an abstract in a county recorder’s office.

A lien on personal property is perfected by filing a notice of state tax lien with the office of the Secretary of State.

PRIORITY OF LIENS**(CONT.) 757.080**

A tax lien of the BOE has priority over liens of other government agencies only as to the time when the liability became due and payable. As to non-government persons, priority is determined by the time of recording or filing in relation to the recordation or filing time of other notices of lien.

Under Government Code section 7170.5, the rule “first in time is first in right” is generally followed. The rule applies to federal liens as well as those of other creditors. However, a purchase money trust deed generally is first in priority even though recorded subsequent to the BOE’s lien date or recording of an abstract. The date of the lien is not used in applying the “first in time is first in right” rule, rather the date when the lien is perfected is controlling. This date is the first billing date or date of assessment. The assessment date for returns is the date of the demand billing. The assessment date for determinations is the finality date. For jeopardy determinations, the assessment date is the date of the jeopardy.

A deed delivered prior to the lien date or abstract, but which is subsequently recorded after the lien date or abstract, generally has priority since the effective date is considered to be the date the instrument was delivered. In these cases, a thorough investigation should be made to be sure a subterfuge is not being attempted to overcome the effect of the BOE’s lien.

Also, BOE liens do not take priority over purchase money security interests no matter when they are filed. See U.C.C. section 9107 for the definition of “Purchase Money Security Interest”.

Government Code Section 7170(c)(4) establishes lien priority for state tax liens in relation to purchase money security interests. Under this section, any person (other than the taxpayer) who, notwithstanding the prior filing (emphasis added) of the notice of the state tax lien:... (E) Is a holder of a purchase money security interest.” Thus, the BOE’s lien against personal property where the taxpayer gives a secured interest to a creditor loses priority to the extent of the secured interest.

HOMESTEAD EXEMPTIONS**757.100**

A person or married couple is limited to claiming a single homestead exemption at a time. Homestead exemptions protect a portion of the homestead from forced sale. The amount of the homestead exemption is one of the following:

1. One hundred fifty thousand dollars (\$150,000) if the tax debtor or spouse is 65 years of age or older or; 55 years of age or older with a gross annual income of \$15,000 (single) or \$20,000 (married); or is unable to be employed due to a physical or mental disability
2. Seventy five thousand dollars (\$75,000) for the head of a family
3. Fifty thousand (\$50,000) for any other person.

(See Code of Civil Procedure (CCP) sections 704.720, 704.730, 704.950, 704.960 and 704.965.)

DECLARED HOMESTEAD**757.110**

A dwelling in which an owner or owner's spouse resides may be selected as a declared homestead by recording a homestead declaration. (CCP section 704.910 et seq.)

If a declared homestead is voluntarily sold, the proceeds are exempt in the amount of the exemption for 6 months after the date of the sale; (CCP section 704.960), if the owner invests the proceeds in a new homestead declaration. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

On and after July 1, 1983, a state tax lien attaches to a dwelling regardless of the prior recording of a homestead declaration. (Government Code section 7170.) Therefore, if a delinquent taxpayer's file indicated the BOE's lien was filed prior to July 1, 1983, on previously homesteaded property, a new lien should be requested.

Additionally, the responsible collector should be alert to any oversight by title companies in not recognizing the BOE's lien. If an escrow company does not notify the BOE of the sale in escrow and the escrow company releases all funds, the escrow and title companies may be held liable for payment of the liability.

HOMESTEAD EXEMPTION (AUTOMATIC)**757.120**

Whether or not a homestead declaration is recorded, Code of Civil Procedure sections 704.710, et seq., provide for a homestead exemption for dwellings in the same amounts as outlined in CPPM 757.100. Unlike the declared homestead, this exemption also applies to mobilehomes and boats in which the debtor resides. Proceeds from involuntary transfers of a dwelling (execution sale, or condemnation for public use, insurance proceeds from damage or destruction of the homestead) are exempt in the amount of the homestead exemption for six months after the debtor receives the proceeds. The proceeds are not exempt if the debtor or debtor's spouse applies the homestead exemption to another property within the six-month period. Proceeds from the voluntary sale of the dwelling are not exempt.

LIEN ON CAUSE OF ACTION**757.130**

In cases where a delinquent taxpayer either files a civil action against another person to recover a sum of money or is the defendant in the action and files a cross-complaint, there is a possibility for the BOE to place a lien on the cause of action and any judgment subsequently recovered by the taxpayer. To accomplish this, the matter must be referred to SPS with all of the details, so appropriate action can be taken before judgment is entered. No case should be considered for a lien on cause of action if the liability is less than \$500.

If the lien on cause of action is successful, a lien will be granted, which will attach to the judgment rendered in favor of the plaintiff if the plaintiff prevails in the suit. The lien on the cause of action has priority as of the date that it is filed in the civil action. If the attorney representing the taxpayer has a written fee agreement that provides that the taxpayer grants the attorney a lien on any proceeds of the lawsuit to pay the attorney fees and costs incurred in the lawsuit, the attorney has a lien as of the date that agreement is executed. In most cases, the written fee agreement will create a lien senior to the BOE's, entitling the attorney to offset all attorney fees and costs (*Cetenko v. United California Bank* (1982) 30 Cal.3d 528).

LIEN ON CAUSE OF ACTION — INFORMATION NECESSARY FOR**757.140**

If a civil action is filed by a delinquent taxpayer to recover money, and the taxpayer owes the BOE \$500 or more, Form BOE-708, *Request for Notice of Lien on Cause of Action*, should be completed and forwarded to SPS. When the tax debtor is the defendant in the case, only forward a BOE-708 if a cross complaint is filed.

When preparing Form BOE-708, Item 1 {DAG}(Deputy Attorney General), should be left blank. Items 2 through 10, listed below, must be accurately completed.

Item 2: Court.

Item 3 Case name (always give complete title of case per court records).

Item 4 Case number.

Item 5 Taxpayer (complete name or names).

Item 6, 7, & 8 Total unpaid amount and interest information.

Item 9 Parties to serve (include the name and address of the attorneys for all parties. If no attorneys are known, give the name and address of the party to which notice may be given. If substitute attorneys are listed in court records, show their names and addresses).

Item 10 Nature of suit and cross complaint.

Since the Attorney General must give notice of the state's lien to all parties in the action, these matters must be promptly reported to SPS.

COLLECTION ACTION TO CONTINUE**757.150**

Requesting a lien on cause of action should be considered as one of the cumulative remedies to be used while other collection actions continue. The fact that a taxpayer who has filed a civil action is also making installment payments to the BOE, or has promised to make full payment at some future date, should not be reason to refrain from attempting to create a lien on cause of action.

REPORTS TO THE DISTRICT OFFICE**757.160**

After the Attorney General has completed his/her action and notification has been received by SPS on the results of the Attorney General's efforts, the information will be passed on to the district office or Special Taxes division. Regardless of whether the Attorney General was successful or not, other efforts to collect should continue.

ACTION WHEN FULL PAYMENT RECEIVED**757.170**

If full payment is received in the district office or Special Taxes division on a case referred to the Attorney General, whether before or after a lien has been granted, a report of the collection will be forwarded promptly to SPS so the information can be conveyed to the Attorney General.

DISTRICT OFFICE FOLLOW-UP**757.180**

As frequently as deemed necessary, district office or Special Taxes personnel should follow-up on these cases. Court records should be checked or the attorneys should be contacted. Any significant changes in the case should be promptly reported to SPS. Keeping abreast of the current status of a case is important since the action of the Attorney General consists only of obtaining the lien and not of maintaining a follow-up or taking further collection action.

**RELEASES, PARTIAL RELEASES
AND SUBORDINATION OF LIENS****761.000****GENERAL****761.010**

At any time and under any of the laws it administers, the Board of Equalization (BOE) may release all or part of a taxpayer's real property from the effect of a lien or liens it filed on the taxpayer's property. The BOE may also subordinate its lien or liens to other liens or encumbrances if:

1. It is determined the amount due is sufficiently secured by a lien or other property.
2. Collection of the amount due will not be jeopardized by subordinating the lien.

Full lien releases are furnished to taxpayers only after full payment has been made or, if amounts are still due, they may be furnished to escrow agents or title companies along with a statement of payment and conditional release requirements, which must be met prior to the use of the release. All full releases are prepared and mailed by the Special Procedures Section (SPS). Lien releases may also be issued if it is in the best interest of the state or to facilitate payment.

ROUTINE RELEASES OF LIENS**761.020**

Government Code section 7174(c)(2) states:

“In the case of the Controller or the State Board of Equalization, the agency shall, not later than 40 days after the liability is satisfied, do one of the following:

- A. Record a certificate of release in the office of the county recorder where the notice of state tax lien is recorded.
- B. Deposit in the mail or otherwise deliver to the taxpayer a certificate of release.”

Therefore, in compliance with section 7174(c)(2), liens automatically enter the “Lien Release” state in ACMS after 40 days from the date of payment.

Staff should regularly be requesting lien releases when it is determined that the liability secured by a lien has been paid in full. In all cases where it is determined that the liability was paid in full or abated prior to the lien recording, a “free” release of lien will be requested. A free release of lien allows the taxpayer to have the lien removed from official records without paying a fee.

REQUESTS FOR RELEASES OF LIENS**761.030**

When a taxpayer requests a release of lien, proof of payment such as copies of canceled checks (both sides) must be provided for payments made by personal check within the last 30 days. If the lien recording information is not available in ACMS, the taxpayer should be advised that a release cannot be issued until the recording date becomes available. If a release is required sooner, CLEAR can be used to obtain the recording information. If the recording information is not available through CLEAR, the taxpayer should be advised that they can obtain a copy of the recorded lien from their respective county recorder (this is more applicable in larger counties where it takes longer for the BOE to receive the recorded lien.)

REQUESTS FOR RELEASES OF LIENS

(CONT.) 761.030

Requests for releases to be mailed to escrow agents, title companies, or the taxpayer to enable the conveyance of property, will be handled as expeditiously as possible. If the request is received by a district office, it will be forwarded to SOB within one day. When requests are received in SOB, whether from a district office or directly from the taxpayer or its agent, the release should be mailed within one day.

If the release mailed to an escrow agent or title company requires payment be made prior to its use, SOB will maintain a proper follow-up to ensure payment is received or the unused release is returned. When the liability is paid, a lien release is sent directly to the county recorder. Title companies and escrow agents who record releases without making payment in violation of the BOE's written instructions become liable for the amount they fail to pay.

PAYMENTS BY PERSONAL CHECK — RELEASE OF LIEN

761.040

Upon payment of a liability by personal check, the 40-day period required by Government Code section 7174(c)(2) in which to issue a lien release (through ACMS) will be observed. This period allows time for the personal check to be processed through the banking system and prevents a lien release from being issued if the taxpayer's account does not have sufficient funds. In instances where the taxpayer is requesting a release prior to the 40-day period expiring, he or she should be advised that a lien release will not be furnished unless the taxpayer can present for examination the cancelled check used in making the payment. If the release is to be delivered to the taxpayer at the time payment is made, such payment must be in cash, money order, certified check or cashier's check. Company checks of escrow agents or title companies are also acceptable.

PAYMENTS BY CREDIT CARD – RELEASE OF LIEN

761.045

Credit card payments will be treated as cash payments for the purpose of lien releases. Prior to releasing a lien for a liability paid by credit card, the payment must be verified in the Integrated Revenue Information System (IRIS).

RELEASE OF LIENS ACQUIRED THROUGH ERRONEOUS RECORDINGS

761.050

The BOE is responsible for releasing liens acquired through erroneous recording of certificates or abstracts. An example of a certificate or abstract recorded in error is where the recordation took place after full payment had been made. In these cases, SPS will prepare a release clearly showing that the document was recorded in error and the release will be forwarded to the county recorder to be recorded without payment of the fee.

SUBORDINATION OF LIENS

761.060

Subordination of real property liens are usually requested for the purpose of:

1. Acquiring property on which a trust deed is to be executed, which is to become a first lien.
2. For the purpose of placing a new encumbrance on property that already stands in the taxpayer's name.

Subordination of a lien should not be issued merely as a convenience to the taxpayer or without proper investigation to determine the merits of the request. In most cases, the position of the state will not be worsened by issuing a subordination since property is to be acquired or presently owned property will be retained.

SUBORDINATION OF LIENS**(CONT.) 761.060**

In cases of refinancing currently owned property, the taxpayer will have money coming to them at the close of escrow. In these cases, a subordination of lien will not be given unless there are extenuating circumstances or unless the taxpayer has agreed to have the surplus funds from the escrow remitted directly to the BOE.

In all cases where a subordination of a lien is requested, the district office staff will send a written recommendation, including supporting reasons, to SOB, accompanied by the taxpayer's written request stating the reason the subordination is desired. Also forwarded will be the following:

1. The date and amount of the deed of trust to be executed.
2. The names of the parties executing the deed of trust as those names will appear on the instrument.
3. The name of the trustee.
4. The name of the party in whose favor (beneficiary) the deed of trust will be executed.
5. Copy of the preliminary title report.
6. The legal description of the property as it will appear on the deed of trust (required only if this description is different than the description contained in the preliminary title report).
7. Schedule of proposed disbursement of funds by the escrow holder.
8. Printout of a real property search report (RealQuest, CLEAR, Westlaw, etc.).
9. Lender's appraisal report or statement of property value.

Every such request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay, no subordination will be issued.

PARTIAL RELEASES OF LIENS**761.070**

A partial release of lien, when recorded, has the effect of removing a lien from only the particular real property described in the partial release, while allowing the lien's effect on other real property in which the taxpayer has an interest to remain undisturbed. Partial releases are given at the discretion of the BOE and their issuance is not mandatory. Releases of this type are usually requested in those cases where the taxpayer does not have available funds to pay the amount due, but does own more than one parcel of real estate, and is selling at least one, but not all parcels of property owned.

Also, a partial release of lien might be requested when the taxpayer is selling his/her only parcel of real property and the surplus funds are insufficient to pay the entire tax liability. In this case, the taxpayer must agree to have the surplus money from the sale remitted directly to the BOE in exchange for issuing a partial release of lien.

Partial releases are given only when such action will not jeopardize collection of the remainder of the account or where the lien on other property provides adequate security. When a partial release of lien is issued, all amounts that would normally be paid to the taxpayer in excess of the amounts due prior lien holders plus the costs of the sale will be paid directly to the BOE.

PARTIAL RELEASES OF LIENS**(CONT.) 761.070**

| All requests for partial releases shall be transmitted to SOB. In order for SOB in conjunction with the legal staff, to consider the request properly, the following is required:

1. Cover memo including recommendation and reasons in support of recommendation.
2. Taxpayer's or escrow's written request stating the reason the partial release is desired.
3. Lender's appraisal report or statement of market value.
4. Copy of preliminary title report.
5. Schedule of proposed disbursement of funds by the escrow agent.
- | 6. Printout of a real property search report (RealQuest, CLEAR, Westlaw, etc.).

Every request for a partial release of lien requires thorough investigation. In every case where the taxpayer has the ability to pay in full, no partial release of lien will be issued.

RELEASE OF LIENS WHEN BOE RECORDS ARE DESTROYED**761.080**

It is not unusual for the BOE to receive requests for a release of lien in cases where records have been destroyed. If, when a request is received, the district office finds its records are destroyed, the Taxpayer Records Unit should be contacted to determine if they have the necessary records. If the Taxpayer Records Unit's records have also been destroyed, district offices should secure, either from the escrow agent, title company, or from the office of the county recorder, all of the data necessary for the preparation of the release. This information should then be promptly forwarded to SPS along with the request for the release. The required information is as follows:

1. Certificate number.
2. Name of person or persons against whom recorded, including dba, if any.
3. Amount of certificate.
4. County in which recorded.
5. Date, book, and page of recording.

In every case where a request for a release is received and records are destroyed, it must definitely be ascertained that the certificate for which a release is requested was recorded by the BOE. Failure to do so will result in unnecessary work, as well as delay for the taxpayer, if it is later discovered the certificate was recorded by another agency.

LIENS AFFECTING PERSONS OTHER THAN TAXPAYERS**761.090**

On occasion, a person with the same or very similar name as a BOE taxpayer may be affected by a BOE lien. The person generally becomes aware of the lien when it appears on a credit report or title report. Such persons will likely contact the BOE to request assistance in resolving the problem.

LIENS AFFECTING PERSONS OTHER THAN TAXPAYERS**(CONT.) 761.090**

When this situation arises, staff should first verify the person is not, in fact, the taxpayer being sought. To verify that the person contacting the BOE is not the taxpayer in question, require the person to appear in one of the BOE's field offices. The following information is required for proper identification:

1. His or her driver license or verifiable picture ID, such as from a place of employment.
2. Social security card.
3. Copies of other documents that show the social security number (e.g., payroll documents, income tax returns).

If the above documents do not conclusively demonstrate that the person is not the taxpayer in question, other evidence must be submitted. District office staff has the latitude and responsibility to work with the person to determine the acceptable documentation verifying that he or she is not the taxpayer in question.

Once the above documentation is obtained, staff should photocopy the documents and prepare a cover memo and recommendation that includes:

1. The person's name.
2. The person's mailing address.
3. The person's telephone number.
4. A brief description of how the person discovered the error (e.g., credit report, title report).
5. Any other supporting documents.

The memo and the photocopies of the documents should then be sent to SPS where staff will prepare a notarized letter ("wrong person" letter) stating that the indicated person is not the correct taxpayer. A cover letter is sent to the person with this notarized letter suggesting that the person provide the notarized letter to credit reporting companies and others who may question the lien. The letter should mitigate any future concerns or issues regarding the lien.

DETERMINATIONS AND ALTER EGO**764.000****DEFICIENCY DETERMINATIONS****764.010**

RTC sections 6511 and 6481 for sales and use tax, and similar sections for programs administered by the Special Taxes and Fees (STF) Department, provide that if a person fails to file a return the BOE shall make an estimate of the amount of tax due, or if the BOE is not satisfied with the return(s) filed, it may compute and determine the amount that is required to be paid. BOE may compute this amount based on the facts contained in the return(s), or any information in its possession or that may come into its possession. One or more deficiency determinations may be made for the amount due for one or for more than one period.

Deficiency determinations are subject to interest and penalties. Penalties are described in the Revenue and Taxation Code as follows:

- Section 6484* 10 percent penalty for negligence or intentional disregard of this part or authorized rules or regulations.
- Section 6485* 25 percent penalty for fraud or intent to evade this part or authorized rules and regulations.
- Section 6485.1 50 percent penalty for purchasing and registering a vehicle, vessel or aircraft outside the State of California for the purpose of evading the payment of taxes due under this part.
- Section 6511 10 percent penalty for failure to file a return.
- Section 6597 40 percent penalty for collecting but not timely remitting sales tax reimbursement or use tax.
- Section 6565* 10 percent penalty if the determination is not paid when due and payable.

*Similar Sections for STF programs

The BOE must provide written notice of a determination to the tax or fee payer (taxpayer) or other responsible person. "Written notice" means that the *Notice of Determination* must fairly apprise the taxpayer of the nature of the liability covered. The *Notice of Determination* is sent via U.S. mail to the person's address as it appears in the records of the BOE. Service of the notice is complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason.

In lieu of mailing, a *Notice of Determination* may be served personally by delivering it to the person to be served. Notice is complete at the time of delivery. Personal service to a corporation may be made by delivery of a *Notice of Determination* to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

Any person against whom a determination is made, or any person directly interested, may file a written petition for redetermination within 30 days from the service of the notice. If a petition for redetermination is not filed within the 30-day period, the determination becomes final. All determinations made under the above sections are due and payable at the time when they become final. If any amount of the determination is not paid when due and payable (final), a "finality" penalty of 10 percent shall be applied to the remaining unpaid tax or fee portion of the determination.

DEFICIENCY DETERMINATIONS**(CONT.) 764.010**

Notices of Determination issued to corporations, LLCs, and LLPs will also include a note to educate and remind principals they may be personally liable and responsible for tax, interest, and penalties owed by the business under RTC section 6829 if the business terminates, dissolves or is abandoned.

JEOPARDY DETERMINATIONS**764.020**

A *Jeopardy Notice of Determination* is issued when collection of the amount due is jeopardized by delay. The request for a jeopardy determination must receive approval and signature by an administrator or any person delegated this authority.

A jeopardy determination may be issued:

1. For either self-assessed or BOE-assessed liabilities.
2. For the same liability included in a non-final determination, even if the non-final determination is in petition status.

The recommendation for a jeopardy determination must set forth the reason or reasons why delay will result in jeopardizing collection. To request a jeopardy determination, staff must prepare a memo that includes the following:

1. The taxpayer's name and address,
2. The source and status of the underlying liability,
3. The taxpayer's overall financial condition, including a list of all known assets and liabilities,
4. The amount of equity available for a lien or levy,
5. The taxpayer's present and future income potential, including the taxpayer's ability to earn wages or pay the liability if there is no jeopardy determination,
6. Which county or counties in which a Notice of State Tax Lien is to be filed,
7. Whether or not a lien is to be recorded with Secretary of State,
8. Whether or not a warrant is being requested, which must include the name of the person to whom the warrant is to be sent, the asset(s) to be levied upon, and the amount of advance fees that may be required, and
9. Documentary evidence in support of a jeopardy determination.

A list of Resources for Jeopardy Determination Analysis is available on eBOE to assist staff in locating assets, providing support when estimating the amount of equity available in real property, disclosing the priority of liens and other encumbrances, and showing whether a taxpayer is becoming insolvent.

For sales and use tax, the original request for a jeopardy determination is routed to the Tax Policy Division (TPD) Chief, with a copy sent to the Special Operations Branch (SOB). If the request for a jeopardy determination is approved, the TPD Chief will notify SOB to proceed. For the Investigations Division (ID), the original request for a jeopardy determination is routed to the Investigation and Special Operations Division (ISOD) chief. If the request for a jeopardy determination is approved, the ISOD chief will notify SOB to proceed. Audit Determination and Refund Section (ADRS) is responsible for billing jeopardy determinations. Routing for special taxes accounts is handled in accordance with Special Taxes Policy and Compliance Division's policy.

JEOPARDY DETERMINATIONS

(CONT.) 764.020

As a guide in determining whether to request a jeopardy determination, the following are some examples of instances where a jeopardy determination is warranted:

1. Taxpayer is obviously dissipating his/her assets.
2. Taxpayer is placing assets in the names of other persons for purposes of concealment.
3. Taxpayer's assets are being attached by creditors, or are in imminent danger of attachment.
4. There is a pending sale of property which represents the last remaining assets and, without the funds from such sale, collection is doubtful.
5. There is evidence the taxpayer intends to file a petition in bankruptcy or make an assignment for benefit of creditors.
6. There is evidence creditors intend to file an involuntary petition in bankruptcy against the taxpayer.

Determinations of this type are:

1. Due and payable immediately.
2. Exempt from the following provisions of the Taxpayers' Bill of Rights:
 - a. RTC section 7094, (or similar STF section), *Release of Levy*.
 - b. RTC section 7097(a) (or similar STF section), *Prior Notice of Liens*.
3. Subject to the use of all collection remedies as of the date they are served, either personally or by mail.

Similar to deficiency determinations, any person against whom a jeopardy determination is issued has the right to petition for redetermination. However, in the case of a jeopardy determination the petition for redetermination must be filed within 10 days following the issuance of the *Notice of Jeopardy Determination*. Within the same 10-day period, the person must post such security as may be deemed necessary by the BOE (see CPPM 445.000 et seq.). If the jeopardy determination remains unpaid 10 days from the date of issuance and a petition for redetermination has not been filed, an additional 10 percent penalty will be added, except when a jeopardy determination is made against an existing self-assessed or BOE-assessed final liability that has already been assessed the 10% penalty.

A jeopardy determination is, in itself, an indication that collection will be jeopardized by delay. Therefore, district offices must give priority to their collection efforts, making full and prompt use of appropriate collection remedies, which may include the seizure of a taxpayer's personal property. If personal property is seized, the sale of the property must be delayed until an administrative hearing is either granted or denied. If the taxpayer does not request an administrative hearing, a 30-day period must elapse between the date of service of the jeopardy determination and the date of sale of seized assets.

DUAL DETERMINATIONS — GENERAL**764.030**

A “dual determination” is a determination made against a person for a tax liability that is also the obligation of another person. Dual determinations may be based upon the full amount of tax owed by the other person or for a portion thereof, depending on the specific circumstances. The liability may be based upon either self-assessed or BOE-assessed tax.

Some examples of circumstances where a dual determination may be issued include the following:

- More than one determination may be issued when there is doubt as to the true ownership of a business or when the true ownership cannot be established. Determinations for the same liability are made against each of the entities that investigation discloses could have operated the business and incurred the liability.
- Dual determinations are also issued whenever a person holding a permit or license sells the business or otherwise changes the ownership without notification to the BOE, allowing the succeeding entity to continue the business using the permit or license issued to the original operator (see CPPM section 734.000).
- Dual determinations may be issued when a purchaser of a business or stock of goods fails to withhold a sufficient amount of the purchase price to cover the tax liability of the seller (see CPPM section 732.000).
- Dual determinations may be issued against corporate officers for an unpaid tax liability incurred while the corporation is suspended (Sales and Use Tax accounts only, see CPPM section 764.060).
- In certain circumstances, a dual determination for personal liability may be issued against a corporate officer, or shareholder, or any responsible person under RTC section 6829 (Sales and Use Tax accounts only, see CPPM section 764.080).

Regardless of how many additional entities or persons have been issued a dual determination for the original liability, the liability is posted to the accounts receivable only one time.

The collector in the unit or district responsible for collection of the account has the responsibility of fully substantiating a dual determination case and bringing it to the attention of the appropriate section so a dual determination may be issued. For Sales and Use Tax accounts, the Special Operations Branch (SOB) or Audit Determination and Refund Section (ADRS) will review the information provided by staff and determine whether sufficient documentation has been provided to support the issuance of a dual determination.

DUAL DETERMINATIONS — STATUTORY PROVISIONS**764.040**

Dual determinations may be issued against a dualee for some or all of the unpaid liabilities of the primary taxpayer for any periods for which the statute of limitations have not expired.

DUAL DETERMINATIONS — PENALTY**764.050**

When a dual determination is issued against a dualee (secondary account), all penalties assessed to the primary account included in the periods of liability subject to the dual determination will be included in the determination assessed against the dualee, including any finality penalty assessed to the primary account. However, if the dualed liability is not paid before its finality date, it does not accrue an additional finality penalty. Additionally, if relief of penalty is granted under the primary account for periods that have been assessed to a dualee, the liability assessed to the dualee will be reduced by the same amount.

DUAL DETERMINATION AGAINST CORPORATE OFFICERS SUSPENDED CORPORATION**764.060**

Sales and Use Tax Regulation 1702.6 provides for the personal liability of:

1. A corporate officer or shareholder with control over operations or management of a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended.
2. Any responsible person who fails to pay or to cause to be paid any taxes due from a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended.

Personal liability shall extend to the unpaid tax, interest and penalties regardless of the basis for the suspension of the corporation's powers, rights, and privileges. However, personal liability under this regulation applies only when the BOE establishes that, during the period of suspension, the corporation:

1. Sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due, or
2. Collected use tax and failed to report and pay the tax, or
3. Consumed tangible personal property and failed to pay the applicable tax to the seller or the BOE.

When the evidence shows that tax reimbursement was the normal operating procedure of the corporation, a dual determination may be issued against the corporate officers of a suspended corporation. However, any liability determined against the corporate officer(s) must have been incurred by the corporation during the period during which it was suspended. Photocopies of evidence examined (if available) substantiating such procedures must be attached to the request to issue a dual determination.

Certain audit liabilities are subject to corporate suspension duals, depending on the basis for the audit. If the basis is underreported sales, and it is the normal operating procedure of the corporation to collect sales tax, then it can be inferred that the corporation reimbursed itself for the audited taxable measure. If the basis for the audit is disallowed sales for resale or disallowed sales in interstate commerce, it cannot be assumed that the corporation received reimbursement for the audited taxable measure. In this case, the audit measure may need to be separated into liabilities which are subject to dual determination and liabilities which are not.

A suspended corporation remains liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate powers, rights, and privileges were suspended, without regard to any personal liability determined against corporate officers or shareholders.

DUAL DETERMINATION AGAINST CORPORATE OFFICERS SUSPENDED CORPORATION**(CONT.) 764.060**

“Responsible Person” means any officer or shareholder who is charged with the responsibility for filing returns or payment of tax or who has a duty to act for the closely held corporation in complying with any provision of the Sales and Use Tax Law and who derives a direct financial benefit from the failure to pay the tax liability.

“Closely held” corporation means one in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business.

“Control over operations and management” means the power to manage or affect day-to-day operations of the business.

PROCEDURES TO ESTABLISH A CORPORATE SUSPENSION DUAL DETERMINATION**764.070**

A corporate suspension dual may be established even if the seller’s permit is still active. Complete each of the following steps before submitting a request for a dual determination to ADRS:

1. Establish that the corporation has been/was suspended by accessing Secretary of State corporate information via ACMS. Relevant information that can be obtained through the Secretary of State includes FTB filing history, the Federal Employer Identification Number (FEIN), the Corporate Number, the date of incorporation, the date of suspension (if any) and the filing and payment history for the corporation’s income taxes.
2. Establish that the statute of limitations has not expired for the liability in question.
3. Establish that the liability to be assessed against the corporate officers was incurred by the corporation during the suspension period.
4. Establish that the corporation is a closely held corporation by showing that:
 - a. The ownership is concentrated in one person, a family, or a small group of individuals.
 - b. The majority stockholders also managed the business.
 - c. The corporate minutes are inadequate.
5. Establish that the corporation received tax reimbursement. This can be determined in a number of ways:
 - a. Review previous sales tax returns for line 9 entries (sales tax included on line 1). Copies of prior tax returns can be ordered from the Taxpayer Records Unit if necessary, or the information can be printed from REV FZ in IRIS.
 - b. Review the audit comments on previous audits, including Form BOE-1296, *Account Update Information*.
 - c. Send a Form BOE-1508, *Dual Determination Information Request (Offer)* (available in ACMS) to each of the former corporate officers. A current statement of corporate officers can be obtained from the Secretary of State.
 - d. Send Form BOE-1509, *Dual Determination Information Request (Employee)*, (available in ACMS) to a few ex-employees of the corporation. A list of employees can be obtained from an external access request for payroll tax return data reported to EDD.

- e. Send a Form BOE-1510, *Dual Determination — Customer Affidavit*, (available in ACMS) to any previous customers of the corporation. Customers can be found from previous audits, bankruptcy mailing matrices or contact with ex-employees. If investigation does not reveal whether or not sales tax reimbursement was collected on the transaction for which the tax was due, a dual determination may be issued against the corporate officers only if there is evidence showing that the corporation's normal operating procedure was to include or add sales tax reimbursement. If it is known, or there is a strong presumption as in the case of disallowed deductions, that sales tax reimbursement was not collected, we should not include such sales in the dual determination. Transactions included under the "normal operating procedure" rationale that are later discovered not to include tax reimbursement must be deleted from the determination.
6. Ascertain the responsible individual who is charged with the filing and paying of taxes and other liabilities, or supervision of such employees, by:
 - a. Reviewing the information in the file and in collection notes.
 - b. Contacting ex-employees of the corporation and asking them to complete a Form BOE-1509.
 - c. Contacting responsible corporate officers and other corporate officers and asking them to voluntarily complete a Form BOE-1508.
 - d. Checking audit comments for any mention of responsible corporate officers, including form BOE-1296.
 - e. Checking previous sales tax returns and ordering corporate income tax returns.
 - f. Checking copies of previous checks used to pay sales tax returns for signatures.
 - g. If the corporation filed bankruptcy, checking the bankruptcy court file for a "Statement of Financial Affairs." This statement can provide a wealth of information including references to payments to corporate officers and major creditors in the period prior to the bankruptcy petition, and it is signed under penalty of perjury by the responsible officer.
 - h. Considering a subpoena of bank records to determine who signed checks. This tool is effective, but it is costly and time consuming. Given the added expense of a subpoena, other elements of the dual should be verified first.
7. Prepare an interoffice memorandum requesting a corporate officer dual determination and send it to ADRS along with documentation of the above items.

WHEN A CORPORATE SUSPENSION DUAL DETERMINATION SHOULD BE ISSUED

764.072

Corporate suspension dual determinations under Regulation 1702.6 should only be issued if the corporation's seller's permit is still active with no near-term expectation of being closed out (e.g., the corporation remains suspended but is solvent and capable of revival).

Additionally, for reporting periods during which the corporation was suspended, corporate suspension dual determinations should only be pursued within three years of the suspension date or three years from the date of the liability, whichever is later. Approval of all corporate suspension dual determinations should be made by the respective Assistant Chief of Field Operations or section supervisor prior to the request being forwarded to ADRS for billing.

If the corporation's seller's permit is closed, only a dual determination under Revenue and Taxation Code section 6829 should be considered.

PERMIT OF A SUSPENDED CORPORATION**764.074**

If a corporation is suspended by the Franchise Tax Board (FTB) or Secretary of State (SOS), the corporation's seller's permit should remain active until it has been determined that the corporation is no longer doing business. Staff should not close out the corporation's seller's permit and issue a new permit to an individual or a partnership solely because the corporation is suspended.

**DUAL DETERMINATIONS UNDER RTC SECTION 6829
STATUTORY PROVISIONS****764.080**

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

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

Additionally, the responsible person shall be liable only for transactions where the taxes became due during the periods he or she had the control, supervision, responsibility, or duty to act for the entity, plus the interest and penalties on those taxes (RTC section 6829(b)).

4. **Willfulness** (see CPPM 764.150) - Personal liability can be imposed on a responsible person only if the person willfully failed to pay or to cause to be paid taxes due from the entity (RTC section 6829(a), Regulation 1702.5(a)). "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action (RTC section 6829(d), Regulation 1702.5(b)(2)), and this failure may be willful even though such failure was not done with a bad purpose or evil motive (Regulation 1702.5(b)(2)).

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

RTC SECTION 6829 OVERVIEW OF PROCESS**764.090**

Once an entity's permit is closed in the Integrated Revenue Information System (IRIS) and the closed entity has an outstanding liability, staff in the responsible district or Headquarters unit works the account to obtain payment for the entity's outstanding liability.

Upon reviewing the case notes and file material, staff in the responsible district or Headquarters unit makes contact with officers/members/partners/potential responsible persons of the closed entity to request that the entity pay the outstanding liability in full or enter into a payment agreement. Additionally, staff discusses with the officers/members/partners/potential responsible persons RTC section 6829 and its implications with respect to personal liability should the outstanding liability of the entity remain unpaid. To expedite payment of the closed entity's liability, staff also determines if there are any outstanding assets of the closed entity that can be used to pay down the liability. Staff also determines whether other avenues of collection are available and whether these avenues have already been investigated (e.g., successor liability). Note that before and after a dual determination is issued pursuant to section 6829, staff should continue to pursue collection efforts against the closed entity.

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

A designated reviewer in the responsible district or Headquarters unit is then assigned to review the request. If the reviewer concurs that, based on the existing evidence, the four requisite elements have been established, the reviewer approves the dual request(s) and authorizes the issuance of the BOE-1515, *Notice of Proposed Determination*, to each potential responsible person (see CPPM section 764.170).

Except in limited circumstances (e.g., a jeopardy determination) approved by the assigned Chief (CEA) or his/her designee, staff then prepares and mails the BOE-1515 to each potential responsible person. The BOE-1515 generally must be mailed no later than one year prior to the expiration of the statute of limitations (see CPPM section 764.100). In limited circumstances, upon receiving approval by the assigned CEA or his/her designee, the BOE-1515 may be mailed less than one year prior to the expiration of the statute of limitations. The BOE-1515 process allows a potential responsible person that receives a BOE-1515 an additional 15 days to provide evidence that may warrant further investigation as to whether one or more of the requisite elements could potentially be disproved for any of the reporting periods at issue.

If a potential responsible person responds to a BOE-1515, after any additional investigation that is warranted is completed, and if one or more of the requisite elements have been successfully disproved for any of the reporting periods at issue, the request for the dual determination is modified or withdrawn, as appropriate.

RTC SECTION 6829 OVERVIEW OF PROCESS**(CONT.) 764.090**

If, after any additional investigation is completed, the reviewer believes the totality of the evidence still supports a finding that, for any of the reporting periods still at issue, it is still more likely than not that all four of the requisite elements have been established, the request for the dual determination is revised, as needed, and finalized, taking into account any post-BOE-1515 evidence. If the potential responsible person does not respond to the BOE-1515 or responds and no information is brought forth for staff to consider or investigate, then staff will document this in ACMS and the request for the dual determination is finalized.

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

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

STATUTE OF LIMITATIONS FOR RTC SECTION 6829 DUAL DETERMINATIONS**764.100**

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

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

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

STATUTE OF LIMITATIONS FOR RTC SECTION 6829 DUAL

DETERMINATIONS

(CONT.) 764.100

5. Successor's application for a seller's permit to determine whether the successor indicated it had purchased the business.
6. PACER and IRIS for any relevant bankruptcy or legal filings of the entity where the BOE was properly noticed as a creditor.

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

ESTABLISHING AN RTC SECTION 6829 DUAL DETERMINATION – GENERAL

764.110

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

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

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

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

1. Contact and interview officers/members/partners/potential responsible persons found throughout ACMS notes and make them aware of the entity's outstanding liability. When discussing the entity's outstanding liability with these persons, staff should request that the entity make payment(s) towards the outstanding liability or enter into a payment agreement.
2. Discuss RTC section 6829 and its implications with respect to personal liability for the entity's outstanding liability with officers/members/partners/potential responsible persons found throughout ACMS.
3. Determine if there are assets of the entity that can be used to reduce or pay the liability in full (liquor license, vehicles, vessels, machinery and equipment, funds in a bank account, deposits with creditors, etc.).

COLLECTIONS

ESTABLISHING AN RTC SECTION 6829 DUAL DETERMINATION—

GENERAL

(CONT.) 764.110

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

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

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

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

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

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

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

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

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

1. ACMS notes for statements made by officers/members/partners/employees/potential responsible persons that sales tax reimbursement or use tax was collected. ACMS notes may provide information regarding other persons to contact that are knowledgeable about the entity's sales and use tax matters.
2. **Sales and Use Tax Returns should be analyzed to determine if a line 9 deduction (Sales Tax (if any) included on line 1) has been taken.** Staff should review all sales and use tax returns (or return information) for the periods of liability to see if the returns had a line 9 deduction. If returns are not available for the periods of liability, staff may review returns filed prior to or subsequent to the periods of liability to determine if it was normal operating procedure for the entity to collect sales tax reimbursement.
3. **Audit comments for existing or prior audits, comments on re-audits, and petition materials of the entity for information about whether the entity collected sales tax reimbursement or use tax.** If the entity's unpaid liability is the result of an audit, staff must take care to ensure that the audit is thoroughly reviewed and that audit staff is consulted when it is unclear whether an audit item includes sales tax reimbursement or use tax collection. Staff must be able to determine which audit items include sales for which sales tax reimbursement or use tax was collected. However, there is no requirement that the audit was conducted on an actual basis to establish that sales tax reimbursement or use tax was collected. Audits based on samples, mark-ups, or other accepted methodologies are adequate to establish that sales tax reimbursement or use tax was collected if there is sufficient information to establish that it was the entity's practice to collect the applicable tax on all taxable sales. If, after fully investigating the matter, substantial uncertainty exists with respect to whether an audit item includes evidence of sales tax reimbursement or use tax collection, the benefit of the doubt should be given to the potential responsible person. **Audit workpapers may also include receipts or invoices which may show that sales tax reimbursement or use tax was added to the selling price.** An auditor may complete BOE-1296, *Account Update Information*, which may indicate whether sales tax reimbursement was included or added to the selling price.
4. **The entity's Central File for receipts and invoices.**
5. Form BOE-1508, *Dual Determination – Responsible Person Questionnaire* (available in ACMS), completed by the former corporate officers/members/partners.
6. Form BOE-1509, *Dual Determination – Business Operations Questionnaire* (available in ACMS), completed by employees, bookkeepers and CPA's or any other person that the investigator believes through a review of the case notes and interviews with officers/members/partners may have had knowledge of the business operation.
7. Form BOE-1510, *Dual Determination – Customer Affidavit* (available in ACMS), completed by customers of the entity. Customers can be found from previous audits, bankruptcy mailing matrices, contact with ex-employees, or internet sources.
8. Information from the landlord. **The landlord may have direct knowledge of whether the entity added sales tax reimbursement to or collected use tax on its sales. The landlord may have documents that support sales tax reimbursement or use tax collection, such as abandoned records, receipts, menus, advertisements, ledgers, etc.**

9. An entity's online menus, website, or online Shopping Cart may provide information that sales tax reimbursement or use tax was collected on taxable sales.
10. Advertisements, menus, brochures, price listings, or sales contracts.
11. Merchant credit card processor records may reveal charges that appear to include the base charge plus tax.
12. **The entity's books and records and ledgers.**
13. City business license applications may ask whether sales tax reimbursement will be collected.
14. **Businesses that are a franchise may provide information as to whether the cash registers are programmed to charge sales tax reimbursement on taxable sales, or may have records available to support that sales tax reimbursement or use tax was added to or included in the selling price.**
15. If the Investigations Division has conducted an investigation on the entity, staff can request access to the records under their control. **Receipts or invoices that support the collection of sales tax reimbursement or use tax may be available.**
16. Tax advice letters issued to the entity that explain the application of the SUT Law to the entity's facts when the request for advice stated that sales tax reimbursement or use tax was collected.

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

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

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

764.140

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

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

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829

DUAL DETERMINATION – RESPONSIBLE PERSON

(CONT. 1) 764.140

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

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

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

1. ACMS notes documenting conversations regarding repayment of the entity's outstanding liabilities and who staff spoke with. **In particular, ACMS notes that indicate the speaker, or some other person, was a person responsible for the entity's sales and use tax compliance.**
2. **Signed sales and use tax returns and prepayment forms.** If the sales and use tax returns and prepayment forms are signed by a Paid Preparer, then attempts should be made to contact the Paid Preparer in an effort to determine who was responsible for the non-payment of tax.
3. Signed BOE-555-EFT, *Authorization Agreement for Electronic Funds Transfer (EFT)*.
4. **Seller's Permit Application, which lists persons in an officer/member capacity.** The signature on the application should also be considered. Note: the list of officers on the seller's permit application may be outdated, with different officers in place during the periods of liability.
5. Person that signed or appears on the entity's lease agreement.
6. Person that signs checks issued on behalf of the entity or person listed on the financial institution's signature card as an authorized signor.

7. **Testimony and affidavits provided by a bookkeeper, CPA, landlord, employees, creditors, suppliers, corporate officers/members identifying who is a responsible person.** Testimony and affidavits signed under penalty of perjury should be given greater weight than answers to a questionnaire. Care must be taken in relying on testimony and affidavits, keeping in mind the possible conflicting interests of those responding to questionnaires. Questionnaires include:
 - a. Dual Determination – *Responsible Person Questionnaire* (BOE-1508)
 - b. Dual Determination – *Business Operations Questionnaire* (BOE-1509)
 - c. Dual Determination – *Creditor/Supplier/Landlord* (BOE-1511)
8. **Audit BOE-414-Z, Audit Assignment History, revealing who the audit was discussed with.** Even if the audit is for a different period, the audit workpapers can provide valuable information regarding a person's responsibilities within the entity.
9. **Audit BOE-836-A, Report of Discussion of Audit Findings, revealing who staff had conversations with regarding the outstanding audit liability.**
10. **Petition records pertaining to audits that include documents and materials as to who staff had discussions with regarding the audit and/or audit contentions.**
11. **Signed BOE-122, Waiver of Limitation.**
12. Personal bankruptcy filings of potential responsible persons. Potential responsible persons may report an entity's tax liability in their personal bankruptcy.
13. **Signed entity bankruptcy filings.**
14. Secretary of State's (SOS) Articles of Incorporation, Statement of Officers or Statement of Information which list officers/members.
15. **Corporate Minutes and By-laws identifying corporate officers' duties.**
16. Internet search for the entity or the entity's website.
17. Alcoholic Beverage Control (ABC) Liquor License (website and file information).
18. CLEAR public record reports naming the person representing the entity. Lawsuits involving the entity should be reviewed.
19. Better Business Bureau complaints naming the person representing the entity.
20. UCC filings revealing who signed the documents.
21. EDD Officer Data revealing the person authorized to act for the entity.
22. EDD tax returns and checks revealing who signed returns and checks.
23. Corporate and individual income tax returns revealing ownership interest in the entity and any titles.
24. **District Office Collection Information regarding who staff had discussions or other communications with regarding the entity's outstanding liability.**

**ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829
DUAL DETERMINATION – WILLFULNESS****764.150**

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

1. The responsible person had knowledge that the taxes were not being paid. Staff may obtain evidence that shows the responsible person had actual knowledge of the tax liability. In cases where staff does not have evidence of actual knowledge, staff can use available evidence, including circumstantial evidence, to show that it is more likely than not that the responsible person knew of the liability (e.g., under the circumstances, the responsible person must have known of the tax liability).
2. The responsible person had the authority to pay taxes or cause them to be paid. Whether a responsible person ever signed checks or even had check signing authority is not dispositive on this element. The crucial question is whether the person had the authority to pay the taxes or direct someone else to pay them.
3. Along with such knowledge and authority, the responsible person had the ability to pay the taxes but chose not to. Staff may show the ability to pay by, among other evidence, the collection of sales tax reimbursement or use tax that was not remitted. The ability to pay may also be shown by payments made to other creditors during or after the relevant periods of liability. Staff does not have to establish that the actual amount of taxes owed was available at any given time. Staff must merely show that funds were, in general, available and not paid to the BOE.

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

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

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829

DUAL DETERMINATION – WILLFULNESS

(CONT.1) 764.150

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

1. All documented conversations with responsible persons or other officers, partners, members, or employees in ACMS.
2. All signed sales and use tax returns and prepayment forms, **in particular, those returns signed by the responsible person.**
3. Signed checks to the BOE during or after liability periods, **in particular, those signed by the responsible person.**
4. **Testimony and affidavits provided by a bookkeeper, CPA, employee, corporate officer/member/partner/responsible person indicating who, within the entity, was aware of the entity's tax liability or potential liability.** This may include information obtained from:
 - a. Dual Determination – *Responsible Person Questionnaire* (BOE-1508)
 - b. Dual Determination – *Business Operations Questionnaire* (BOE-1509)
5. **Audit BOE-414-Z, Audit Assignment History, revealing with whom the audit was discussed.**
6. **Signed BOE-122, Waiver of Limitation (used to extend the three-year statute of limitations for periods included in an audit).**
7. **Audit BOE-836, Report of Discussion of Audit Findings, revealing who was in discussions with staff regarding the outstanding liability.**
8. Other documents contained in the audit workpapers that indicate who was involved in the day-to-day operation of the entity.
9. **Bankruptcy documents which reveal a responsible person filed a personal bankruptcy and reported the entity's tax liability on the Statement of Financial Affairs.**
10. **Petition records revealing who petitioned the entity's audit liability.**
11. **Records pertaining to investigations of other possible responsible persons within the entity for the same liability. This includes all information gathered in these investigations including, but not limited to affidavits, questionnaires, letters, emails, and other documentation.**
12. Central file records including, but not limited to letters, emails, and other communications with the responsible person or other persons associated with the entity.
13. Tax advice letters issued to the entity that explain the application of the SUT Law to the entity's facts.
14. Signed BOE-571-L, *Business Property Statement*, filed with County Assessor's Office, which identifies acquisitions of supplies, machinery, equipment, and office furniture. The form provides a notification to the signer that California use tax is imposed on consumers of tangible personal property that is used, consumed, given away or stored in this state and that businesses must report and pay use tax on items purchased from out-of-state vendors not required to collect California tax on their sales.

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829

DUAL DETERMINATION – WILLFULNESS

(CONT.2) 764.150

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

1. All documented conversations with officers, partners, members, responsible persons, or other employees in ACMS.
2. **Testimony and affidavits provided by a bookkeeper, CPA, employee, corporate officer/member/partner/responsible person.** This may include information obtained from:
 - a. *Dual Determination – Responsible Person Questionnaire* (BOE-1508)
 - b. *Dual Determination – Business Operations Questionnaire* (BOE-1509)
3. Signed sales and use tax returns and prepayment forms.
4. Signed checks to the BOE and creditors during or after liability periods.
5. **Corporate Minutes and By-laws identifying corporate officers' duties.**
6. Secretary of State's (SOS) Articles of Incorporation, Statement of Officers or Statement of Information which list officers/members. While a person's title does not establish his/her actual authority, it is evidence that should be considered.
7. **Audit BOE-414-Z, Audit Assignment History, revealing with whom the audit was discussed.**
8. **Other documents contained in the audit workpapers that indicate who was involved in the day-to-day operations of the entity and which persons directed payments of creditors.**
9. **Signed BOE-122, Waiver of Limitation (used to extend the three-year statute of limitations for periods included in an audit).**
10. **Audit BOE-836-A, Report of Discussion of Audit Findings, revealing who was in discussions with staff regarding the outstanding liability.**
11. Petition records revealing who petitioned the entity's audit liability.
12. Records pertaining to investigations of other possible responsible persons within the entity for the same liability. This includes all information gathered in the investigation including, but not limited to affidavits, questionnaires, letters, emails, and other documentation.
13. Central file records including, but not limited to, letters, emails and other communications with the responsible person or other persons associated with the entity.
14. Bankruptcy filings by the entity.

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

1. Evidence that sales tax reimbursement or use tax was collected but not paid to the BOE.
2. Payments made to the entity's landlord during or after the periods of liability.
3. **Payments made to the entity's creditors and suppliers during or after the periods of liability.**
4. Wages paid to employees during or after the periods of liability.
5. Bank statements.
6. **Payment of the entity's state income taxes during or after the periods of liability.**

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829

DUAL DETERMINATION – WILLFULNESS

(CONT.3) 764.150

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

Pro Rata Defense – Rebuttal of Willfulness

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

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

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

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

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

If staff determines that any of the above items are not satisfied, relief due to the entity making pro rata payments is not applicable to the responsible person. In the event that a pro rata defense might be applicable, then this should be communicated to the responsible person no later than the issuance of the BOE-1515 so that the responsible person might be afforded the opportunity to present evidence of pro rata payments.

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

GUIDELINES FOR PREPARING A DUAL REQUEST**764.160**

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

The request for a dual determination includes:

1. An interoffice memorandum addressed to ADRS,
2. A BOE-1512, *Dual Liability Billing Worksheet*, located on eBOE,
3. Copies of all relevant documentation and information gathered during the investigation, and
4. A copy of the BOE-1515, *Notice of Proposed Determination*.

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

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

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

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

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

Notice of Proposed Determination – Include a paragraph that states whether or not a response was received to the BOE-1515, *Notice of Proposed Determination* (see CPPM section 764.170). The paragraph should include a summary of the potential responsible person’s contentions, if any, and staff’s analysis of the contentions.

GUIDELINES FOR PREPARING A DUAL REQUEST

(CONT.) 764.160

3. **Statute of Limitations** – Include a paragraph explaining the date of knowledge (DOK) of the closeout and when the statute of limitations expires.
4. **BOE-1512, Dual Billing Worksheet** - Each request must include form BOE-1512, Dual Liability Billing Worksheet, to identify the primary account, dual account number(s), the responsible person(s), liability period(s), and the names and addresses for the copies (i.e., cc's).
5. **Account Number** - In most cases, a dual determination request will require issuing an arbitrary account number to the persons that the dual determination is intended to reach. It is the responsibility of the district or Headquarters unit to issue the necessary arbitrary account number before the dual determination request is submitted to ADRS. If the responsible person has an existing arbitrary number, then a billing should be issued to the existing arbitrary number in lieu of issuing a new arbitrary number. For additional procedures on issuing an arbitrary account number, see CPPM section 295.091.
6. **Signature and Approval** - Staff must sign and the designated reviewer must approve the request.

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

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

DISPROVING PERSONAL LIABILITY PRIOR TO NOD**764.180**

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

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

CORPORATION AS ALTER EGO**764.190**

When the shareholders are merely the “alter ego” (other self) of the corporation, the courts can treat the body of shareholders and the corporation as synonymous rather than as separate entities and hold the individual shareholders personally liable for the corporate obligations as a matter of equity. Collection via the alter ego approach is pursued by court action against the “alter ego” of the corporation (rather than by a dual determination process) in those cases involving “closely-held” corporations and statutory “close” corporations having no shareholder’s agreement or acting contrary to such agreement. Since the burden of proof rests with the BOE to prove the alter ego theory, thorough investigations are necessary to uncover the required evidence.

If collection from a closely held corporation appears unlikely and the liability is \$5,000 or more, the alter ego approach may be used to pursue collection from individuals through court action. Due to the expense of the court system and the difficulty in proving that alter ego exists, this action is employed as a last resort.

The control of the corporation by an individual, group or other person for the purpose of working a fraud on the creditors is an important element necessary to establish the alter ego theory. When attempting to establish alter ego, the following factors are essential before the corporation can be disregarded and others held liable:

1. Inadequate financing of the corporation.
2. Lack of corporate records.
3. Commingling of funds and collection of corporate funds to be used for the purposes of those controlling the corporation.

Examples of information to be secured are:

1. Has the corporation been suspended for nonpayment of franchise taxes?
2. Has a full set of records been set up and followed for the corporation, including records showing the issuance of stock? The corporate records to be considered are its records on issuance of capital stock, correspondence, bank accounts, payrolls, licenses, sales and purchase orders.
3. Has there been a commingling of corporate and personal funds? If the principals have commingled the corporate funds with their own funds, this is an indication the corporate officers are disregarding the corporate entity.
4. What is the capitalization of the corporation? Inadequate capitalization may be considered as a factor determining whether the corporate entity should be disregarded.
5. Have the minute books been maintained and are the corporate meetings being held with reasonable regularity?

In all cases where the possibility of asserting the alter ego theory exists, district office or Special Taxes division staff will forward comprehensive reports to SPS for review and decision as to further action.

ALTER EGO AND DUAL DETERMINATIONS — FIELD PROCEDURES**764.200**

If a corporation appears to be having financial problems, alternate methods of collection may be considered as described in the following five steps:

Step One

Ensure that the following conditions are met:

1. Collection from the corporation appears unlikely or is in jeopardy.
2. The liability to be assessed is \$5,000 or more for alter ego and \$500 or more for other collection alternatives (can be a lesser amount, if a reasonable possibility of collection from persons associated with the corporation exists and approval is obtained from the district administrator).

Step Two

If the conditions in step one are met, information obtained from the Secretary of State's office must be examined to determine the following:

1. Is the entity actually incorporated or registered as a foreign corporation with the California Secretary of State?
2. Is the corporation now, or was it during the period of liability, suspended by the Franchise Tax Board or Secretary of State?
3. Are the currently listed corporate officer(s) of record the same one(s) as those during the period for which a dual determination is contemplated? If they are the same persons, a dual determination may be issued against the corporate officers, provided the conditions listed in CPPM 764.070 are met. One exception exists for this requirement. If, at the time the audit determination became final the corporation was intact and had more than sufficient funds available but chose to pay other creditors instead of paying the audit liability, the responsible person may be held liable, even though he or she was not a responsible person during the audit period.
4. Who controlled the corporation when the business terminated and when the liabilities were incurred? If the other conditions in CPPM 764.090 are met, and the individuals were associated with the corporation and responsible for tax matters during the period to be dualled, then a dual determination may be issued against the corporation and the responsible individuals.
5. Was the corporation active when an alter ego situation was suspected? In the case of an alter ego situation, both qualifying elements must be documented (unity of interest and fraud or inequity).

If the entity is not incorporated in California or elsewhere, then the liability falls on the person(s) who operated the business.

Step Three

If none of the above collection alternatives mentioned in step two can be pursued, proceed as follows to determine whether any of the remaining noted collection alternatives can be pursued:

1. When a tax liability is determined against the successor, ascertain whether the predecessor failed to notify the Board of a change in ownership. If notification was not made, a dual determination should be issued against the predecessor, as indicated in CPPM 734.000 et seq.
2. Determine from reviewing the records whether any other alternative methods of collection of corporate liability against individuals can be used including fraudulent conveyances (CPPM 753.095), unpaid loans (CPPM 730.045), or unlawful distributions (CPPM 726.000). If any of these collection methods are viable, obtain complete documentation for the appropriate action.

Step Four

If the liability to be included in the dual consists of self-declared tax and/or prior audit determination:

1. For suspended corporations, complete an interoffice memo requesting a dual determination and send it with supporting documentation to SPS.
2. For duals under RTC section 6829 or court actions for alter ego, complete an interoffice memo requesting a dual determination and send it to ADRS along with any information on the individual's involvement in the business. ADRS will review for self-declared tax and include any that falls within the allowable billing period. Attach a copy of BOE-414-1A, *Summary of Tax Return Changes*, if applicable.

Step Five

If the liability to be included in the dual is a combination of self-declared tax and/or prior audit determination and liability from an audit in process:

1. Follow STEP FOUR (1) and (2) above.
2. ADRS will process the duals for the liability resulting from the current audit and SPS will process the duals resulting from self-declared and/or prior audit determination.

All requests must be approved by the District Principal Compliance Supervisor or District Principal Auditor prior to sending them to Headquarters. The supervisors of SPS and ADRS will review for approval all requests that will be billed by their respective section. Incomplete requests, or rejected requests, will be returned to the requester, giving the reason for return or rejection.

ALCOHOLIC BEVERAGE LICENSE SUSPENSIONS AND TRANSFERS

765.000

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE FOR FAILURE TO FILE OR PAY SALES & USE TAXES

765.005

Business and Professions Code (BPC) section 24205 provides for the automatic suspension of any alcoholic beverage license issued by the Department of Alcoholic Beverage Control (ABC) when:

1. The taxpayer fails to pay taxes or penalties due under the Sales and Use Tax law and that liability arises in whole or in part from the exercise of the privilege of an alcoholic beverage license, or
2. The taxpayer fails to pay any taxes or penalties due under the Alcoholic Beverage Tax Law, and
3. The taxpayer is at least 3 months delinquent in the payment of either the sales and use, or alcoholic beverage taxes or penalties listed above.

Staff must verify that the name of the licensee who holds the alcoholic beverage license (ABC license) for a specific business location matches the name and location of the BOE permit holder before requesting a suspension of the license. Staff can use the ABC License Query System on the website www.abc.ca.gov to find the name and business location of the licensee.

If the registration information of ABC and BOE do not match, staff may not request suspension of the license. Staff must investigate the discrepancy and determine the true ownership or location of the business. If the investigation supports a questionable ownership dual determination, a request for a dual billing against the ABC licensee with supporting documentation and supervisory approval should be sent to the Special Operations Branch (SOB). If staff's investigation reveals that BOE's registration is correct, staff should contact the local ABC office to request they investigate a possible "undisclosed ownership" issue or to get the correct entity licensed.

When the individual licensees are married or in a registered domestic partnership, ABC will make an exception and allow the suspension of a license even if the names do not match. ABC will allow a suspension of an ABC license when the seller's permit and the suspension request only list one tax debtor and the liquor license is held in the name of the tax debtor and his or her spouse or registered domestic partner. Conversely, ABC will also allow a suspension when the seller's permit and the suspension request is in the name of a husband and wife or registered domestic partnership and the liquor license is held in the name of only one of the spouses or partners. This exception also applies to ABC license transfer withholds (see CPPM section 765.040).

Taxpayers who have entered into an approved payment plan and are current with their payments should not be considered candidates for suspension of their ABC license.

ACMS contains two warning letters for use in cases where the potential to request suspension of an ABC license exists. The first letter, BOE-1495, *ABC Suspension — Preliminary Notice, Delinquency*, is designed to be used once an account is roughly 2 1/2 months delinquent in the filing or payment of a return or prepayment (calculated from the due date of the return/prepayment). This letter warns the taxpayer of the potential consequences for not filing and paying the delinquent return/prepayment or not paying the delinquent balance. The BOE-1495 should be mailed to the mailing address of record. In the case of tax return delinquencies, the taxpayer will be mailed a delinquency citation notice which also contains a warning that the taxpayer's liquor license may be suspended.

SUSPENSION OF ALCOHOLIC BEVERAGE**LICENSE FOR FAILURE TO FILE OR PAY SALES & USE TAXES****(CONT.) 765.005**

The second letter, BOE-1497, *ABC Suspension — Final Notice, Delinquency*, must be mailed to the mailing address of record prior to suspending the ABC license. The taxpayer must be delinquent in the filing or payment of a return or prepayment for three full calendar months (calculated from the due date of the return/prepayment) before the BOE-1497 can be mailed. This final letter affords the taxpayer 14 calendar days to comply before suspension occurs.

After the 14-day period has expired, if the taxpayer has not filed and paid the delinquent return/prepayment, paid the delinquent account balance, or commenced a satisfactory payment plan, a BOE-200-A, *Special Operations Action Request*, should be completed and sent to the SOB for processing. SOB will verify that:

1. Both the BOE-1495 and BOE-1497 have been sent to the taxpayer.
2. 14 days have elapsed since the BOE-1497 was mailed.
3. The taxpayer has not filed and paid the delinquent return/prepayment, paid their delinquent account balance, or commenced with a payment plan.

SOB will forward a BOE-1499, *ABC Suspension Request*, to ABC requesting the suspension of the ABC license until further notice. (Note: If the taxpayer complies before SOB issues the BOE-1499, staff must notify SOB immediately.)

Once a month, ABC processes BOE suspension requests by issuing a Notice of Suspension to the ABC licensee with the effective date of the suspension. SOB receives a copy of the notice and will note the suspension date in the appropriate ACMS account. The suspension status can be confirmed on ABC's website. BPC section 24205 provides that reinstatement of the liquor license should only be allowed when the taxpayer is current in filing and paying all delinquent sales and use taxes¹.

Once the taxpayer has filed and paid all delinquent sales and use tax returns, the collector assigned to the account will complete a BOE-1500, *ABC Suspension Release*, available in ACMS. Staff will scan the form and email it as a PDF file attachment to ABC's headquarters in Sacramento using the email address LicensingUnit@abc.ca.gov. Copies do not need to be sent by mail or fax to ABC's headquarters or to local offices. The BOE-1500 notifies ABC that the taxpayer's liquor license should be reinstated. ABC will process the release requests it receives by email and update its website within two business days.

**SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE
FOR FAILURE TO RENEW A SURETY BOND**

765.006

BPC section 24205 provides that the liquor license of a taxpayer shall be automatically suspended upon cancellation of its sales and use tax bond, or if that bond becomes void or unenforceable for any reason.

However, this procedure is not to be used when the BOE is making an initial demand for security. ACMS contains two warning letters for use when requesting an ABC license suspension for the above reasons. A BOE-1496, *ABC Suspension — Preliminary Notice, Security*, should be used when the taxpayer has not replaced a bond that was cancelled, became void or unenforceable, or when the taxpayer is delinquent in renewing or replacing the bond for approximately 2 1/2 months. This letter warns of the potential consequences of an automatic suspension of its ABC license for not providing a valid surety bond.

¹ An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved payment plan against an audit liability.

SUSPENSION OF ALCOHOLIC BEVERAGE**LICENSE FOR FAILURE TO RENEW A SURETY BOND****(CONT.) 765.006**

The BOE-1498, *ABC Suspension — Final Notice*, Security, should be mailed to the taxpayer approximately two weeks after the first letter or when a taxpayer is delinquent in renewing or replacing the surety bond for three full calendar months. A BOE-1498 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14-day period has expired, and the taxpayer has not provided a valid surety bond replacement or commenced with a satisfactory payment plan to replace the bond, a BOE-200-A, *Special Operations Action Request*, should be completed and forwarded to SOB for processing. SOB will verify that:

1. Both the BOE-1496 and BOE-1498 have been sent to the taxpayer.
2. 14 days have elapsed since the BOE-1498 was mailed.
3. The taxpayer is currently three full calendar months delinquent in the renewal or replacement of the surety bond.

SOB will forward a BOE-1499, *ABC Suspension Request*, to ABC requesting that the ABC license be suspended until further notice. (NOTE: If the taxpayer complies prior to issuance of the BOE-1499, staff must notify SOB immediately.)

BPC section 24205 expressly provides the license shall be automatically reinstated if the taxpayer files a valid bond, or pays his or her delinquent taxes or penalties, as the case may be¹. Once the seller has provided a valid surety bond and has paid all delinquent taxes or penalties, a release letter (BOE-1500, *ABC Suspension Release*) should be scanned and sent as a PDF file attachment to ABC's headquarters in Sacramento using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. This letter will notify ABC that the taxpayer's liquor license should be reinstated. ABC will process the release requests it receives by email and update its website within two business days.

WITHHOLD OF TRANSFER — ALCOHOLIC BEVERAGE LICENSE**765.010**

BPC section 24049 provides that the transfer of any alcoholic beverage license may be refused if the applicant is delinquent in the payment of any taxes due under:

1. The Alcoholic Beverage Tax Law,
2. The Sales and Use Tax Law,
3. The Personal Income Tax Law,
4. The Bank and Corporation Law,
5. Revenue and Taxation Code (RTC) section 134, defining unsecured property, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license, or
6. The Unemployment Insurance Code, when such liability arises out of the conduct of a business licensed by the ABC.

¹ An exception may be allowed if the taxpayer is current on self-declared taxes, has a valid surety bond, and is making payments on an approved payment plan against an audit liability.

WITHHOLD OF TRANSFER - ALCOHOLIC BEVERAGE LICENSE**(CONT.) 765.010**

This allows the BOE, through an arrangement with ABC, to request placement of a withhold against a liquor license transfer when the applicant is delinquent under any of the laws mentioned above.

For the purpose of these withholds and in cases of transfers, the applicant is deemed to be the transferor of the liquor license. ABC will not accept a withhold on a temporary or pending license of a transferee.

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLD**765.020**

“Limited” liquor licenses are those licenses that are restricted. This type of license is issued based on the population of the county in which the business premises are located. Those that lend themselves to withhold procedures are listed by the following ABC Tax Control Codes:

- 20 Off-sale beer and wine affected by the moratorium (see listing in CPPM 767.110).)
- 21 Off-Sale General
- 47 On-Sale General Eating Place
- 48 On-Sale General Public Premises
- 49 On-Sale General Seasonal
- 57 Special On-Sale General
- 75 Brewpub-Restaurant

In transferring a limited liquor license for a purchase price or consideration, an escrow must be established, with the following exceptions:

1. Any transfer of a liquor license made by an executor, administrator, guardian, conservator, trustee, receiver, assignor, or fiduciary who has been approved or authorized by ABC is considered to be the same as an escrow agent for the purpose of receiving withholds and release letters. Escrows are not required on premise transfers when ownership of the license remains the same.
2. Many types of licenses are excluded from the withhold procedure, as there is no requirement that escrow information be furnished to ABC. These license codes include:
 - 20 Off-Sale beer and wine (not affected by the moratorium)
 - 40 On-Sale Beer
 - 41 On-Sale Beer and Wine
 - 51 Club (worth a maximum of \$350)

FORM LETTERS USED IN THE WITHHOLD PROCESS**765.030**

The BOE-871, *Request for Transfer of Liquor License To Be Withheld*, is sent to ABC by SOB to request a withhold on the transfer of a liquor license.

The BOE-872, *Release of Hold Against ABC License*, is used by the district offices to notify ABC to release a withhold placed against the transfer of a liquor license.

The BOE-872-A, *Release of Withhold on Liquor License Transfer*, is used to inform the escrow agent of requirements that need to be met prior to the transfer of the liquor license. If a demand has been made to the escrow agent because of a liability against an account, generally both the BOE-872 and BOE-872-A, are sent to the escrow holder. After all liabilities against an account have been cleared, the escrow agent will forward the BOE-872 to ABC so the liquor license may be transferred. If ABC does not approve the transfer, the release will be returned with a brief explanation.

FORM LETTERS USED IN THE WITHHOLD PROCESS

(CONT.) 765.030

If BOE staff sends the BOE-872 to ABC to release the withhold, the form should be scanned and emailed as a PDF file attachment to ABC headquarters using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. ABC will process requests received by email within two business days. For expedited requests, staff must contact SOB after emailing the release request to ABC. SOB can be reached by phone at 916-445-1122 or by email at SpecialOperationsBranch@boe.ca.gov. SOB will then contact ABC to expedite the release.

TRANSFER WITHHOLD REQUESTS

765.040

BPC section 24049 provides the BOE the authority to refuse the transfer of an ABC license if the applicant is delinquent in the payment of any sales and use taxes due. BPC section 24040 states that each ABC license shall be issued to a specific person for a specific business location.

Collection staff and SOB staff share responsibility with respect to placing holds against the transfer of certain types of liquor licenses. The notification of a pending license transfer may come from the taxpayer or escrow company to the district office, or from daily ABC licensing reports obtained by SOB.

On a daily basis, SOB retrieves a licensing report of new ABC applications and identifies the district responsible for the applicant's business location. These reports are disseminated to District Principal Compliance Supervisors. The reports can assist staff in identifying permit issues, transfers involving an account with a delinquency or liability, or possible sale of a business.

A liquor license withhold may only be requested if the licensee matches the permit holder, with the exception of spouses and registered domestic partners (see CPPM section 765.005). A withhold may be requested if:

1. There is a reporting delinquency, or
2. A final or non-final liability exists.

When SOB determines that a withhold should be placed on a liquor license, a BOE- 871, *Request for Transfer of Liquor License To Be Withheld*, will immediately be sent to ABC headquarters, Sacramento, with a copy to the taxpayer.

When staff has determined that a withhold on the transfer of the liquor license should be placed, the district will notify SOB either by telephone (if an escrow is pending) or by sending a BOE-200-A, *Special Operations Action Request*. If notification is made by telephone, staff should also send a BOE-200-A to ensure the request is documented in ACMS. The request must contain the taxpayer's name, account number, liquor license number, and reason for requesting a withhold.

When there is a pending liquor license transfer and the BOE has a withhold on the license, the district will send a letter to all interested parties informing them a tax liability exists that must be cleared prior to the withhold being removed and the license being transferred.

**DEMAND AND RELEASE PROCEDURE
FOR ALCOHOLIC BEVERAGE LICENSE WITHHOLDS****765.050**

Upon receipt of the BOE-871, ABC will send SOB two copies of the application to transfer the license and SOB will forward this information to the responsible district office. Because a liquor license can transfer no earlier than 30 days from date of application to the date of transfer, the district office staff must make every effort to:

1. Clear all delinquent periods.
2. Search for related accounts that may be involved. Note that a withhold may only be placed for liabilities associated with use of the ABC license for a specific business. If there are taxes owed under another account held by the same taxpayer, a Notice of Levy may be sent for any additional funds that may be held in the escrow account.
3. Once a final or non-final liability is determined, send the BOE-872, *Release of Hold Against ABC License*, and the BOE-872-A, *Release of Withhold on Liquor License Transfer*, to the escrow holder. In cases where the escrow is not being handled by an escrow company (e.g., bank, etc.), or when there are multiple tax agency withholds on the license, only the BOE-872-A, should be sent to the escrow holder. The BOE-872 should be held pending payment of the demand or BOE's prorated share of the selling price with the other tax agencies.

If a demand is not sent to the escrow holder within 30 days, ABC may allow the license to transfer without payment.

When the escrow holder is in a position to disburse funds, payment will be made to the BOE pursuant to the BOE-872-A instructions and the escrow holder, except as noted previously, will simultaneously forward the BOE-872, *Release of Hold Against ABC License*, to ABC headquarters, Sacramento. ABC will then remove the withhold on the transfer of the liquor license.

If staff sends the BOE-872 to ABC to release the withhold, the form should be scanned and emailed as a PDF file attachment to ABC headquarters using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. ABC will process requests received by email within two business days.

For expedited requests, staff must contact SOB after emailing the release request to ABC. SOB can be reached by phone at 916-445-1122 or by email at SpecialOperationsBranch@boe.ca.gov. SOB will then call ABC to expedite the release. ABC headquarters will only accept a withhold or release request by telephone when a license transfer is pending.

FOLLOW UP REQUIRED ON WITHHOLDS**765.060**

Each district office is responsible for follow-up on its liquor license withholds. If an audit is recommended, compliance staff will notify the audit staff immediately so they can initiate the audit promptly or make the determination that no audit is necessary.

Under RTC section 6813, the BOE may require the posting of a security deposit in order to issue a Certificate of Tax Clearance that will allow the escrow to proceed with the transfer of the business and the liquor license. When a license withhold cannot be placed because no delinquencies exist with respect to reporting, or the account does not have a final or non-final liability at the time the application for transfer is made, the provisions of RTC section 6813 should be considered in order to ensure payment of any anticipated liability. If additional liabilities are found within the allotted time, or before all the escrow funds are disbursed, an amended demand should be made on the escrow agent.

Once the reason for placing the ABC withhold on the liquor license has been resolved, staff should make sure to have the withhold removed. Districts can make use of the “uncleared items flag” in ACMS to remind themselves that the withhold needs to be removed once the liability is resolved. The uncleared items flag will prevent the case from exiting ACMS until the flag has been cleared. This is important because the BOE-872, *Release of Hold Against ABC License*, is generated in ACMS and an account will route out of ACMS once payment in full is applied to the account.

MISCELLANEOUS INFORMATION — LIQUOR LICENSE WITHHOLD**765.070**

BPC section 23959 states, “If an application is denied or withdrawn, one fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes then due from the applicant under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.” ABC notifies SOB when such fees are available for a potential offset.

REMINDER TO THE DISTRICT OFFICES — LIQUOR LICENSE WITHHOLDS**765.080**

The following information is included as guidelines for staff when considering placement of a withhold against a liquor license.

1. Unless the account has a reporting delinquency, a non-final liability, or a final liability, a withhold on the transfer of a license will not be placed.
2. Withholds are not placed against cancelled, pending, or revoked liquor licenses.
3. After considering all factors, including application of cash deposits, a withhold is not to be requested on balances less than \$100.
4. A withhold should not be requested when the name of the ABC licensee does not match the name of the BOE permit holder, except in the cases of spouses and registered domestic partners.
5. A withhold should not be requested unless all or part of the liability or delinquency arose from the operation of a business requiring the holding of a liquor license.
6. No “rush” withhold on the transfer of a liquor license can be made unless there is an application for the transfer on the license.

BANKRUPTCIES INVOLVING LIQUOR LICENSES**765.090**

Normally, penalty and post-bankruptcy interest are charges that are not allowable in bankruptcy claims. However, if the bankrupt was the holder of a liquor license that has been sold by the bankruptcy trustee, a withhold will be placed against the license transfer and will not be removed until the total liability, including all penalty and interest to the date of payment, has been paid, regardless of the amount included in any bankruptcy priority claim previously filed. If the amount realized from the sale of the license is inadequate to pay the total amount due, release of the withhold must be given on the basis of the sales price of the license, rather than the amount of the tax liability. See 11 U.S.C. 326(a) to verify that the proper procedures for reasonable compensation of the bankruptcy trustee were followed.

ESCROWS**765.100**

Under the withhold procedure, a claim is made directly upon funds held in escrow pending transfer of the liquor license. Demand and release instructions (Forms BOE-872, *Release of Hold Against ABC License*, and BOE-872-A, *Release of Withhold on Liquor License Transfer*) are sent directly to the escrow agent who, upon payment of the demand, will send the BOE-872, *Release of Hold Against ABC License*, to ABC Headquarters in Sacramento.

If escrow funds are inadequate to pay in full the claims of all agencies that have withholds against the license transfer, SPS will be contacted to arrange a pro-rate of available funds. The information required includes the total selling price of the license, amount of escrow fee, the name of any other agencies having claims in the escrow, and the name and address of the escrow company.

INSTALLMENT PAYMENT AGREEMENTS — LIQUOR LICENSE WITHHOLDS **765.110**

Under no circumstances should an installment payment agreement be accepted when the debtor is the transferor. The transferor is receiving a consideration for the sale of the license and the liability should be paid out of the proceeds.

If the delinquent taxpayer is the transferee and an investigation discloses an inability to pay the obligation, even though acquiring a license, a report and recommendation should be forwarded to SPS. In certain unusual situations of this kind, the acceptance of a proposal for payment will be in order since the license represents an asset that might, at a later date, be helpful in clearing the account. In such cases, a liquor license withhold will not be removed unless a substantial initial payment has been received.

PAYMENT FOR RELEASE OF WITHHOLD — LIQUOR LICENSE**765.120**

Payment by personal check should not be accepted to release a liquor license withhold. An escrow check or a check from a source representing funds held in trust is acceptable.

INTERNAL REVENUE SERVICE SEIZURE AND SALE — LIQUOR LICENSE 765.130

The Internal Revenue Service (IRS) can seize and sell the liquor license of any person who is delinquent in the payment of federal taxes. To transfer the license once the license has been sold, the IRS and the buyer must open an escrow account with a bona fide escrow holder. The transfer of the license must be processed through ABC. The buyer and the details of the transfer must meet the same requirements as in any other liquor license transfer. District offices will be notified via Form BOE-871, *Request for Transfer of Liquor License to be Withheld*, of these pending transfers in the same manner as in the transfer of other licenses.

When a district becomes aware that the IRS has seized the license, a withhold on the transfer of the license will be requested when application for transfer is made, providing a reporting delinquency or delinquent liability exists. After the responsible district office receives notification of the pending transfer, Forms BOE-872 and BOE-872-A (the demand and release forms) are sent to the escrow holder. The demand and release forms are never deposited with the IRS even though they may be requested.

ABC DAILY TRANSMITTALS 765.140

Each day, all ABC district and branch offices type a transmittal that shows new liquor license requests, transfer applications (including name and address of transferor and transferee), and temporary applications. This information is sent to ABC Headquarters in Sacramento for immediate forwarding to SPS. Some BOE district offices formerly received copies of the transmittals directly from their neighboring ABC district office. This no longer officially occurs since SPS forwards copies of the transmittals to district offices when they are received from ABC Headquarters.

ABC district/branch offices are at the following locations:

Northern California

Fresno
Oakland
Sacramento
San Francisco
San Jose
Salinas
Santa Rosa
Eureka
Stockton
Yuba City
Redding

Southern California

Bakersfield
El Monte
Inglewood
Long Beach
Los Angeles/Wilshire
Rancho Mirage
San Bernardino
Indio
San Diego
Santa Ana
Santa Barbara
San Luis Obispo
Van Nuys

CONTRACTOR LICENSE SUSPENSIONS**766.000****SUSPENSION OF CONTRACTOR'S LICENSE****766.005**

Under Business & Professions Code (BPC) section 7145.5, the Board of Equalization (BOE) may request that the Contractors State License Board (CSLB) either deny or suspend a taxpayer's contractor license or application thereof, when that taxpayer has outstanding final tax or fee liabilities assessed by the BOE. This section does not apply to any outstanding final liability if the licensee has entered into a payment plan for that liability with the BOE and is in compliance with the terms of that plan. Staff may verify whether a taxpayer possesses a contractor license by visiting the Department of Consumer Affairs, Contractors State License Board website at www.cslb.ca.gov, and clicking on the Instant License Check icon.

When staff determines that a taxpayer's liability is final and the taxpayer possesses a contractor license with the CSLB, before contacting the CSLB to request the license be denied or suspended, staff must first ensure all other forms of collection actions pertaining to the taxpayer, such as issuing levies, sending notices to withhold, issuing wage garnishments, issuing liens, and utilizing offsets, have been exhausted before contacting the CSLB to request the license be denied or suspended. If the taxpayer has entered into a payment plan for a final liability with the BOE and is in compliance with the terms of that plan, staff shall not make a request from CSLB to deny or suspend the license. It is CSLB's policy to inform the taxpayer (licensee) of the request from the BOE and to allow the licensee an additional 60 days to resolve the issue before the contractor license is indefinitely denied or suspended.

Once the contractor license has been verified, staff will send the taxpayer (licensee) two warning letters informing the taxpayer of the impending request to CSLB for denial or suspension of his or her contractor license:

- BOE-1392-A, *CSLB Suspension - Delinquency Warning First Notice*, and
- BOE-1392-B, *CSLB Suspension - Warning Final Notice*, respectively.

Staff must allow 14 calendar days between both warning letters. If the liability remains unresolved after 14 calendar days from the date of the last warning letter, staff will send the request, via the BOE-200-A, *Special Operations Action Request*, to the BOE Special Operations Branch (MIC 55) for transmittal to the CSLB.

Staff should note that BPC section 7145.5(e) provides that the section does not apply if the taxpayer (licensee) has entered into a payment plan with the BOE and is in compliance with the terms of that plan for the liability owed. If the licensee's license is suspended and the licensee subsequently enters into a payment plan for an outstanding final liability or pays the liability in full and staff determines that the taxpayer is in compliance, the responsible collector will send a BOE-1392-R, *CLSB Suspension Release Notice*, directly to the CLSB's Judgment Unit to rescind the original request and reinstate the contractor license. The request can be sent via email directly to the CSLB Judgment Unit at judgments@CSLB.ca.gov, or by calling 916-255-3970 for assistance.

SEIZURE AND SALE**767.000****GENERAL****767.010**

As discussed in CPPM 753.000, whenever a warrant is used, the possibility that the action may result in an eventual sale of the taxpayer's property must be considered. Although in most cases seizure and sale of a taxpayer's property is not necessary, this collection technique is commonly employed when a liquor license is involved.

SEIZURE AND SALE OF LIQUOR LICENSE**767.020**

The Board of Equalization (BOE) may seize and sell the liquor license of any off-sale or on-sale¹ general licensee, or off-sale beer and wine licensee who, upon termination of business, is delinquent in the payment of any taxes due under the Sales and Use Tax Law. Seizure and sale of off-sale beer and wine licenses will be restricted to those licenses issued for locations in moratorium² counties and cities (see CPPM 767.110). In order to seize and sell a liquor license, the licensee shall have either surrendered the license to the Department of Alcoholic Beverage Control (ABC) or failed to pay the annual renewal fee to the department.

Business and Professions Code section 23000, et seq., provides that a license may be surrendered for a period of up to one year. Any license voluntarily surrendered shall be revoked if, within one year, it is not:

1. Transferred to another person.
2. Transferred for use at another location.
3. The licensed activity is not resumed.

For good cause, ABC may extend the surrender period. The reason for the surrender, and the expiration of the surrender period, are determined by ABC on a case-by-case basis.

No license is to be seized unless the intent is to immediately take the seized license to sale. Generally, a license should not be seized until 15 to 20 days prior to the expiration of the surrender period or the permanent revocation date because of nonpayment of the renewal fees. If the taxpayer is in bankruptcy, the liquor license may not be seized until the trustee abandons the license. Staff should send a letter to the trustee requesting to file a motion to abandon the license and copies of the letter to SPS and ABC.

1 As opposed to "on-sale" licenses, "off-sale" licenses do not permit consumption of alcoholic beverages on the business premises.

2 Section 23817.5 of the Business and Professions Code, effective January 1, 1995, places a moratorium on the issuance of original off-sale beer and wine licenses (type 20) in counties and/or cities where the ratio of type 20 licenses exceeds one for each 2,500 population.

REVOCATION OF GENERAL ON-SALE AND OFF-SALE LICENSES OR OFF-SALE BEER AND WINE — FAILURE TO PAY RENEWAL FEE

767.030

With the exception of a temporary license or a daily on-sale general license, Business and Professions Code section 24048(d) provides that “Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) [of section 24048], a license that is in effect on the month posted on the license continues in effect through 2 a.m. of the 60th day following the month posted on the license, at which time it is automatically canceled.” Licenses canceled under section 24048(d) that are not reinstated during the 30 days immediately following the cancellation date are automatically revoked on the 31st day. A permanently revoked license cannot be revived. When this happens, the potential for selling the license and obtaining full or partial payment to satisfy the taxpayer’s liability is lost.

The Special Procedures Section (SPS) will identify for the district offices those licensees who have failed to renew their license. The district offices will follow these non-renewals by checking with ABC district offices up to the 15th day before the permanent revocation date of the license, at which point seizure of the liquor license may be requested.

APPROVAL FOR SEIZURE AND SALE OF LIQUOR LICENSE

767.040

Approval for seizure of a liquor license rests with the district administrator who will, once the license is seized, appoint someone to conduct the sale (normally a Business Taxes Compliance Specialist). The forms necessary to seize and sell a liquor license are all accessed through ACMS. These forms are:

- Form BOE-21 *Liquor License — Notice of Sale.*
- Form BOE-22 *Liquor License — Notice of Seizure.*
- Form BOE-23 *Liquor License — Successful Bidder.*
- Form BOE-264 *Declaration of Service by Mail.*

To seize a liquor license, the license need not be physically seized; however, to the extent possible, the license should be taken if the licensee willingly gives up possession. Form BOE-22 informs the licensee that the license will be offered for sale and the proceeds of sale applied as payment of delinquent taxes.

The licensee is served the first copy of Form BOE-22, which is sent to the person’s last known residence or business address in this state by United States mail, first-class postage prepaid. The second copy is mailed to the local ABC district office.

The licensee may redeem the license at any time prior to the date of sale of the license by the BOE or the appropriate deadline, whichever occurs first, by paying the renewal fee and penalty. If the owner redeems the license, either by paying the fees to ABC or reimbursing the BOE for fees advanced, the sale is canceled and the license seizure released. If the licensee redeems the license and finds a buyer, the BOE will be paid through escrow. A forced sale by the BOE may result in receiving less revenue for the license than a voluntary sale would yield.

RENEWAL FEES — LIQUOR LICENSE

767.050

After seizing the liquor license, district office staff will request an advance with which to pay the renewal fee and penalty and prevent the permanent revocation of the liquor license. The request for an advance is routed to SPS who will deliver the payment warrant to ABC Headquarters for that purpose. The district office is responsible for ensuring that Form ABC-292, *Application for Reinstatement*, is completed (at the ABC district office) after payment of the renewal fees. Staff should check the ABC web site for current annual renewal fees and penalty amounts.

NOTICE OF PUBLIC SALE OF LIQUOR LICENSE**767.060**

The BOE-21, *Liquor License — Notice of Sale*, giving the time and place of sale, must be fully completed and served on the licensee and given to interested bidders. The BOE-21 shall be sent in an envelope addressed to the person at his or her last known residence or place of business in this state by United States mail, first-class postage prepaid, at least 25 days (30 days for licensees residing out of state) before the date set for the sale. (RTC section 6797 and Code of Civil Procedure section 1013) The notice contains:

1. A description of the license.
2. A statement saying unless the renewal fees are paid on or before the date entered in the BOE-21, the license will be sold in accordance with law and the notice.
3. The amount due (including interest, penalties, and costs).
4. The name of the delinquent licensee.
5. The conditions of sale.
6. The minimum acceptable bid.

A BOE-264, *Declaration of Service By Mail*, shall be executed upon the completion of mailing by the person actually placing the notice in the mail. The declaration will be attached to each copy of the BOE 21 and become a part of the sale file.

The BOE-21 shall be published in a newspaper of general circulation published in the city in which the property is located, if in a city, or if not, in the judicial district, or if none, in the county. A copy of the notice must be in the hands of the newspaper in time to permit the newspaper to make the initial publication not less than twenty days before the date set for sale. The notice must be printed once a week for three weeks and with at least five days between each printing.

The newspaper billing will be sent to the Accounting Services Section, in triplicate, together with two copies of the notice and one copy of the affidavit of publication prepared by the newspaper. The office holding the sale must ask the newspaper to prepare the affidavit although, as a general rule, this is done as a matter of course. Publication costs should be accumulated and reimbursed to the Accounting Services Section from the proceeds of sale. The original affidavit of publication becomes a part of the sale file.

A notice to the general public of the time and place of sale shall also be made by posting the notice in two public places in the county at least twenty days before the date of sale. The outside or the public corridor of a building is considered a public place. The inside of a plate glass window or a private corridor of a public building is not a public place. To attract the maximum amount of prospective bidders and improve the probability of a successful sale, the notice should be posted in four or five places, including the location of the ABC office that has jurisdiction over the license.

A declaration of the posting of notice will be executed by the person actually posting the notice. The places of posting will be part of the declaration. This declaration will become a part of the sale file.

Upon completion of the license transfer, a copy of all *Liquor License — Notices of Sale*, newspaper announcements and bids should be compiled and sent to the Taxpayer Records Section Unit for retention in Documentum.

NOTICE OF PUBLIC SALE OF LIQUOR LICENSE**(CONT.) 767.060**

The BOE-21 will also be posted on the BOE's public website for all liquor licenses being seized and sold. The BOE-21 will be posted under the "Business Center" section, under the heading "Liquor Licenses for Sale by BOE." By posting this to the website, the BOE will potentially attract more buyers for the liquor license and increase the potential for the license selling at a greater amount, thus increasing the collected amount.

The following are procedures for posting the BOE-21 to the BOE's public website:

1. The BOE-21 will be completed in ACMS.
2. Staff will notify the Liquor License Internet Coordinator (LLIC) in the Special Operations Branch regarding the BOE-21 to be posted by sending an email to ABCSeizureDesk@boe.ca.gov. Include the account number, liquor license number, and date of the BOE-21 in the request for posting to the LLIC.
3. The LLIC will make the BOE-21 document accessible to persons who are visually impaired.
4. The LLIC will email the pdf files and webpage revisions to the Web Services Division at BOEInternet@boe.ca.gov for posting to BOE's public website.
5. Staff will email the LLIC for removal of the BOE-21 when the auction has been completed or cancelled.

ADDITIONAL ADVERTISING**767.070**

Districts located in counties where it has been difficult to sell licenses should consider other sources of letting potential bidders know of the pending sale. This might include sending a copy of the Form BOE-21 to those local businesses that might want to upgrade their liquor license. For Off-Sale General licenses, this would include those businesses coded as a Grocery Store with Beer and Wine. For On-Sale General licenses, this would include Bars with only a Beer and Wine license. Mailing labels for these establishments by business code can be obtained by sending a request to the Technology Services Division.

SALE OF LIQUOR LICENSE**767.080**

The individual selected to conduct the sale will choose the site for the sale. In choosing the site, consideration should be given to weather conditions, anticipated attendance, ease of access, etc. Some typical locations would be the lobby of a state building, the front steps of the City Hall, a state garage, the parking lot of a district or branch office, or on the sidewalk in front of the office. Some state buildings may have conference or court rooms available at specified times.

The district office responsible for the city or county area where the liquor license is seized is responsible for conducting the sale. The provisions of CPPM 135.020 pertaining to conflict of interest issues will apply to the sale of the liquor license. For future district office reference, the person responsible for the sale should prepare a list of names and addresses of all persons expressing an interest in the sale.

A record should be kept of all costs attributable to the sale, such as long distance calls, postage, notice of publication, renewal fees, etc. The individual additional expense items may be listed on the Form BOE-21, if the district desires. As noted before, the Form BOE-21 shall contain the minimum bid acceptable. The minimum bid will be based on the going value of that type license in the county where issued and should not be less than 80% of the market value.

The sale at public auction will be made at the precise time and place indicated in the notice. The person conducting the sale will commence proceedings either by reading the *Liquor License — Notice of Sale* in full or by otherwise indicating the purpose of the sale. In the latter alternative, the person conducting the sale shall state that the sale is for unpaid sales and use taxes and mention the following:

1. Total amount owed, including all incidental expenses.
2. Name of the licensee.
3. Type of liquor license being sold.
4. County in which the license was issued.
5. Minimum bid acceptable.

An announcement should be made that the sale is at public auction to the highest bidder for cash in lawful money of the United States, the full bid price to be deposited with an escrow holder within 48 hours, excluding weekends and holidays. After opening escrow, the buyer is required to make application for transfer and pay transfer fees to the department. The buyer is also required to pay all escrow fees.

Transfer of the license is contingent upon approval of the applicant by ABC. If, after opening escrow and making application for license transfer, ABC finds the applicant to be unacceptable as a license holder, the process to sell the license will start over, with prior costs included in the *Liquor License — Notice of Sale*. ABC in Sacramento and its appropriate district office will receive copies of all actions taken pursuant to Business and Professions Code section 24049.5, i.e., notices, letters, declarations, etc.

CONCLUSION OF SALE AND ESCROW — LIQUOR LICENSE**767.090**

The buyer will be given written confirmation (Form BOE-23, *Notice of Sale — Successful Bidder*), of the successful bid and notified (within 30 days) to file an application for license transfer, and (within 48 hours) deposit with escrow an amount representing the full bid price of the license. The buyer is responsible for notifying the Board of Equalization when escrow is opened. The district office will then complete the escrow instructions.

If there are other holds on the license, the proceeds of sale, less advances, must be prorated with agencies authorized to place holds on the license. Otherwise, surplus funds, if any, will be paid in the order of priority set forth in Business and Professions Code section 24074. For this reason, it is imperative to establish a proper minimum acceptable bid.

Questions about the seizure and sale of liquor licenses should be referred to SPS.

SEIZURE AND PUBLIC DRAWING OF ORIGINAL ISSUE LIQUOR LICENSE**767.100**

Newly issued general on-sale or off-sale licenses, or licenses that were previously transferred between counties, cannot be transferred to another owner for a period of two years from the date of the initial issuance or date of the inter-county transfer. Exceptions to this provision exist when the owner of the license is deceased, when the owner of the license is a corporation whose stock is publically traded on the New York Stock Exchange and is required by law to file periodic reports with the Securities and Exchange Commission, or when the ABC determines that the transfer is necessary to prevent undue hardship. Although we do not anticipate encountering any of these exceptional situations, should you do so, you may email the Compliance Policy Unit at SUTDCPU@boe.ca.gov with any questions. Additionally, a license that was transferred between counties within the last five years cannot be sold for more than \$13,800. After these time constraints have passed, there are no further price restrictions and the license may be sold at auction to the highest bidder.

When determining whether a license should be seized, collection staff must be aware of when the license was initially issued as well as if the license has been transferred between counties. Staff must take into consideration any price restrictions that may apply in determining whether it is cost-effective to seize and sell a liquor license. For assistance in determining any applicable restrictions, please reference the decision chart following this section

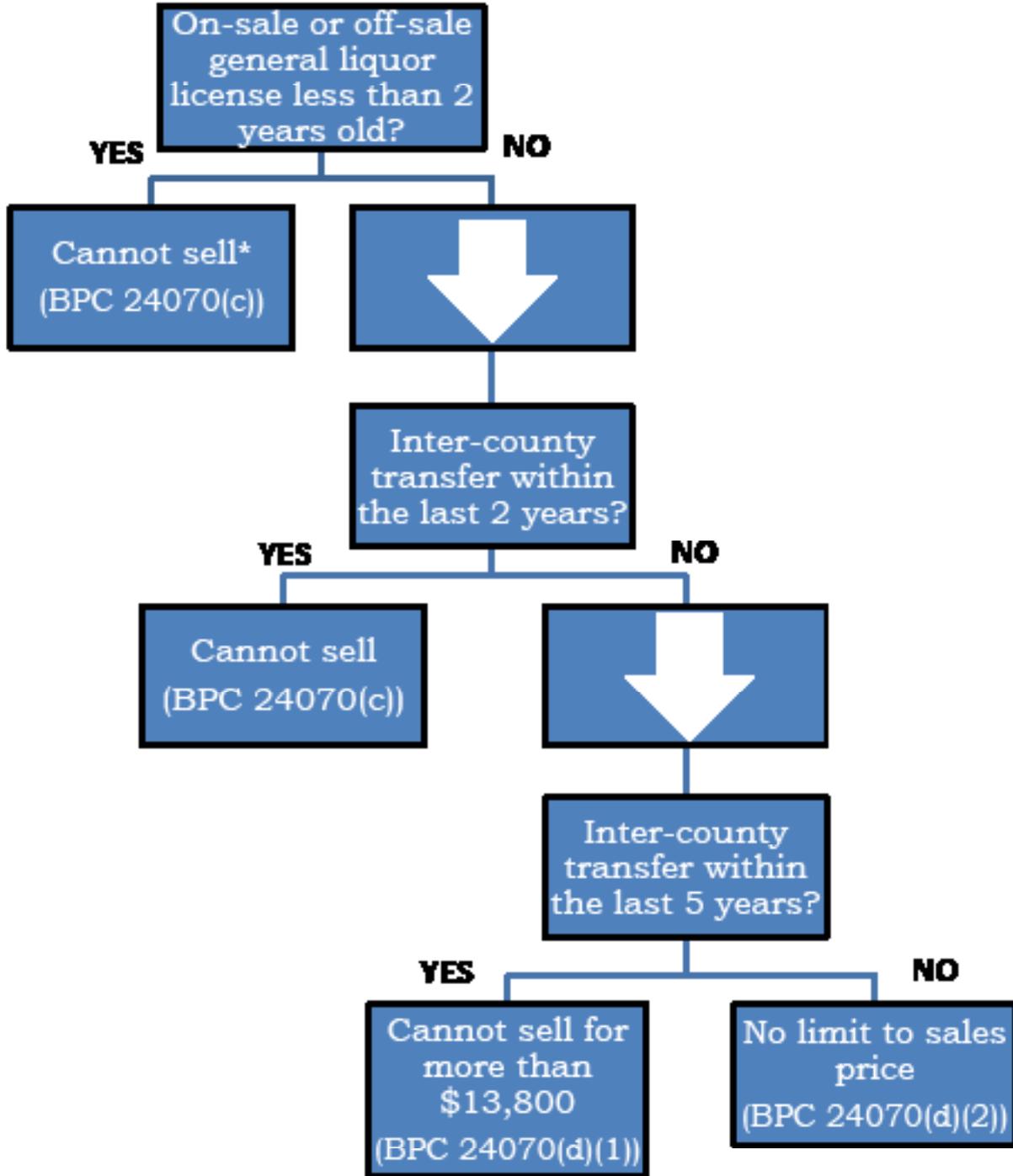
The BOE cannot accept bids at public auction that exceed the maximum allowable amount. In these instances, the BOE may hold a public drawing in lieu of a public auction. The forms necessary to conduct a public drawing for this purpose are not available as standard forms. Sample letters follow this section. The *Notice of Sale by Public Drawing* shall be advertised by following the procedures in CPPM 767.060.

The *Notice of Sale and Entry Letter* may be mailed to known interested participants, liquor license brokers, and unsuccessful bidders of prior ABC drawings. Only one entry form should be accepted from each corporation or each family unit (husband-wife, parent-child).

The lower portion of the *Notice of Sale and Entry Letter* should be severed, folded, and placed in a container large enough to allow room for mixing or shaking before the drawing. Two BOE employees should conduct the drawing. All entries should be drawn. The ranking or order of drawing (i.e., 1, 2, 3, etc.) should be placed on the entry form and letter as the control number.

The participant whose name is first drawn, if not present at the drawing, should be notified by telephone and sent a confirmation letter. If the first drawing participant fails to open escrow or complete the license transfer, the license should be offered to the next ranking participant(s) until the sale is completed.

Decision Chart



* Exceptions may exist. Contact SUTDCPU@boe.ca.gov with questions.

COLLECTIONS

SEIZURE AND PUBLIC DRAWING OF ORIGINAL ISSUE LIQUOR LICENSE

(CONT.2) 767.100

Sample Notice of Sale by Public Drawing letter

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
Notice of Sale by Public Drawing

Notice is hereby given that, pursuant to the authority of Section 24049.5 of the Business and Professions Code, the State Board of Equalization will sell the following described liquor license, by public drawing on _____ 19__, at 10:00 A.M., at the State Board of Equalization, _____.

Liquor License No. :
County in which issued:
Type of License:

Said liquor license was seized by the State Board of Equalization to recover delinquent sales and use taxes, interest and penalties incurred by _____, a seller within the meaning of the Sales and Use Tax law, to wit:

Tax \$ _____
Interest \$ _____ to _____
Penalty \$ _____
Costs \$ _____
TOTAL \$ _____

The license will be offered for sale for \$ _____ plus applicable costs to the person whose name will be drawn at random from the names of all interested parties. Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, effect of the sale, and the liability of defaulting bidders. Names for the drawing will be accepted in the name of the applicant(s) only and cannot be in the name of a nominee. Drawing Entry forms are available from the above Board of Equalization office. Transfer of said license is contingent upon approval of the applicant by the Department of Alcoholic Beverage Control in accordance with the laws, rules, and regulations administered by that department. Within 48 hours of the sale, excluding weekends and holidays, the successful buyer must open an escrow account with an escrow holder approved by the Board of Equalization. The buyer will deposit in lawful money of the United States an amount representing the full sale price of the license. Within 30 days of the opening of the escrow, the buyer must apply for transfer of the license and pay transfer fees to the Department of Alcoholic Beverage Control. Applicant must receive Department of Alcoholic Beverage Control approval of transfer within 75 days from the date of application, and the escrow must close within 120 days of opening, otherwise the sale may be canceled. Buyer is to pay all escrow fees.

SALE PRICE OF LICENSE \$
LICENSE SALE COSTS \$
TOTAL SELLING PRICE \$

The licensee may redeem the license at any time prior to the date of sale by conforming to the requirements for reinstatement of a license pursuant to Sections 24048.1 or 24048.3, Business and Professions Code.

DATED: _____, 19 _____ STATE BOARD OF EQUALIZATION
Account No. BY:

cc: ABC District Office,
ABC Headquarters, 2927 Lennane Drive, Suite 100, Sacramento, CA 95834
Special Procedures Section

SEIZURE AND PUBLIC DRAWING OF ORIGINAL ISSUE LIQUOR LICENSE

(CONT.3) 767.100

Sample Notice of Sale and Entry letter

NOTE: Use standard BOE letterhead for this letter.

Control No. _____

The State Board of Equalization will offer for sale, by public drawing, to be held at 10:00 a.m. _____ at _____ the following liquor license.

Liquor License No. _____
Issued in _____
Type of License _____

The license will be offered for sale to the first participant whose name is drawn, at random, from the names of all people interested in purchasing the license. If that participant declines to purchase, or otherwise fails to comply with the conditions set forth in the enclosed Notice of Sale, the license will then be offered to the next name drawn until sold.

To be eligible for the drawing complete the entry form below. Please note only one entry will be accepted per corporation or family unit.

Sincerely,

Entry for Liquor License Drawing

Name of Buyer(s): _____
(No Nominee Accepted)

Address: _____

City: _____ CA Zip Code _____

Daytime Telephone No: (_____) _____

Control No. _____

COLLECTIONS

SEIZURE AND PUBLIC DRAWING OF ORIGINAL ISSUE LIQUOR LICENSE

(CONT.4) 767.100

**Sample Confirmation to Successful Drawing
Entrant Sale of Liquor License letter**

NOTE: Use standard BOE letterhead for this letter.

CONFIRMATION TO SUCCESSFUL DRAWING
ENTRANT SALE OF LIQUOR LICENSE

RE: Public Sale of Liquor License

No:

Please accept this letter as confirmation your name was drawn to purchase liquor license _____ offered for sale by public drawing on _____, 19____. The liquor license transfer, as stated in the Notice of Sale, is contingent on approval by the Department of Alcoholic Beverage Control.

You are to open escrow with a Board approved escrow company within 48 hours, excluding weekends and holidays, and to deposit with escrow, as stated in the notice, the full purchase price of the license, \$_____. You are also required to make application for transfer to the Department of Alcoholic Beverage Control, _____, _____, California.

You are responsible for payment of all escrow fees and to see that the escrow holder notifies this office of the opening of the escrow.

Sincerely,

cc: ABC District Office
ABC Headquarters, 3927 Lennane Drive, Suite 100, Sacramento CA 95834
Special Procedures Section
District
Branch (if applicable)

Attachment: Notice of Sale

LIQUOR LICENSE MORATORIUM CITIES AND COUNTIES

767.110

The number of off-sale beer and wine licenses is limited to one for each 2,500 people in a city or county, and the number of beer and wine licenses that can be issued in a city or county *in combination with* off-sale general licenses is limited to one for each 1,250 people. (Business and Professions Code section 23817.5). The following lists are updated every five years by the Department of Alcoholic Beverage Control.

Moratorium — Counties			
Effective January 1, 2005			
County	Moratorium	County	Moratorium
Alameda	NO	Orange	NO
Alpine	YES	Placer	YES
Amador	YES	Plumas	YES
Butte	YES	Riverside	NO
Calaveras	YES	Sacramento	NO
Colusa	YES	San Benito	YES
Contra Costa	NO	San Bernardino	NO
Del Norte	YES	San Diego	NO
El Dorado	YES	San Francisco	YES
Fresno	YES	San Joaquin	YES
Glenn	YES	San Luis Obispo	YES
Humboldt	YES	San Mateo	NO
Imperial	YES	Santa Barbara	YES
Inyo	YES	Santa Clara	NO
Kern	YES	Santa Cruz	YES
Kings	YES	Shasta	YES
Lake	YES	Sierra	YES
Lassen	YES	Siskiyou	YES
Los Angeles	NO	Solano	NO
Madera	YES	Sonoma	YES
Marin	YES	Stanislaus	YES
Mariposa	YES	Sutter	YES
Mendocino	YES	Tehama	YES
Merced	YES	Trinity	YES
Modoc	YES	Tulare	YES
Mono	YES	Tuolumne	YES
Monterey	YES	Ventura	NO
Napa	YES	Yolo	YES
Nevada	YES	Yuba	YES

COLLECTIONS

LIQUOR LICENSE MORATORIUM CITIES AND COUNTIES

(CONT. 1) 767.110

Moratorium — Cities**Effective January 1, 2005**

Alameda County			
City	Moratorium	City	Moratorium
Alameda	NO	Livermore	YES
Albany	YES	Newark	NO
Berkeley	YES	Oakland	NO
Dublin	NO	Piedmont	NO
Emeryville	YES	Pleasanton	NO
Fremont	NO	San Leandro	NO
Hayward	NO	Union City	NO

Contra Costa County			
City	Moratorium	City	Moratorium
Antioch	NO	Moraga	NO
Brentwood	YES	Orinda	NO
Clayton	NO	Pinole	NO
Concord	NO	Pittsburg	YES
Danville	NO	Pleasant Hill	YES
El Cerrito	NO	Richmond	NO
Hercules	NO	San Pablo	YES
Lafayette	NO	San Ramon	NO
Martinez	NO	Walnut Creek	NO

Los Angeles County			
City	Moratorium	City	Moratorium
Agoura Hills	NO	Compton	NO
Alhambra	NO	Covina	NO
Arcadia	NO	Cudahy	YES
Artesia	NO	Culver City	NO
Avalon	YES	Diamond Bar	NO
Azusa	YES	Downey	NO
Baldwin Park	NO	Duarte	YES
Bell	YES	El Monte	NO
Bellflower	NO	El Segundo	YES
Bell Gardens	YES	Gardena	NO
Beverly Hills	NO	Glendale	NO
Bradbury	NO	Glendora	NO
Burbank	NO	Hawaiian Gardens	YES
Calabasas	NO	Hawthorne	NO
Carson	NO	Hermosa Beach	YES
Cerritos	NO	Hidden Hills	YES
Claremont	NO	Huntington Park	YES

Los Angeles County			
City	Moratorium	City	Moratorium
Commerce	YES	Industry	YES
Inglewood	YES	Pomona	NO
Irwindale	YES	Rancho Palos Verdes	NO
La CanadaFlintridge	NO	Redondo Beach	NO
La Habra Heights	NO	Rolling Hills	NO
Lakewood	NO	Rolling Hill Estates	NO
La Mirada	NO	Rosemead	NO
Lancaster	NO	San Dimas	NO
La Puente	NO	San Fernando	YES
La Verne	NO	San Gabriel	NO
Lawndale	YES	San Marino	NO
Lomita	NO	Santa Clarita	NO
Long Beach	NO	Santa Fe Springs	YES
Los Angeles	NO	Santa Monica	NO
Lynwood	NO	Sierra Madre	NO
Malibu	YES	Signal Hill	YES
Manhattan Beach	NO	South El Monte	YES
Maywood	YES	South Gate	YES
Monrovia	NO	South Pasadena	NO
Montebello	NO	Temple City	NO
Monterey Park	NO	Torrance	NO
Norwalk	NO	Vernon	YES
Palmdale	NO	Walnut	NO
Palos Verdes Estates	NO	West Covina	NO
Paramount	YES	West Hollywood	NO
Pasadena	NO	Westlake Village	NO
Pico Rivera	YES	Whittier	NO

Marin County			
City	Moratorium	City	Moratorium
Belvedere	NO	Ross	NO
Corte Madera	NO	San Anselmo	YES
Fairfax	YES	San Rafael	YES
Larkspur	NO	Sausalito	YES
Mill Valley	NO	Tiburon	NO
Novato	NO		

Moratorium — Cities
Effective January 1, 2005

Orange County			
City	Moratorium	City	Moratorium
Aliso Viejo	NO	Lake Forest	NO
Anaheim	NO	La Palma	NO
Brea	NO	Los Alamitos	NO
Buena Park	NO	Mission Viejo	NO
Costa Mesa	YES	Newport Beach	NO
Cypress	NO	Orange	NO
Dana Point	NO	Placentia	NO
Fountain Valley	NO	Rancho Santa Margarita	NO
Fullerton	YES	San Clemente	NO
Garden Grove	NO	San Juan Capistrano	NO
Huntington Beach	NO	Santa Ana	NO
Irvine	NO	Seal Beach	NO
Laguna Beach	NO	Stanton	YES
Laguna Hills	NO	Tustin	NO
Laguna Niguel	NO	Villa Park	NO
Laguna Woods	NO	Westminster	NO
La Habra	NO	Yorba Linda	NO

Riverside County			
City	Moratorium	City	Moratorium
Banning	YES	Lake Elsinore	YES
Beaumont	YES	La Quinta	NO
Blythe	YES	Moreno Valley	NO
Calimesa	YES	Murrieta	NO
Canyon Lake	NO	Norco	YES
Cathedral City	YES	Palm Desert	YES
Coachella	YES	Palm Springs	NO
Corona	NO	Perris	NO
Desert Hot Springs	YES	Rancho Mirage	NO
Hemet	YES	Riverside	NO
Indian Wells	NO	San Jacinto	YES
Indio	YES	Temecula	NO

Moratorium — Cities
Effective January 1, 2005

Sacramento County			
City	Moratorium	City	Moratorium
Citrus Heights	NO	Isleton	YES
Elk Grove	NO	Rancho Cordova	NO
Folsom	NO	Sacramento	YES
Galt	YES		

San Bernardino County			
City	Moratorium	City	Moratorium
Adelanto	NO	Montclair	YES
Apple Valley	NO	Needles	YES
Barstow	YES	Ontario	YES
Big Bear Lake	YES	Rancho Cucamonga	NO
Chino	YES	Redlands	NO
Chino Hills	NO	Rialto	NO
Colton	YES	San Bernardino	YES
Fontana	NO	Twentynine Palms	NO
Grand Terrace	YES	Upland	NO
Hesperia	NO	Victorville	YES
Highland	NO	Yucaipa	NO
Loma Linda	NO	Yucca Valley	YES

San Diego County			
City	Moratorium	City	Moratorium
Carlsbad	NO	Lemon Grove	NO
Chula Vista	NO	National City	NO
Coronado	NO	Oceanside	NO
Del Mar	NO	Poway	NO
El Cajon	YES	San Diego	NO
Encinitas	NO	San Marcos	NO
Escondido	YES	Santee	NO
Imperial Beach	NO	Solana Beach	NO
La Mesa	YES	Vista	NO

Moratorium — Cities
Effective January 1, 2005

San Mateo County			
City	Moratorium	City	Moratorium
Atherton	NO	Menlo Park	YES
Belmont	NO	Millbrae	NO
Brisbane	YES	Pacifica	NO
Burlingame	NO	Portola Valley	NO
Colma	YES	Redwood City	NO
Daly City	NO	San Bruno	NO
East Palo Alto	NO	San Carlos	NO
Foster City	NO	San Mateo	NO
Half Moon Bay	YES	South San Francisco	NO
Hillsborough	NO	Woodside	NO

Santa Clara County			
City	Moratorium	City	Moratorium
Campbell	YES	Morgan Hill	YES
Cupertino	NO	Mountain View	NO
Gilroy	YES	Palo Alto	NO
Los Altos	NO	San Jose	NO
Los Altos Hills	NO	Santa Clara	NO
Los Gatos	YES	Saratoga	NO
Milpitas	NO	Sunnyvale	NO
Monte Sereno	NO		

Solano County			
City	Moratorium	City	Moratorium
Benicia	YES	Suisun City	NO
Dixon	YES	Vacaville	NO
Fairfield	NO	Vallejo	NO
Rio Vista	YES		

Ventura County			
City	Moratorium	City	Moratorium
Camarillo	NO	Port Hueneme	NO
Fillmore	YES	Santa Paula	YES
Moorpark	NO	Simi Valley	NO
Ojai	YES	Thousand Oaks	NO
Oxnard	NO	Ventura	YES

SEIZURE AND SALE OF REAL PROPERTY**767.150**

This is a step-by-step guide for the process of seizing and selling real property. A seizure and sale may be considered whenever the total liability owed is \$5,000.00 or more.

Step 1:

Using the RealQuest system or CLEAR, obtain a property information print out of each parcel you are reviewing for potential seizure and sale. This document will provide you with the following information:

- 1. Address:** This will be used on the warrant to describe the property to be seized and sold.
- 2. APN (Assessor's Parcel Number) and County:** This number will also be used in the description of the property for the Court and the law enforcement department serving the warrant.
- 3. How the Property is Deeded:** In the case of joint tenants or tenants in common, the Board of Equalization can only levy on the interest of the taxpayer per Code of Civil Procedure section 704.820. This means that the purchaser from the seizure and sale would become a joint owner with the joint tenant remaining on the property title. Also, please note that there are certain community property exemptions that might apply when the spouse is not on the seller's permit. The property is subject to community property law and title would be vested with the community property spouse. See Code of Civil Procedure section 703.110, Exemptions Applicable When Judgment Debtor Married.
- 4. Date and Instrument Number of the Last Sale:** This information will be used to research liens.
- 5. Land Use:** It is not the policy of the BOE to seize and sell property used as the primary residence of a taxpayer. Every warrant for a seizure and sale must specify whether or not a dwelling exists on the property. If a dwelling does exist, an application for "Order for Sale of a Dwelling" must be made with the Superior Court within twenty (20) days of the date of the seizure and sale warrant. A request for referral to the Attorney General to file the application must be sent to SOB with the warrant request. See Code of Civil Procedure sections:
 - 704.710 Dwelling Family Unit.
 - 704.720 Exemption of Homestead.
 - 704.730 Amount of Homestead.
 - 704.740 General Requirement for Sale of Dwelling.
 - 704.750 Application for Order for Sale of Dwelling.
 - 704.760 Contents of Application.

In a forced sale, a homestead need not be recorded with the County Recorder's Office to be declared in effect. The judge decides the issue of homestead during the hearing process on the Order for Sale of a Dwelling.

- 6. Original Mortgage Holder and Amount Financed:** This will help to determine how much money is owed on the property. This information may not always be available.
- 7. Current State of Property Taxes and Year of Delinquency:** If the property is delinquent for property taxes, there may be a seizure and sale process already in motion. Check with the County Hall of Records to determine if a notice of sale has been issued. You may send a levy to the County Property Tax Assessor's Office for any excess funds from their seizure and sale procedure.

Step 2

Verify the Board of Equalization has filed a lien and determine the date the lien was recorded. All liens recorded both before and after the BOE's lien must be reviewed to determine equity and the potential for sale. This is the time to order a property profile on the subject property. These reports are available from local title companies.

Step 3

Through the property profile or via a field call to the local County Hall of Records, determine all liens and encumbrances both superior and inferior to the BOE's lien(s). As you review the liens and encumbrances for the subject property, make a list of names and addresses of all mortgage holders and judgment lien holders. This information will be vital when attempting to determine equity.

Step 4

Determine Fair Market Value (FMV). How do you determine FMV? If possible, make a field call to the subject property to determine the current state of repair (condition) of the property. Obtain prices of sales of similar property (comparables) in the area. This information can be obtained via the property profile or by Internet search. This will enable you to make an estimate of the FMV of the property. Another method for appraisal is to have a BOE property tax appraiser set the FMV. Requests are made through SOB.

For an exact FMV, have the property appraised by a real estate appraiser. However, remember that there will be a cost for this service. To request funds for these costs, forward a memorandum to SOB and a copy to the Accounting Section.

Step 5

Determine Equity of the Property. To determine the equity for the subject property, send a letter to each judgment creditor, lien holder, and mortgage holder requesting the pay-off balance (see sample letter at the end of this section). The courts require this information if the property being sold is a "dwelling." If the mortgage holder or lien holder will not respond, a subpoena duces tecum may be needed. Refer to CPPM section 774.000 for information on how to request a subpoena duces tecum. Remember that a separate subpoena will be needed for each lien holder that will not respond to your request for pay-off information.

Step 6

Evaluate the information received. You should evaluate the information received at each step. However, from Step 7 there will be costs to the state and litigation may be required. Therefore, prior to going any further, meet with your supervisor and together evaluate the information received to determine if the seizure and sale is cost efficient.

Step 7

Order Cost of Litigation Guarantee. What is a Cost of Litigation Guarantee? This is a title report, which in addition to the title report, includes an attached schedule C. The schedule C includes the name and address of each litigant required to be notified by the courts in the sale. If the sale is of a “dwelling,” this is a required report [see Code of Civil Procedure section 704.760 (c)]. This report protects the state against lawsuit if a party to the litigation is overlooked. This report does not contain the pay-off amount for the liens. This report only records the original lien amount filed.

To determine the fee for a cost of litigation guarantee contact a local title company. For an estimate of cost, the title company will need to know the amount of the BOE’s lien(s). Once you have determined the cost, send your request via memorandum as follows: one copy to SOB and one copy to the Accounting Section. Once the payment is authorized, go forward with the Cost of Litigation Guarantee report.

Step 8

Determine fees for seizure and sale. Contact your local law enforcement office to determine the amount of warrant fees needed to seize and conduct the sale. For total fees also include the cost of the litigation guarantee.

Step 9

Complete BOE-200-W, *Special Operations Warrant Request*, to obtain a seizure and sale warrant along with a request for Attorney General referral if the subject property is a “dwelling.” The BOE-200-W must include a full legal description of the property to be seized. It must also include the present address of the owner of the property. This is required because the law enforcement officer must personally serve the owner of the property with notification that the property has been seized.

Step 10

The law enforcement department will notify you, as the BOE’s representative, that the property has been seized. If the property has a “dwelling,” the law enforcement department will give you notice that you have twenty (20) days to obtain an “Order for Sale of Dwelling.” It is at this time that the Attorney General process goes forward. Once the judge has issued the order, the court will notify the law enforcement department to proceed with the sale and any conditions for the sale, such as a homestead or minimum bid.

If no dwelling issue exists, the law enforcement department will proceed with the sale process 120 days after the levy notice is served on the judgment debtor for the interest in the real property. For reference as to the process that the law enforcement department uses to sell the subject property, see the following Code of Civil Procedure sections:

701.510	Sale of property levied upon.
701.520	Collection; Sale of collectible property.
701.530	Notice of sale of personal property.
701.540	Notice of sale of real property.
701.545	Period that must elapse before giving notice of sale.
701.547	Notice to prospective bidders.
701.550	Notice of sale to persons requesting notice.
701.555	Advertising of sale by judgment creditor or judgment debtor.
701.560	Effect of sale without required notice.
701.570	Place, time, and manner of sale.
701.580	Postponement of sale.

COLLECTIONS

SEIZURE AND SALE OF REAL PROPERTY

(CONT. 3) 767.150

After the warrant is sent to the law enforcement department for seizure and sale, see the following Code of Civil Procedure sections:

- 701.590 Manner of payment..
- 701.600 Defaulting bidder.
- 701.610 Persons ineligible to purchase.
- 701.620 Minimum bid.
- 701.630 Extinction of liens upon sale.
- 701.640 Interest acquired by purchaser.
- 701.650 Delivery of possession or of certificate of sale of personal property.
- 701.660 Deed of sale of real property.
- 701670 Contents of certificate or deed of sale.
- 701.680 Sale as absolute; Liability.
- 701.810 Distribution of proceeds of sale or collection.
- 701.820 Distribution of proceeds.
- 701.830 Procedure where conflicting claims to proceeds.

Once the warrant goes to the law enforcement department, the responsibility for the sale shifts to that agency. However, it is recommended that you remain knowledgeable of the law enforcement department's process.

COMPLIANCE POLICY AND PROCEDURES MANUAL

Seizure and Sale of Real Property

(Cont. 4) 767.150

Sample letter

STATE OF CALIFORNIA

BETTY T. YEE
First District, San Francisco

STATE BOARD OF EQUALIZATION

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

District Office Address

City, CA Zip Code

MICHELLE STEEL
Third District, Orange County

TELEPHONE (XXX) XXX-XXXX

FAX (XXX) XXX-XXXX

JEROME E. HORTON
Fourth District, Los Angeles

www.boe.ca.gov

Date

JOHN CHIANG
State Controller

(Company name or person's name)

(address)

(City, State Zip)

CYNTHIA BRIDGES
Executive Director

Re: Lien recorded in (_____) County

Acct. No.: SR XX 99-999999

Taxpayer's Name

Dear _____:

The Board of Equalization is seeking information on the above referenced taxpayer. A search of the records for (_____) County disclosed lien number XX-XXXXX filed on (____ DATE ____) by you for a money judgment. A copy is attached for your reference.

Government Code Section 15618 states, "The board may examine, as a board, individually, or through its staff, the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report." The information requested below is required for tax administration purposes only and will not be used for any other purpose.

Please provide the following information in regard to the subject lien:

Has the above referenced lien been satisfied?

If yes, what date was the debt paid in full?

If no, what is the pay-off balance for this debt?

Thank you for your assistance in this matter. A postage-paid return envelope is enclosed for your convenience. If you have any questions, please call me at (XXX)-XXX-XXXX.

Sincerely,

[Working Title]

TAXES COLLECTED BY OTHER AGENCIES**768.000****VEHICLE, VESSEL, OR MOBILEHOME USE TAX COLLECTIONS****768.020**

Among other things, the Board of Equalization (BOE) is responsible for the collection of sales and use taxes. However, other agencies may act for the BOE and collect the use tax on its behalf for certain types of use tax transactions. This situation typically occurs when vehicles, undocumented vessels, and mobilehomes are purchased from persons who are not authorized dealers, manufacturers, dismantlers, or lessor-retailers.

Under Sales and Use Tax Regulation 1610, *Vehicles, Vessels and Aircraft*, certain exemptions from use tax may apply to purchases of vehicles and undocumented vessels. If the use tax is applicable, the Department of Motor Vehicles (DMV) collects the tax from the purchaser based on the purchase price of the vehicle or undocumented vessel.

With certain exceptions listed in Sales and Use Tax Regulation 1610.2, *Mobilehomes and Commercial Coaches*, purchasers of mobilehomes and commercial coaches required to be registered annually under the Health and Safety Code shall pay tax to the Department of Housing and Community Development (HCD) when making application for registration.

The Board of Equalization is responsible for collection of the use tax on purchases of other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health and Safety Code) that are not registered or subject to identification with the DMV or HCD. (See CPPM chapter 8, *Consumer Use Tax*.)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**768.030**

Mobile Home Registration Information

HCD provides the ownership and registration information for mobilehomes not registered with DMV. Ownership information is filed by license, serial or decal number, but is sometimes also available by name and address of the owner.

A formal title search may be requested by completing Form No. HCD-491.1, which is available from HCD's web site located at www.hcd.ca.gov. In addition to providing the title report, HCD will send notification of any title changes for the specified mobilehome that are filed during the subsequent 120 days.

MOBILEHOME DEALER REPORT OF SALE BOOKS**768.040**

Mobilehome dealers are required to release their Report of Sale books to HCD upon closure of the business. The BOE and HCD have established an agreement allowing for mutual notification when a dealer terminates his or her business.

HCD will telephone the BOE office that has jurisdiction over the dealer's place of business when HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license. If the BOE does not require the Report of Sale books, HCD will destroy them. If the account is selected for audit, HCD will deliver them to the responsible BOE office. The Report of Sale books will be returned to HCD at the following address upon completion of the audit and after it is determined that there is no further need for the Report of Sale books:

Department of Housing and Community Development
 Division of Codes and Standards
 Occupational Licensing Section
 PO Box 31
 Sacramento CA 95812-0031

MOBILEHOME DEALER REPORT OF SALE BOOKS

(CONT.) 768.040

If HCD finds evidence of noncompliance when reviewing the dealer Report of Sale books, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate BOE office.

When the BOE closes the seller's permit of a mobilehome dealer, it will contact the HCD Sacramento Occupational Licensing Section at the following number: (916) 323-9803. If Report of Sale books are required for examination or audit, they can be requested at this time. The BOE will also provide the location of books and records if known, and the close out date. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the BOE, if requested, or destroy them.

To determine a dealer's financial stability and ensure subsequent public protection, the BOE will notify HCD, at the above telephone number, when either of the following situations arise on active mobilehome dealer accounts:

1. A mobilehome dealer has an outstanding liability that requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:
 - a. Based on the audit, it does not appear the business is properly financed to clear the probable liability.
 - b. There is factual information produced through the audit that the business is in financial trouble.
 - c. The district administrator approves the telephone call.

A notation that HCD has been contacted should be entered on the compliance or audit assignment.

PAYMENT PLANS**770.000****GENERAL****770.005**

All collectors will collect amounts owed to the Board of Equalization (BOE) in a fair, efficient, and timely manner. When a collector contacts a tax or fee payer (taxpayer) for payment, he or she should request payment in full and should not solicit the taxpayer to request a payment plan. However, when payment in full is not feasible, accepting payments over time may be the best alternative. RTC section 6832¹ provides the BOE discretionary authority to allow an installment payment agreement (payment plan) in cases of financial hardship. In such cases, allowing a payment plan may accommodate a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the BOE.

Taxpayers may request a payment plan online via the BOE website or while in contact with a collector. When a payment plan is requested online and meets certain criteria, it may be approved automatically without any action by staff. When a payment plan is not automatically approved, collectors will review the account history and the taxpayer's financial situation to determine if a payment plan is appropriate and if so, the duration and payment amount.

ONLINE PAYMENT PLANS**770.010**

If an online payment plan request is automatically approved, the required payments will be automatically debited from the taxpayer's bank account and the details of the payment agreement will be recorded in the Automated Compliance Management System (ACMS).

Only **final** liabilities are eligible for online payment plans. In addition, accounts with any of the following conditions are **not** eligible to request an online payment plan:

- Account is assigned Taxable Activity Type (TAT) PS, MJ, PC, PK, PO, PT, or SM;
- Account does not currently exist in ACMS;
- Permit or license is revoked or suspended;
- Account is in any of the following functional areas in ACMS: Offer in Compromise, Write Off, Special Operations/Bankruptcy, or Legal;
- Account already has an active or pending payment plan;
- All liability periods are in DFB (discharged in bankruptcy) status; or
- Account has Owner Code R (Receivership).

To submit a payment plan request online, taxpayers can either log in as a Registered User using their User ID and Password, or they can use their Express Login code. Only taxpayers who log in as a Registered User will:

- Have the ability to view the total amount due² on the "Proposed Payment Terms" page;
- Have the ability to view the current status from the "Account Service Menu" page, under "Account Functions;" and
- Receive status updates by email after the request is submitted (e.g., Approved, Submitted, Reviewed, Denied and Unable to Process).

¹ RTC Section 6832 refers to Sales and Use Tax Law; similar provisions exist for special taxes and fees.

² Only the total amount of the liability will be displayed for Registered Users. It will not be broken down into individual liability or reporting periods.

ONLINE PAYMENT PLANS**(CONT.) 770.010**

Taxpayers may request a payment plan for any final liability amount (no minimum or maximum), and must enter the following information when requesting a payment plan:

- Name (Express Login users only),
- Phone number,
- Payment amount (payment must be \$10 or more),
- Frequency (weekly, biweekly, or monthly),
- First payment date (first payment must be within 45 days of request), and
- Bank information (routing number, account type, and account number).

The online system then provides a review screen for taxpayers to check the information entered and the terms of their proposed payment plan for accuracy. The taxpayer can edit or cancel the request prior to submitting it. Once submitted, the taxpayer will be immediately advised if the plan was approved or submitted for review. They will also be provided a confirmation number. Staff can find the confirmation number in ACMS on the “Review Online Promise” and “View Online Proposals” windows.

Online Payment Plans Entering ACMS

Payment plans will enter ACMS in real time. Immediately after the taxpayer submits the request, a history line is created and the payment plan terms are populated. Staff can view the submitted payment plan in ACMS by selecting the “Online Proposal” button. For purposes of the Collection Cost Recovery Fee (CRF) assessment, the effective date of the payment plan will be the date of the request, and is not modifiable in ACMS.

Automatic Approval

Payment plans that meet the criteria for auto approval will be immediately approved and the account will be routed to the Promise to Pay work state in ACMS without any action required by staff. Exceptions to this are partnership accounts (ownership type of P, M, L, or V) or accounts with both final and non-final liabilities. Partnership accounts and accounts with both final and non-final liabilities will route to the Access A – Awaiting Call work state in ACMS so staff can review for any additional actions needed. In either case, the Automated Clearing House (ACH) debit payments will begin. Staff should not attempt to renegotiate an auto approved payment plan of the individual partner for partnership accounts. Note that Consumer Use Tax Accounts route to the appropriate state for the type of account (i.e., Automobiles, Boats, or Planes).

Requests Submitted for Review

Requests that are not automatically approved will route to the Review Online Promise work state to be reviewed by staff and will appear in the collector’s work list within 1-2 business days (see CPPM section 770.012).

Payment Plan Confirmation

The method in which the taxpayer logs in (Registered User or Express Login) and whether the payment plan is auto approved or approved after a collector’s review determines which forms, if any, are required. A Registered User’s proposal whose payment plan is auto approved will automatically receive an email notification and no action is required by the collector. For an Express Login user whose payment plan is auto approved, a BOE-407-CN, *Payment Plan Confirmation*, is automatically mailed out by the headquarters’ mailroom. See CPPM section 770.012 regarding what forms are required if the payment plan is not auto approved.

REVIEW OF THE REQUEST**770.012**

If the payment plan is not automatically approved, the collector must evaluate the financial ability of the taxpayer to determine if the request for a payment plan is reasonable. Before accepting a payment plan, the collector will have thoroughly investigated the financial condition of the taxpayer and made a determination that a payment plan is the most effective method available to collect the amount due.

The primary consideration in accepting a payment plan is whether the plan is in the best interest of the state. When it is not in the best interest of the state, the BOE is not required to accept a taxpayer's request for a payment plan. Staff must review the taxpayer's past payment history, the merits of the proposal and the viability of the business when determining whether to accept the proposed payment plan. When reviewing past payment history, a taxpayer's record under related accounts as an individual, partner, or corporate officer should also be considered. Although a taxpayer's payment history may be unsatisfactory, the district office or program area has discretion to grant an exception. Staff must document the justification in ACMS notes. In addition, financial documentation may be needed to determine the financial need for a payment plan, and to evaluate reasonable repayment terms.

If the taxpayer has the ability to pay the liability in full, or has assets that can be liquidated or borrowed against to pay the liability, he or she should be required to do so. Some examples of sources to borrow from include:

- Lines of credit – secured and unsecured,
- Life insurance policies or retirement funds,
- Equity in real property interests,
- Equity in vehicles, vessels, or aircraft,
- Credit cards,
- Cash advances,
- Stock certificates or bond holdings, or
- Interests in certain estates or trusts.

By requiring the taxpayer to exhaust other means to pay off the existing liability, the BOE is relieved of the burden of financing the tax debt. If the taxpayer has the ability to pay in full but refuses, the collector should proceed with collection action. If borrowing is not an option, the taxpayer should attempt to make arrangements with other creditors to defer or make smaller payments to those creditors to allow for payment in full or larger payments towards the delinquent tax liability.

Online Requests Requiring Staff Review

In ACMS, the "Review Online Promise" screen will display the terms of the proposal as submitted. The collector will review the proposal and make the decision to accept or deny the request. If the proposal is acceptable, the collector will send a BOE-407-CN, *Payment Plan Confirmation*, to the taxpayer. The BOE-407-CN is available in ACMS. If the proposal is not acceptable, the collector must contact the taxpayer to discuss acceptable terms.

Once new terms are agreed upon, the collector will deny the original request in ACMS and have the taxpayer resubmit a new request online. If the taxpayer is not able to resubmit the request online in a timely manner (i.e., in time for the first payment to be processed, or before a Collection Recovery Fee (CRF) would be assessed), the collector should modify the original request using the "Modify" button in the Review Online Promise window before using the "Accept" button.

REVIEW OF THE REQUEST**(CONT. 1) 770.012**

Staff may modify the plan only after contact is made with the taxpayer and the terms are negotiated. If the plan is modified, the taxpayer **must** complete and sign a BOE-407, *Payment Plan Agreement*. The following fields can be modified:

- Taxpayer name;
- Frequency;
- First payment amount;
- First payment date;
- If twice monthly frequency is selected, the second payment amount and date will become enabled;
- Difference selection;
- Banking information;
- Review date; and
- Maximum amount.

In addition, when the collector selects the “Modify” button, the “Modify” button will then change to “Update Periods.” If the “Update Periods” button is selected, the system will determine if new amounts due have entered or amounts previously due have exited ACMS since the payment request was submitted. The collector is to ensure the correct periods for the payment plan are checked. The “Current Promise Amount” will be updated to the total of all periods that are checked, including updated interest amounts, if applicable.

By selecting the “Online Proposal” button, collectors can view payment proposals that were submitted online. The screen will display the most current online proposal; however, staff can view prior online proposals by selecting the “Request Date” from the pull-down menu.

If the payment proposal is not auto approved and financial documentation to support the proposal is required, the account will remain in the Review Online Promise work state and the collector can set an appropriate follow-up date. However, if the account is left in the Review Online Promise state for 21 business days, it will automatically route to the Sup Review work state.

Direct Contact from Taxpayer

Taxpayers may call a collector directly asking to set up a payment plan. Staff should first request that taxpayers pay their liability in full. Taxpayers who are unable to pay in full should be directed to make their payment plan request online. For those taxpayers unable to make their request online, staff will evaluate the requested payment plan and if accepted, must send the taxpayer a BOE-407 to complete and return, ensuring that all terms of the agreement are documented on the BOE-407. The BOE-407 is available in ACMS.

When Financial Documentation is not Needed for Approval

When the taxpayer is unable to make the request online (i.e., does not have access to the Internet), the collector may accept a payment plan without reviewing financial documentation if all of the following criteria are met:

- The final balance is less than \$10,000;
- The minimum monthly payment amount is at least \$10.00;
- If the account is active, the final balance must be paid in full within 12 months;
- If the account is closed, the final balance must be paid in full within 24 months;
- The taxpayer is not delinquent in filing required tax returns;
- The taxpayer has not been subject to enforced collection action (e.g., levy, lien, withhold, wage garnishment) within the previous 90 days; and
- The taxpayer is not in bankruptcy or other legal status.

Before accepting a proposal for a payment plan that does not meet the criteria above, the collector will have thoroughly investigated the financial condition of the taxpayer and determined that a payment plan is the appropriate method to collect the amount due.

REQUESTING FINANCIAL INFORMATION**770.013**

Documentation may be required to determine the taxpayer's need for a payment plan and financial ability to meet its terms. When evaluating a taxpayer's financial situation, the collector may require an individual to submit information as listed on the BOE-58, *Payment Plan- Need Information (Individual)*. A corporation or other entity type may be required to submit information as listed on the BOE-60, *Payment Plan – Need Information (Non-Individual) Review*. Such documentation may include:

- A BOE-403-E, *Statement of Financial Condition*,
- Bank statements (both personal and business),
- Merchant card statements,
- Income tax returns,
- Accounts receivable listings (including names, addresses, phones numbers, and amounts owed),
- Income and expense (or profit and loss) statements,
- Balance sheets,
- Cash flow statements, and
- Other documentation relating to the taxpayer's finances.

The collector should not make a blanket request for information, but should tailor the requested documents to each taxpayer's specific situation.

One example of documentation that may be requested, but should not be requested as a matter of routine, is evidence of a loan in process or loan denial letter. While taxpayers should be encouraged to seek other sources of funds to repay their tax debt, staff should not request evidence of a loan in process or denial letter from taxpayers who do not have the means to get a loan. This documentation should also not be requested from taxpayers who meet the criteria for a payment plan without providing financial documentation as outlined in CPPM section 770.012.

REQUESTING FINANCIAL INFORMATION**(CONT.) 770.013**

Additional information and verification may be required as deemed necessary by the collector; however, only documentation that provides financial information may be requested. Staff should not request any documents that do not provide financial information (e.g., dual questionnaires), and may not require such documents as a condition of acceptance of the payment plan.

The collector should require the taxpayer to start making the proposed payments while financial information is compiled by the taxpayer and evaluated by the collector.

If the payment plan exceeds 2 months on an active account, the taxpayer may be required to make weekly or monthly payments against anticipated liabilities for the upcoming periods in addition to the payment plan payments. This requirement will ensure that the taxpayer does not incur further debt with BOE and does not accrue further penalty for failure to file, or to pay, a tax or fee return timely. Since payment plans with automatic debit payments cannot accommodate unbilled future liabilities, these payments must be made separately by the taxpayer.

ANALYZING FINANCIAL INFORMATION**770.014**

The financial information submitted in support of a payment plan request should indicate how much money the taxpayer is able to pay in order to satisfy the liability in full, including interest accruals, within the time frame specified. The taxpayer's income should be compared to his or her claimed expenses. If expenses exceed income, the taxpayer must provide an explanation (i.e., what expenses are not currently being paid).

Evaluating a payment proposal for an active business can be less straightforward than a proposal for a closed account where, for example, the source of income is wages and the only expenses to consider are household expenses. In addition, active businesses owned by sole proprietors or partnerships require a financial review of both the individual owner(s) and the business. For businesses owned by other entities (e.g., corporations, LLCs), the documentation may consist of financial statements and bank records. The following guidelines are based on the *Financial Analysis Handbook* published by the Internal Revenue Service (IRS) and may be helpful when analyzing a taxpayer's financial condition.

Determining Individual Income

Generally, all household income will be used to determine the taxpayer's ability to pay. Income consists of the following: wages, interest and dividends, net income from self-employment or Schedule C of the Federal Income Tax Return Form 1040, net rental income, pensions, child support, alimony, or other income (e.g. royalties, gambling winnings, payments from a trust account). Income claimed on the BOE-403-E, *Individual Financial Statement*, should be compared with bank statements, tax returns, and all other financial documents. The taxpayer should be asked to explain any differences noted by the collector.

Business Financial Statements

Many businesses employ accounting firms to maintain books and records or use over-the-counter software programs. Because of the complexity of some business entities, reviewing these records may be very important in determining the business' ability to pay and the true value of its assets.

When determining ability to pay, the income and expense information must reflect a sufficient time frame to accurately determine the monthly average that could be expected for the entire year. Seasonal variations in business income must be considered, as well as extraordinary events that can lead to excessive increases or decreases in income or expenses at a particular time. Information provided on the BOE-403-E, as it pertains to income, assets, and expenses, should match the information provided on other financial statements, tax returns and schedules, and other sources used to verify assets or encumbrances. Discrepancies must be addressed and documented in ACMS.

The following is a list of financial statements and the information contained in them that may be used to evaluate a payment proposal:

- **Income Statement (Profit and Loss Statement)**

The Income Statement (Profit and Loss Statement) shows a business' revenue, expenses, and profit during a given accounting period, usually either quarterly or annually. Along with the balance sheet, the income statement is a tool used to assess the health and prospects of a company. The income statement shows revenue and expenses, including operating expenses, depreciation, income taxes, and extraordinary items. Staff should be able to determine funds available for a payment plan based on cash flow, profit margins, and other important indicators of how the business is doing by reviewing the income statement.

- **Balance Sheet**

A business' balance sheet is a snapshot of its financial picture on a given day. A balance sheet shows the financial position of a company by indicating the resources that it owns, the debts that it owes, and the amount of the owner's equity in the business. One side of the balance sheet totals up assets, moving from the most liquid (cash) to least liquid (plant and equipment or goodwill). The other side lists liabilities in order of immediacy or urgency. Remember that assets must equal liabilities plus shareholder's/owner's equity. Although the balance sheet by itself may not clearly show funds available for a payment plan, it should be used to identify assets and other liabilities.

- **Cash Flow Analysis**

Staff may also request a cash flow analysis. This is often completed when taxpayers seek loans or investors and may already be available for staff's review. Cash flow is net income minus preferred dividends plus depreciation (as given in the income statement). Generally, depreciation charges are not considered an allowable expense as they are not genuine bills that have to be paid. Cash flow is the key to a company's ability to cover debts and can be especially useful in assessing businesses in capital-intensive industries where huge depreciation charges can hide healthy profits.

Cash flow projections are used by a business to forecast future income to meet upcoming expenses. They are based on comparing money owed to expected revenues. This information is useful when dealing with a business that does not have the ability to pay in full within a short period of time. This information will help determine if the business can remain current with operating expenses and taxes, and also pay the delinquent taxes. The cash flow analysis will help staff determine an appropriate and sustainable payment amount based on revenue and expenses.

Analysis of income and expenses may identify many of the assets the taxpayer has available. For example, rental income may identify real property or equipment owned. Expenses such as taxes and licenses may indicate assets such as machinery and equipment. The IRS *Financial Analysis Handbook* identifies common sources of income, expenses, and assets that may be listed on the taxpayer's income tax return.

Determining Equity in Assets

To determine the equity in an asset, staff must determine its value, whether there are encumbrances against it, and the priority of the Notice of State Tax Lien. Proper valuation of an asset is necessary to determine whether it is a source for collection. Some assets can be complex or difficult to value. The Fair Market Value (FMV) of an asset is the price set between a willing and able buyer and seller in an arm's length transaction where both parties have full knowledge of the relevant facts. The FMV can be influenced by market conditions, age of the asset, condition of the asset, demand, and other factors. The Quick Sale Value (QSV) of an asset is an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the seller to sell in a short period of time, usually 90 days or less. Generally, the QSV is calculated at 80% of the fair market value. A higher or lower percentage may be appropriate depending on the type of asset and current market conditions. Sources for determining FMV may also depend on the type of asset. For vehicles, for example, there are several online tools available to help determine the value.

Once the equity in an asset is established, staff may determine the taxpayer has the ability to pay the liability in full if they can liquidate, refinance, or borrow against the asset. Taking payments over time is not in the best interest of the state if the taxpayer's financial information indicates an ability to pay their liability in full.

ANALYZING EXPENSES FOR INDIVIDUALS**770.015**

Allowable expenses are segregated into two categories: “necessary” and “conditional.” Necessary expenses are those expenses that must be paid in order to support health, welfare, and production of income. Conditional expenses are expenses that the taxpayer may be allowed to continue paying if all of the taxpayer’s liability, including interest accruals, can be paid during the stipulated time.

When analyzing the necessary and conditional expense allocations of the taxpayer, collectors should use the *Collection Financial Standards* tables published by the IRS. These standards are based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey.

These national standards serve as a guide for determining the average expense levels applicable to a taxpayer who is applying for a payment plan. Whenever a taxpayer lists an amount lower than the standard, collectors should use the actual figure given by the taxpayer. Whenever the taxpayer lists an amount higher than the IRS standard and higher than local averages, the collector should question the amount and determine if the claimed amount is excessive.

Necessary Expenses

The first category of expenses on the IRS’s *Collection Financial Standards* page is the *National Standards: Food, Clothing and Other Items*, with a link to a table that provides a set amount allowed depending upon the number of family members. The table lists the following necessary expenses:

1. Food
2. Housekeeping supplies
3. Apparel and services
4. Personal care products and services
5. Miscellaneous - The miscellaneous allowance is for expenses a taxpayer may incur that are not included in any other allowable living expense items, or for any portion of expenses that exceed the standards.

In addition to the table of allowable living expenses for food, clothing, and other items, the IRS website has links to tables for out-of-pocket health care expenses, housing and utilities, and transportation. The table for housing and utilities is organized by state and, once the collector clicks on the California link, by county. The transportation table has an allowance for car ownership (limited to two cars) and is then segregated into operating cost by region. Also listed is a nationwide allowance for public transportation.

Other expenses that do not appear in the IRS tables can be “necessary” if they meet the necessary expense test (health, welfare, or production of income), but the amount of the claimed expense must be reasonable. For example, childcare and dependent care services do not have standardized costs, and the cost for these services can vary greatly depending on a number of factors. The collector should analyze the cost for these types of expenses based on the prevailing living standards where the taxpayer is incurring the expense. In addition, the collector should use his or her best judgment and experience when determining if the amount of the claimed expense is necessary and reasonable. Adequate documentation should be provided when an expense falls into this category and the amount is questionable. The taxpayer is responsible for determining the specific areas in its budget that can be modified or eliminated in order to pay the tax liability.

The following list describes some of the various types of expenses in the “other” category.

1. Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test. Other accounting expenses and legal fees are not necessary expenses. They are conditional expenses, but they may be allowed if the liability owed to the BOE can be paid in full, including projected interest and penalty accruals, within three years.
2. Charitable contributions include donations to tax exempt organizations such as civic groups, religious organizations, and medical services or associations. Contributions to religious organizations as a condition of membership (tithing and educational donations) should be allowed if the amount donated matches the amount required by the organization.
3. Childcare costs, such as baby-sitting, daycare, nursery school, and preschool, can vary greatly, and the collector must determine whether the cost appears reasonable in relation to the type of care provided. If a portion of a childcare expense seems excessive, the taxpayer should be required to provide an explanation or to submit documentation to support the claimed amount.
4. Dependent care expenses for the elderly, handicapped, or infirm are necessary if the taxpayer has no recourse except to pay the expense.
5. The cost of education is a necessary expense if it is required for a physically or mentally challenged child, and no public education providing a similar service is available. If childcare is provided by the educational institution and the cost for the childcare is included as part of the educational expense, it should not also be included by the taxpayer as an additional childcare expense. Where the charge for the childcare is segregated from the charge for the educational expense, the childcare expense should be claimed separately from the educational expense. The cost of education is also a necessary expense if it is required as a condition of employment. Current licensure is a requirement for many professionals in order for them to work. Therefore, continuing education units for professionals such as attorneys, accountants, teachers, healthcare workers, realtors, and other professions that are required to maintain a current license are necessary expenses.
6. The cost incurred in obtaining medical insurance when a separate premium is paid, or when the premium is taken as a deduction from the taxpayer’s wages, qualifies as a necessary expense. Medical and dental services, prescription drugs and medical supplies, eyeglasses and contact lenses, and guide dogs for the visually impaired are also necessary expenses.
7. Involuntary deductions such as Medicare, mandatory union dues, and wage garnishments are necessary expenses. If the taxpayer has extra withholding taken from net wages to offset future income tax liability, this may be allowed if the liability owed to the BOE can be paid off within twelve months. Otherwise, the taxpayer must make other arrangements or adjustments to eliminate the extra tax withholding. The taxpayer must arrange for this increase in income to be paid to the BOE.

8. The payment of insurance premiums for a life insurance policy is generally a necessary expense. However, many insurance policies are also used as a vehicle for saving money and the taxpayer may be able to borrow against these funds. For a life insurance policy to be a necessary expense, the policy must be a term-life policy that is already in effect at the time of the BOE's billing to the taxpayer. Even for term-life policies, expensive premiums must be justified. The collector should determine if the payoff of the policy is high compared to the lifestyle of the beneficiaries. For whole-life policies, the taxpayer should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the payment plan is in progress (if allowable by the insurance company). If policy premium payments cannot be suspended, the expense will be considered as conditional.
9. Payments to creditors may be necessary for secured or legally perfected debts. If the claimed debt meets the necessary expense test, then payments to these creditors will be allowed to continue; however, the taxpayer must substantiate that the payments are being made regularly.
10. Current federal and state taxes that are withheld from wages, including FICA withholding, are necessary expenses.
11. Minimum payments to creditors for unsecured debts (such as money due for credit card purchases) will be allowed if the liability owed to the BOE, including projected penalty and interest accruals, will be paid in full within three years. With the exception of credit card minimum payments, payments on unsecured debts will not be allowed if omitting them would permit the taxpayer to pay the liability in full within 90 days.
12. Miscellaneous expenses are expenses the taxpayer claims are necessary but that BOE staff considers questionable. Examples include extracurricular activities for children, monthly Christmas savings account deposits, and expenses for newspapers, magazines, and trade publications. Allowing or disallowing these expenses is left to the discretion of the collector or the collector's supervisor.

Conditional Expenses

Conditional expenses are those that do not meet the necessary expense test but may be allowable if the tax liability, penalty, and interest accruals are paid in full within the following guidelines:

1. **Three years.** For substantiated conditional and excessive expenses to be allowed, the tax debt must be paid in full within 3 years.
2. **One year.** If the tax liability cannot be paid in full within 3 years, conditional and excessive expenses may be allowed if the taxpayer agrees to modify or eliminate the expense within 12 months. This period may be adjusted from 1 to 12 months based on the nature of the expense.
3. **90 days.** Payments on unsecured debts, other than credit card debt, will not be allowed if omitting these payments would permit the taxpayer to pay its tax liability in full within 90 days. Minimum payments will be allowed on credit cards to preserve a taxpayer's credit rating.

Conditional expenses, and some necessary expenses (e.g., wage garnishments, child support payments, and other court ordered payments), may have an expiration date. The responsible collector should determine whether the expense will expire within the timeframe of the payment plan. If the expense does end within the period of the payment plan, the collector should require the additional available funds to be directed toward paying the BOE's liability and not paid to other creditors.

Examples of Conditional Expenses

The following conditional expense items do not constitute an exhaustive list of all the expenses a taxpayer may have incurred. If a claimed expense is questionable, the collector should ask for an explanation or documentation as the case requires.

1. Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are conditional expenses.
2. An expense incurred for private education (unless it meets the criteria for a necessary expense, as previously stated) is considered to be a conditional expense.
3. Housing costs other than for the taxpayer's primary residence are conditional expenses. Expenses to maintain a secondary dwelling that are not necessary for the health, welfare, or production of income should be disallowed. If the taxpayer owns the secondary dwelling, and if sufficient value in the property exists, the taxpayer should attempt to borrow against the equity and pay off the liability. A state tax lien subordination will generally be allowed in order to refinance a home for purposes of increasing the payments offered in the payment plan or for a lump-sum payment in full from the refinance.
4. Other expenses not associated with the maintenance of the primary residence are considered conditional expenses. For example, pool and gardening services are conditional expenses.
5. Transportation charges falling within the standards in the IRS tables are generally allowable. Excess transportation charges and claimed expenses for more than one vehicle must pass the necessary expense test. Expenses claimed for items such as boats, motor homes, or extra vehicles must be substantiated. In addition:
 - a. In order to claim ownership costs as an allowable expense, the taxpayer must provide documentation of a lease or loan on his or her vehicle, vessel, or aircraft.
 - b. Transportation costs such as gasoline, maintenance and repairs, vehicle insurance, license and registration fees, towing charges, tolls, and automobile service clubs may also qualify as allowable expenses as long as they are necessary expenses.

Other transportation expenses such as fares for mass transit (buses, trains, ferry services, taxis, airlines, and private school buses) are allowable provided they can be documented as a requirement in the production of income, or they pass the necessary expense test.

ACCEPTING A PAYMENT PLAN**770.020**

After the taxpayer's documentation has been analyzed and the amount and frequency of payments have been discussed and agreed to, the collector should direct the taxpayer to use the BOE website and enter the agreement online. The collector will then approve the online request and send a BOE-407-CN, *Payment Plan Confirmation* (see CPPM section 770.010). The BOE-407-CN is available in ACMS.

If the taxpayer is unable to submit the request online, the collector must send the taxpayer a BOE-407, *Payment Plan Agreement*, and the cover letter, BOE-407-A. These forms are available through ACMS and must be completed only for taxpayers who are unable to submit their request online. All terms of the agreement must be documented on the BOE-407.

Payment Plans Requiring Use of the BOE-407 and BOE-407-A

When a payment plan has been agreed upon and the taxpayer is unable to make the request online, the collector must send the taxpayer a BOE-407 and BOE-407-A. The collector should complete all applicable sections of these forms prior to mailing them to the taxpayer. All terms of the agreement must be documented on the BOE-407, and the collector must discuss those terms with the taxpayer. Specifically, the collector must explain the circumstances under which a lien may be filed, CRF fees may be assessed, or an FTB refund may be offset. In addition the collector must also explain that failure to comply with the agreement will result in its termination.

The taxpayer must sign the BOE-407 indicating agreement with the terms. Payments should be made by automatic debit (debit payments), and banking information must also be completed on the form, as well as the bank account owner's signature authorizing the account to be debited. Debit payments are required in most circumstances (see CPPM 770.022 for information regarding the automatic debit requirement).

After a payment plan is entered into ACMS, the case is monitored by ACMS for appropriate taxpayer notifications and collector follow-ups. All payment plans consisting of three or more payments require supervisory approval and the approval must be noted in ACMS. Single or two-part payment plans with automatic debit payments also require supervisory approval.

Entering the Payment Plan in ACMS

Upon receipt of the completed BOE-407, the details of the payment plan may be recorded using the "Add Summary" button in ACMS and selecting "Promise Summary." The collector must then record an action (e.g., "Record Letter") in ACMS, record appropriate comments, and select "Take a Promise to Pay." A pop-up box appears that must be completed using information on the completed BOE-407. Detailed instruction on entering payment plan information is also available on eBOE by selecting the ACMS heading under the Technology Services tab, and then selecting the "Promise to Pay" link.

The collector must select one of two categories of payment plans, "Manual" or "Auto Pay." In a Manual payment plan, payments are initiated by the taxpayer. Manual payment plans should generally only be used in situations where the taxpayer is unable to set up debit payments from his or her bank account. For Manual payment plans entered into ACMS, a reminder notice is automatically mailed to the taxpayer several days before the payment due date¹. Note that when a payment plan is already in effect for the account, the collector will not be able to input another payment plan in ACMS, and therefore a reminder notice will not be sent and the collector must monitor the payment plan manually.

¹ This does not occur for accounts under the Motor Carrier Office (MCO). MCO uses the IFTA Processing Consortium (IPC) to send all notices, and therefore ACMS will not automatically generate notices for those accounts.

ACCEPTING A PAYMENT PLAN**(CONT. 1) 770.020**

Auto Pay is selected when payments will be automatically debited from the taxpayer's bank account. Under Auto Pay, the taxpayer will not receive a notice of the debit payment from BOE.

Payment Method and Frequency

The collector must enter the amount and frequency of payments (e.g., single, two-part, monthly, twice monthly, weekly, bi-weekly). The twice-monthly frequency would be used when a taxpayer wishes to make two payments per month on specific dates (e.g., 5th and 20th of each month). For payment plans with debit payments, the collector must also enter the bank account information.

Liabilities Included in Payment Plan

The Take a Promise to Pay screen will automatically display all unpaid, final liabilities available for a payment plan. By default, all liabilities will be selected for inclusion in the payment plan with the exception of those that are identified in IRIS as having been discharged from bankruptcy (DFB Difference Status code). If a "Manual" payment plan is selected, no modification can be made to liabilities included in the payment plan. If Auto Pay is selected, ACMS will allow the liabilities and amounts included in the payment plan to be modified, when necessary, using the following functions:

- Liability Selection – Specific liabilities or portions of a liability (e.g. interest and/or penalty) can be excluded from a payment plan. A liability could be excluded if, for example, it is subject to future adjustment.
- Exclude Amount (Penalty) – A portion of a penalty amount may be excluded from the payment plan. This feature would be used if only a portion of the penalty for a specific liability is excluded.
- Maximum Amount – This feature allows the payments to stop automatically once the specified dollar amount has been received. If a maximum amount is entered, the tax, interest, and penalty amounts for each of the selected liabilities must be included in the payment plan.

Liabilities included in an active payment plan are identified in IRIS with the Difference Status code PRM. The PRM status code will automatically be removed from the liabilities when the payment plan is no longer active (i.e., completed or terminated).

Review Date

A review date can be selected for any payment plan with three or more payments. A review date would be entered, for example, to schedule a date to contact the taxpayer for a review of his or her financial condition. A review date can be set for up to one year in the future. When the review date is reached, the account will route to the Promise Review work state in ACMS. While an account is in Promise Review, the payment plan remains in effect and debit payments or payment reminder notices (for Manual payment plan) will continue. Regardless of whether or not a review date is entered, the account will automatically route to Promise Review once the account has been in the Promise to Pay state for 365 days. If the account routes to a different state within that time (e.g., routes to new ACCES Model state to transition from ACCES A to ACCES B), the 365 time period starts over.

Payment Plan Statuses in ACMS

The status of the payment plan indicates its current disposition. The status is displayed in ACMS on the Promise to Pay screens. The following is a list of statuses:

- Pending – The payment plan has been input in ACMS, but it has not been approved by a supervisor. While a payment plan is in pending status, debit payments and payment reminder notices will not occur. While in pending status, the payment plan can be modified. However, if the payment plan was submitted online, some fields cannot be modified.
- Active – The payment plan is active and debit payments will be initiated, or payment reminder notices will be sent. Liabilities included in the active payment plan are identified in IRIS by the PRM status code. This status not only indicates there is an active payment plan for the account but identifies the specific liabilities included in the payment plan. While in Active status, bank account information fields can be modified in the Promise to Pay screen.
- Completed – All liabilities included in the payment plan have been paid in full or the amount required to be paid by the taxpayer (i.e., the “Maximum Amount”) has been received.
- Terminated – The payment plan is terminated. The status changes to terminated after staff has initiated the termination process, a BOE-407-T, *Payment Plan – Notice of Termination*, has been sent, and the 15-day period from the date the Notice of Termination was sent has passed. Note: during the 15-day period, the status of the payment plan remains active and debit payments and reminder notices continue.
- Cancelled – The payment plan has been cancelled by BOE staff. If, for example, a new payment plan is negotiated with the taxpayer due to a change in the taxpayer’s circumstances, the existing payment plan must be cancelled before a new one can be entered into ACMS.
- Taxpayer Cancelled – The payment plan has been cancelled at the taxpayer’s request.
- Legal Cancelled – The payment plan has been cancelled as a result of a bankruptcy case filed by the taxpayer or other legal proceeding. The status will automatically change to Legal Cancelled when bankruptcy information is entered in IRIS. For all non-bankruptcy related legal types in IRIS, the payment plan will not be cancelled automatically. Staff with supervisor security capability in ACMS have the ability to change the status to Legal Cancelled.
- Denied – The pending payment plan has been denied by a collector or supervisor.
- Unable to be Processed – The status of the pending payment plan will automatically change to Unable to be Processed when any of the following enter ACMS:
 - o New bankruptcy
 - o All periods of liability are paid in full and/or adjusted to zero
 - o All periods of liability become non-final

Approving a Payment Plan in ACMS

Other than online payment plans that have been automatically approved, payment plans with automatic debit payments require supervisor approval in ACMS prior to becoming active. Manual payment plans with three or more payments also require supervisor approval. Until the payment plan is active, no payments are debited and no payment reminder notices are mailed. Therefore, timely review and approval of a pending payment plan is imperative.

Accounts with pending payment plans route to one of two supervisor work states. Auto Pay payment plans route to the Sup App – Auto Pay while Manual payment plans are routed to the Supervisor Review state. Review and approval of the Auto Pay payment plans must be a priority since the BOE-407 completed by the taxpayer has a specific date on which the BOE will begin debiting the taxpayer's bank account. All attempts should be made to review and approve (if appropriate) these payment plans no later than two business days prior to the due date of the first debit payment. ACMS allows Manual payment plans to be approved any time regardless if the due date of the first payment has passed.

In instances where an Auto Pay payment plan is not approved within this time period, the payment dates identified on the Promise to Pay screen will need to be modified prior to approval. Generally, this involves retaining the previously agreed to payment schedule and merely advancing the start date of the payment plan to the date of the next regularly scheduled payment. If the only modification to the payment schedule is with regard to the date of the first payment, the taxpayer is not required to complete a new BOE-407. The taxpayer should, however, be informed of the new date on which the debit payments will begin. Additionally, the taxpayer should be requested to make the "missed" payment online or by check.

Supervisors review and approve or deny payment plans in ACMS using the Supervisor Review screen. From this screen, the Review Promise to Pay screen can be displayed and all details regarding the payment plan should be reviewed prior to approval. When reviewing the payment plan, the supervisor must select one of the following three options:

- Approve – The payment plan is approved and the status changes to Active.
- Deny – The payment plan is not approved and the status changes to Denied.
- Send Back – The payment plan is not approved, but is returned to the collector for additional work. All payment plan information is retained and the status remains Pending.

Once approved by a supervisor, a BOE-407-CN, *Payment Plan Confirmation*, may be sent to the taxpayer.

AUTOMATIC BANK DEBIT REQUIREMENT**770.022**

Automatic debit payments are the preferred payment method for all payment plans established in ACMS. However, if a payment plan calls for only one or two payments, taxpayers are not required to pay using automatic debit. These taxpayers should generally be directed to make their payments online, or if they are unable to pay online, payment made by check, money order, etc., will be accepted.

When a payment plan calls for three or more payments, BOE requires that the payments be made by automatic debit. The only exceptions to the mandatory requirement are the following STFD accounts, with corresponding Taxable Activity Type (TAT):

- Fire Prevention Fee (FF),
- Water Rights Fee (WR), and
- Cigarette and Tobacco Products Internet Program (consumer accounts CI/UI).

For all other accounts, the payment information is entered by the taxpayer when setting up their online payment plan. Only in the following circumstances will the taxpayer be allowed to pay by another method:

- The taxpayer does not have a checking or savings account,
- The taxpayer's financial institution is unable to process Automated Clearing House (ACH) payment transactions (debit payments), or
- More than one payment plan exists for the account (e.g., partnership accounts), and a payment plan is already established in ACMS.

Note: accounts should not be set up for automatic debit payments when any Legal status (e.g., bankruptcy, probate) exists on the account, and payment plans should be established using the manual payment plan method, if appropriate.

The BOE-407 is used only when taxpayers cannot enter their payment plan online. When the BOE-407 is used, the section with the banking information and signature for authorization for payments to be debited must be completed. Attached to the BOE-407 is an information sheet (BOE-FAQ). Another type of authorization form (BOE-407-CA) is also available through ACMS and also has a BOE-FAQ attached. The BOE-407-CA would be used when a taxpayer already in an active payment plan wants to change bank accounts from which payments are debited. Completed authorization forms must be received before the payment plan can be processed in ACMS. Forms received by fax are acceptable.

Bank Account Information

A checking or savings account may be used for debit payments. The bank name and routing number and the taxpayer's bank account number are required. Since taxpayers may be unfamiliar with routing and bank account numbers, the BOE-FAQ is automatically sent with the BOE-407. The BOE-FAQ provides detailed information about bank account and routing numbers, and asks taxpayers to provide a copy of a cancelled check or bank specification sheet. In some instances a financial institution may use a unique routing number for ACH transactions (debit payments) that is different from the routing number on the taxpayer's checks. In addition, the numbers on deposit slips are generally not the routing number for debit payments. Therefore, taxpayers should be requested to verify the routing number with their financial institution and provide the bank specification sheet if appropriate.

AUTOMATIC BANK DEBIT REQUIREMENT**(CONT. 1) 770.022**

Before entering the bank information in ACMS, the collector should compare the numbers on the BOE-407 to the numbers on the cancelled check or bank specification sheet. If a simple error is found (e.g., transposed numbers), staff should use the number on the cancelled check, etc., and enter a comment in ACMS regarding the correction. If the banking information provided on the BOE-407 differs significantly from the cancelled check or bank specification sheet, or if there is any question as to the correct bank account information, the taxpayer should be contacted to determine the correct information. Staff must enter a comment in ACMS detailing the contact and identifying the correct bank information.

The “Take Promise to Pay” screen in ACMS will verify the bank routing number input by matching the routing number to one that has been previously identified as valid for debit payments. If ACMS is unable to verify the validity of a routing number, staff should first confirm the routing number was input correctly. If it was input correctly but still cannot be validated in ACMS, staff must contact the taxpayer to verify that the routing number is valid for debit payments. The following are some general guidelines for bank account information:

- Bank routing numbers are always nine digits and are comprised of only numbers.
- Bank account numbers may be up to a maximum of 17 characters. Although bank account numbers are usually comprised of numbers, they can contain letters, spaces, and dashes.
- Bank deposit slips cannot be used to confirm banking information since the information on the deposit slip may differ from the information required for debit payments.
- Taxpayers may erroneously include the check number as part of their bank account number or bank routing number when completing the BOE-407. The check number should not be included in either of these numbers.

ACH Debit Block/Filter

In some cases, a taxpayer’s bank may have an ACH debit block or filter that prevents unauthorized debit payments. In this situation, the taxpayer must contact their financial institution to authorize the payment and may be required to provide the BOE’s Company Identification Number:

- For Sales and Use Tax accounts: 1282531033
- For Special Taxes and Fees accounts (including Lumber Products Assessment and Prepaid Mobile Telephony Services Surcharge): 1282435088

Collection Cost Recovery Fee

A Collection Cost Recovery Fee (CRF) is imposed on past due liabilities over \$250 that remain unpaid for more than 90 days from the date of the demand notice, unless the liability is included in an active payment plan. Therefore, when the payment plan information is entered into ACMS, the “Effective Date” field should be used to indicate the date the BOE-407 was sent to the taxpayer, or the date the taxpayer verbally agreed to the terms of the payment plan, whichever date is earlier. As part of the review for approval, supervisors should confirm this date is accurate. For payment plans submitted online, the effective date is the date of the taxpayer’s request and is not modifiable in ACMS.

IRIS will compare the Effective Date field in ACMS to the CRF assessment date(s) that exist on an account. Any CRFs assessed on or after the Effective Date will automatically be deleted by IRIS.

Payment Processing

The debit payment process starts two days prior to the due date of a payment. This generally allows the BOE to debit a taxpayer's bank account on the actual due date of the payment. If the due date falls on a weekend or bank holiday, the payment will be debited from the taxpayer's bank account on the first banking day following the due date.

A file is automatically created in ACMS two business days prior to the due date of the payment. The file contains the payment information (e.g., payment amount, due date, bank account information). The ACMS file is sent to IRIS and is used to create the payment in IRIS, and is posted to the account in IRIS prior to the funds actually being received from the taxpayer's bank account.

Debit payments are identified in IRIS with remittance type code "ELF" and will be displayed on the existing payment screens in IRIS. Payment plan payments are identified in the PAY RE screen in IRIS with an "I" displayed to the right of the value in the "EFT Ref Nbr" field, and in the PAY EA screen with an "I" in the EFT column.

Debit payments will be allocated to the liabilities included in the payment plan and will initially have a "WST" (Waiting Settlement) Held Reason code. Generally, on the due date of a payment, the WST Held Reason code will automatically be removed and the payment will be applied to the payment plan liability. Payments will follow the standard payment application rules (see CPPM section 707.020) but will apply only to those liabilities included in the payment plan. If the last scheduled payment exceeds the remaining amount owed, generally, only the amount owed will be debited.

In rare instances the final debit payment received may exceed the balance of the liabilities in the payment plan. This can happen if, for example, the taxpayer makes an additional payment that is not reflected in IRIS until after the automatic payment is debited. If this occurs, the excess payment will generally be applied automatically to any other billed, unpaid liabilities that exist on the account. If no other billed liabilities exist on the account, the overpayment will remain unapplied and will be assigned the "QUS" (Questionable Situation) Held Reason code. Unapplied payments are identified on a report that is periodically reviewed by BOE headquarters' staff. For Sales and Use Tax accounts (including Lumber Products Assessment), the report will be reviewed by the Return Analysis Unit. For accounts administered by the Special Taxes and Fees Department (STFD), the report will be reviewed by the STFD Return Processing Branch.

Rejected Payments

A debit payment may not be received, most commonly for insufficient funds or an invalid or closed bank account. If the bank information is valid, but the funds were not available on the date the debit was attempted, a second attempt will automatically be made two to three business days after the first attempt. If funds are not available after the second attempt, the payment will be identified as "rejected." Information regarding the rejected payment, including the specific reject reason, is captured in IRIS and ACMS.

If the payment is rejected for any reason other than insufficient funds (e.g., the bank account is closed, payment was not authorized, taxpayer is deceased, etc.), staff **must cancel the payment plan immediately**. Continuing to debit the taxpayer's account after the payment was rejected for these reasons may constitute a violation of National Automated Clearing House Association rules and may result in the BOE being fined. Generally, rejected payments will cause the account to route into the Broken Promise work state in ACMS which must be reviewed **daily** (see CPPM section 770.024).

AUTOMATIC BANK DEBIT REQUIREMENT**(CONT. 3) 770.022**

A report containing information for all rejected payments will automatically be produced. The report will be produced for statistical purposes and will assist management in identifying any potential issues with the debit payments.

Moving Payments

BOE staff with the IRIS security level necessary to move payments in IRIS will have the ability to move payment plan debit payments. However, these payments should generally **not** be moved from one liability to another. If a payment is moved to a liability that was not included in the payment plan, this could result in the BOE debiting the taxpayer's bank account for an amount in excess of the sum of the total payment plan. Supervisor approval is required for any payment or portion of a payment over \$5,000 that is moved, and for SUTD (including Lumber Products Assessment payments), an approval assignment will automatically be created in the Assignment Control (ASC) in-basket. For STFD accounts, supervisors will follow existing review criteria for moved payments.

Unscheduled Payments

An unscheduled payment (e.g., FTB offset payment) is not considered part of the payment plan and will not cause the due date of the next scheduled debit payment to change, unless the liability in the payment plan is paid in full.

Payment Errors

When establishing the payment plan in ACMS, staff should take reasonable precautions to avoid potential debit payment errors. For example, staff should call the taxpayer to resolve any apparent issues with bank account information before proceeding. Staff must also use care when inputting the payment information, including bank account information, payment terms, etc. in ACMS.

Regardless of the precautions taken by staff, the possibility exists that an error may occur. Errors may consist of debiting an incorrect bank account if the account number was entered incorrectly, debiting the wrong amount if the payment amount was entered incorrectly, or continuing to debit the bank account after the taxpayer requested to cancel the agreement (see CPPM 770.032 for cancellation requests).

Resolving Payment Errors

The BOE will most commonly be made aware of a payment error when a taxpayer or other person contacts the BOE to resolve the problem. The collector assigned the account in ACMS is responsible for taking prompt action to confirm and resolve the error before another debit payment is attempted. If the assigned collector is not available, the designated back-up collector, supervisor, or other designee must provide assistance in resolving the error.

First, the collector must confirm the error occurred by reviewing the debit payment information input in ACMS and comparing it to the information provided on the taxpayer's payment plan agreement (BOE-407) or authorization form (BOE-407-CA), and then comparing it to the payment information in IRIS. If the error is on the agreement or authorization form, a corrected BOE-407-CA should be obtained from the taxpayer. The correction must also be made on the Modify Promise to Pay screen in ACMS. An error with the bank routing number or bank account number can be corrected by updating the existing (active) payment plan. Errors involving the payment amount and frequency will require the existing payment plan to be cancelled and a new (corrected) payment plan input

AUTOMATIC BANK DEBIT REQUIREMENT**(CONT. 4) 770.022**

The collector must then take action to correct the payment error. Depending on the circumstances of the error, the erroneous payment transaction can either be reversed or refunded. The following table identifies the recommended action for resolving a payment error based on type of error and the number of banking days that have passed since the person's bank account was debited (generally the same date as the "EFT Settlement Date" in the PAY RE screen in IRIS):

Error Type	Number of Banking Days Since Debit Occurred	
	6 Days or Less	7 Days or More
Incorrect Bank Account	Payment Reversal	Payment Reversal*
Incorrect Payment Amount	Payment Reversal	Refund Check
Debit After Cancellation	Payment Reversal	Refund Check
<i>* A Refund Check can be issued if a Payment Reversal is not possible.</i>		

Payment Reversal – 6 Days or Less

A payment reversal is similar to a stop payment for a check and must, therefore, be initiated by the taxpayer. To initiate a reversal, taxpayers must contact their financial institution and request the transaction be reversed. To assist taxpayers making such a request, they may provide the financial institution the "return reason code" for the reversal. Return reason code R29 ("corporate customer advises not authorized") should be used for bank accounts held by a corporation. Return reason code R10 ("customer advises not authorized") should be used for bank accounts held by individuals and all other entities other than corporations.

Payment Reversal – 7 Days or More

Reversal of a payment transaction after six banking days requires the BOE to authorize its financial institution to allow the reversal. BOE authorization must occur prior to the attempted reversal of the payment. To authorize the reversal, the collector must provide the following information in an email to their supervisor (or designee):

- Subject line should be "Auto Pay Reversal Authorization,"
- Taxpayer's name and the BOE account number to which the payment was applied,
- Name on the bank account that was debited in error,
- Name, title, and phone number of the person requesting the reversal,
- Copy of PAY RE screen showing the remittance to be reversed, and
- Copy of IRIS comments pertaining to the error added to the remittance.

AUTOMATIC BANK DEBIT REQUIREMENT**(CONT. 5) 770.022**

The supervisor is responsible for reviewing the request and confirming an error has occurred requiring reversal. The supervisor should also confirm the email contains all necessary information for Return Analysis Unit (RAU) staff or the designated STFD representative to authorize the reversal. The supervisor should input a comment in the PAY RE screen in IRIS stating that the request has been reviewed and approved. Requests should be marked as high importance and for SUTD accounts should be forwarded to the RAU email group at SUTD-Auto Pay Reversal Refund Group, and those related to STFD accounts should be forwarded to the designated STFD representative.

RAU staff or the STFD representative is responsible for contacting the BOE's financial institution to request the reversal of the erroneous payment. BOE staff initiates the reversal through BOE's financial institution on a specific form. Afterwards, RAU or the STFD representative will inform the collector whether the reversal was completed or if a problem was encountered.

Refund Check

The BOE will issue a refund check for erroneous debit payments in instances where:

- The taxpayer's financial institution refuses to reverse the payment; or
- The taxpayer prefers that BOE issue a refund in lieu of a reversal of the transaction.

A refund check cannot be issued unless seven or more banking days have passed since the bank account was erroneously debited. This is necessary to confirm the debit payment is valid and not rejected. In instances where the incorrect bank account that was debited belongs to someone other than the taxpayer, a payment reversal should be used to correct the error if at all possible.

Prior to initiating a refund request, the collector should first confirm the mailing address on the taxpayer's BOE account is accurate since this is the address to which the refund check will be mailed. If the taxpayer wants the refund check mailed to a different address, the taxpayer must provide a signed, written request identifying the mailing address for the refund check. A signed request is also required when issuing a refund to a person that does not have a BOE account.

To initiate the refund request, the collector must provide the following information in an email to his or her supervisor (or designee):

- Subject line "Auto Pay Refund Authorization;"
- Taxpayer's name and the BOE account number to which the payment was applied;
- The name on the bank account that was debited in error;
- The name, title, and phone number of the person requesting the refund;
- The mailing address to which the refund check should be mailed if different than the mailing address on the taxpayer's BOE account or if refund is being issued to a person that does not have a BOE account;
- Copy of the PAY RE screen showing the remittance to be reversed; and
- Copy of the IRIS comments pertaining to the error the collector added to the remittance.

AUTOMATIC BANK DEBIT REQUIREMENT**(CONT. 6) 770.022**

The supervisor is responsible for reviewing the request and confirming an error has occurred which requires a refund. The supervisor should also confirm the email contains all information necessary for RAU or the designated STFD representative to initiate a refund of the erroneous payment. The supervisor should input a comment in IRIS (PAY RE) stating that the request has been reviewed and approved. Requests should be marked as high importance and forwarded to the RAU email group SUTD-Auto Pay Reversal Refund Group for SUTD accounts, and those related to STFD accounts should be forwarded to the designated STFD representative. If applicable, the signed, written request regarding the mailing address for the refund check must be faxed to RAU or provided to the STFD representative.

RAU staff or the STFD representative is responsible for taking actions necessary to initiate the refund. Processing of the refund should be expedited by all sections and units involved in the process so that the taxpayer receives the payment as quickly as possible. However, refunds over \$50,000 require approval from the appropriate Deputy Director (or designee). In addition, if BOE determines that a claim for refund in excess of \$50,000 should be granted, the decision must be made available as a public record for at least ten days before it becomes effective.

Requesting Waiver of Bank Fees

In some instances, an erroneous debit payment may cause the taxpayer to incur bank fees. For example, a taxpayer may be assessed fees for items returned due to insufficient funds. If the erroneous payment was caused by an error on the part of a BOE employee, the collector is responsible for providing the taxpayer's financial institution with a letter on BOE letterhead requesting any bank fees associated with the erroneous debit payment be waived. The request should be addressed to the taxpayer's financial institution and should include pertinent information regarding the erroneous payment (e.g., bank account, settlement date, payment amount). The request should either be faxed or mailed to the financial institution and a copy of the letter provided to the taxpayer.

In situations where the financial institution will not waive bank fees relating to an erroneous payment caused by BOE error, the account holder may file a claim for reimbursement. Under Revenue and Taxation Code (RTC) section 7096 and equivalent special taxes and fees statutes, a taxpayer may file a claim for reimbursement of bank charges and any other reasonable third-party check charge fees incurred as a direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE (see CPPM section 155.025 for detailed information about requirements under RTC section 7096 and what constitutes "BOE error"). These claims must be filed in writing within 90 days from the date the bank or third party charges were incurred by the taxpayer. District offices and headquarters units should forward claims for reimbursement to the Taxpayers' Rights Advocate (TRA). Claims forwarded should include:

- The original, written claim filed by the taxpayer/claimant,
- A copy of the notice of charge(s) from the taxpayer's/claimant's bank, and
- A memorandum explaining the facts that led to the filing of the claim and a recommendation whether the claim should be paid. The memorandum should be written by the collector that is knowledgeable of the case and approved by his or her immediate supervisor.

AUTOMATIC BANK DEBIT REQUIREMENT

(CONT. 7) 770.022

The statute requires a response within 30 days; therefore, the district offices or headquarters units should review and forward claims as soon as they are received. The TRA will evaluate the claim and notify the claimant of its decision. If the claim is approved, it will be forwarded to the Accounting Section of the Financial Management Division for payment and the claimant will receive a check from the State Controller approximately two to four weeks later.

Notice of Change to Banking Information

Banks routinely notify the BOE of changes to a taxpayer's banking information. Changes in banking information can occur, for example, as a result of bank mergers or acquisitions. A bank may notify BOE of a change in banking information for a specific taxpayer in response to the BOE debiting the taxpayer's bank account. The BOE must take action on these items to avoid future debit payments from being rejected. The correct bank information on the Notification of Change must be corrected within **six banking days** of receipt or before initiating another entry, whichever is later.

As a result of receiving updated banking information, a "Notice of Change" report is automatically generated and emailed to the BOE-Auto Pay Bank Changes email group. This email group is comprised of specific staff in RAU and STFD. The report contains notice of change information for automatically debited payments. Items included on the report are grouped by taxable activity type (TAT) and listed in account number order. A report will only be produced on days where there is at least one change to report.

RAU and STFD staff receiving the report must take the following actions:

1. For each item included on the report, staff must locate the name of the responsible collector for the account in ACMS.
2. Staff must email the information contained in the report for the specific payment to the responsible collector, with a copy to the collector's supervisor. The subject of the email should state "Auto Pay – Bank Information Change" and should be sent as a high priority.

If the payment plan is still active, the collector must put comments in ACMS stating the banking information has been changed. Taxpayers are not required to complete a new authorization form since electronic banking guidelines allow the BOE to update the information based on what was provided by the bank.

REJECTING A PAYMENT PLAN**770.023**

A taxpayer's payment proposal may be rejected if the taxpayer's financial circumstances do not warrant the BOE accepting payments over time. Rejection of a payment proposal may also occur for other reasons, such as the failure of the taxpayer to provide adequate documentation to support the need for a payment plan. Collectors must be able to show that the reasons for rejecting a taxpayer's payment proposal are justified.

The reason for rejecting a taxpayer's payment proposal must be entered into ACMS notes. The responsible collector should contact the taxpayer and verbally explain why the payment proposal was not acceptable. This contact should be followed by mailing a BOE-407-D, *Payment Plan Denial Letter*, to the taxpayer that summarizes the verbal explanation and declines the payment proposal.

If a taxpayer's payment proposal is declined, all of the documentation provided by the taxpayer should be returned or placed in a confidential destruction bin. If the taxpayer subsequently makes a new request for a payment plan the collector should request current financial documents.

REVIEWING ACCOUNTS IN BROKEN PROMISE WORK STATE**770.024**

When the system determines the payment plan is in default, it will route to the Broken Promise work state in ACMS. This is generally due to a payment that is dishonored because of insufficient funds, failure to file a current return or prepayment, or failure to make a manual payment on time. While accounts are in the Broken Promise work state, the payment plan is still active and debit payments and payment reminder notices continue.

The collector must review the account thoroughly to determine if the payment plan is actually in default, and not in Broken Promise in error (e.g., payment erroneously applied to another account or another reporting period). If it is determined that the plan is in default, the collector should call the taxpayer first to try to resolve the issue immediately. In some instances a payment agreement may need to be modified, or temporarily modified, due to the taxpayer's unexpected financial crisis, but the past history of any defaulted payment plans should be considered, and documentation to support the situation should be requested prior to modifying the payment plan.

If the BOE receives notification that a plan payment was dishonored for any reason other than insufficient funds or uncollected funds, staff **must cancel the payment plan or modify the banking information immediately**. Continuing to debit the taxpayer's account after the payment was dishonored may constitute a violation of National Automated Clearing House Association rules and may result in the BOE being fined. Therefore all collection accounts in Broken Promise must be reviewed **daily**. To determine why the debit was dishonored, the collector must highlight the "Returned Payment" history line in ACMS and click the "Details" button to open the history detail window. The reason for the dishonored payment will appear in the top center of the window. Note: To prevent another debit attempt, the cancellation must occur at least two business days prior to the scheduled due date of the payment.

In any case, if the payment plan is in default and resolution is not immediate, the collector should terminate the agreement (see CPPM section 770.025).

Modifying a Payment Plan

A payment plan can be modified in ACMS using the Modify Promise to Pay screen in ACMS, but can only be modified when in Pending or Active status. When a payment plan is in Active status, only the banking information fields can be modified. If any other information needs to be changed, the payment agreement must be cancelled, and a new payment plan entered.

If banking information is updated, staff may send a BOE-407-CC, *Payment Plan – Confirmation, Automatic Payment Modification*, to the taxpayer informing them the bank information has been updated. The BOE-407-CC is available in ACMS.

Skipping a Payment

Collectors can allow the taxpayer to skip a payment without terminating the payment plan. The collector responsible for the account has the discretion to determine whether or not a taxpayer should be allowed to skip a payment based on the taxpayer's circumstances. Supervisor approval is not required in ACMS to skip a payment. ACMS will only allow a payment to be skipped once every 365 calendar days, up to a maximum of two times during the entire length of the payment plan.

The skip payment option is available in the Modify Promise to Pay screen in ACMS. Skipping a payment is not an option for payment plans with only one or two payments, and is not available for accounts where termination of the payment plan has been initiated in ACMS. For a debit payment to be skipped, the collector must initiate the skip payment option at least two business days prior to the due date of the payment to be skipped. Otherwise, the following payment will be skipped instead. For Manual payment plans, the skip payment option can be initiated up to, and including, the due date of the payment. Where appropriate, a BOE-407-SP, *Payment Plan – Notice of Skipped Payment*, may be sent to the taxpayer. This letter is available in ACMS.

TERMINATING A PAYMENT PLAN

770.025

Under RTC section 6832, the BOE has authority to terminate a payment plan upon default of the agreement by the taxpayer. It requires BOE to mail a notice of termination to the taxpayer, and requires the BOE to wait 15 days after the notice before taking collection action. The BOE-407-T, *Notice of Termination*, states that if the requested items are not received within 15 days, the payment plan will be terminated, and collection action will be taken. The 407-T also advises of the taxpayer's right to an administrative review.

RTC section 6832 also allows the BOE to bypass the required notification process if it finds that collection of the liability is in jeopardy. Collectors seeking to terminate a payment plan must fully document their reasons in ACMS and, if the liability is in jeopardy, they must secure supervisory approval before initiating collection action. Although the provisions of RTC section 6832 apply to sales and use taxes, there are similar statutes that contain termination authority that apply to payment plans entered into for certain special taxes and fees programs.

While a taxpayer may terminate the payment plan at any time, the BOE may only terminate it when the taxpayer defaults on the agreement and the provisions in the law for terminating a payment plan have been met. A taxpayer defaults on the payment plan when any or all of the terms in the agreement are not met. It is considered to be in default for missed or late payments, delinquent or partial remittance returns, or failure to disclose assets or income on a financial statement. Failure to increase the payment amount when a financial review warrants an increase, or failure to comply with a required financial review, may likewise result in default of the agreement.

The termination process is initiated from the Modify Promise to Pay screen in ACMS and is only available for payment plans in Active status (note: If a payment plan is in Pending status, the only way to terminate it is for the supervisor to deny approval in ACMS). When termination is initiated in ACMS, the BOE-407-T is automatically displayed in ACMS so that it can be printed and provided to the taxpayer.

The collector must immediately mail the BOE-407-T when a taxpayer defaults on the payment agreement. The taxpayer then has 15 days from the mailing date of the BOE-407-T to file a written request for an administrative review during which time collection action will be suspended, except when collection of the liability is in jeopardy (RTC section 6832(d)). Any scheduled debit payments or payment reminder notices continue during the 15-day period. After the 15-day period has elapsed, collection action may begin even though an administrative review has been scheduled or is ongoing. A supervisor has discretion to extend the hearing period if the taxpayer can provide a reasonable explanation as to why an administrative hearing cannot be set within the 15-day period.

Situations can occur where a payment plan is not formally established because the taxpayer did not complete and return a BOE-407, but a termination letter (BOE-407-T) must still be sent and the 15-day period must have passed before collection action may be taken. To decide whether a termination letter should be issued, the collector should first determine whether the actions taken have given the taxpayer a reasonable presumption to believe that they are in a payment plan. Generally, if the collector and taxpayer agree to a payment plan, and the collector sends the BOE-407, and the taxpayer does not return the form, the collector should still send a BOE-407-T and suspend collection until the 15-day period has passed. Below are three examples of possible situations:

1. The taxpayer proposes a monthly payment plan of \$500 and the collector verbally accepts the offer. A BOE-407 is not issued or, if one is issued, the taxpayer did not sign and return it. Although there is no further contact between the collector and taxpayer, the taxpayer has paid some of the agreed upon payments. In this situation the taxpayer can reasonably presume the acceptance of the payment proposal since we have not indicated anything to the contrary and have been accepting the taxpayer's payments without contacting the taxpayer to inform them otherwise. If the taxpayer defaults on the verbal agreement, the taxpayer should be contacted and a BOE-407-T should be issued before initiating any new collection action.
2. The taxpayer proposes a monthly payment plan of \$500, which is verbally agreed to pending receipt of supporting documentation. The taxpayer does not remit any payments and does not provide any supporting documentation (i.e. financial information). In this situation, the taxpayer has not made any effort toward compliance and cannot reasonably presume that a payment plan is in effect. The collector does not need to send BOE-407-T in this situation, but an attempt to contact the taxpayer prior to initiating any new collection action should be made.
3. Same situation as #2 above, however; the taxpayer sends us the financial information and begins making voluntary payments while the financial information is being reviewed. The payments being remitted are not sufficient to pay off the liability in a reasonable amount of time, but they are accepted while we are reviewing the account. To ensure there is no misunderstanding, the taxpayer should be sent a letter stating that the voluntary payments are being accepted only until the financial information has been reviewed. Assuming the financial information is reviewed timely, sending the taxpayer a BOE-407-T is not required. The collector should contact the taxpayer once the review of the financial information is completed and provide the taxpayer with the appropriate payment proposal form to complete and return.

REINSTATING A PAYMENT PLAN**770.030**

A payment plan can be reinstated in ACMS if the termination process has been initiated, as long as the status has not changed to Terminated. Reinstatement of the payment plan is initiated in the Modify Promise to Pay screen in ACMS. Once the payment plan is reinstated, the termination process is cancelled and the status of the payment plan remains active. A payment plan can be reinstated up to a maximum of three times during the length of the payment plan.

After reinstatement, a BOE-407-R, *Payment Plan – Notice of Reinstatement*, must be provided to the taxpayer. This letter is available in ACMS and documents the fact that the payment plan is not being terminated and informs the taxpayer that the payment plan will continue.

Although the system will allow a payment plan to be reinstated if new liabilities or delinquencies exist on the account, only liabilities that were included in the payment plan when it was originally approved will be included in the reinstated payment plan. In order to add new liabilities that were not included in the original payment plan, if appropriate, the existing payment plan must be cancelled and a new one established.

The taxpayer should be directed to request the new payment plan online. If the payment plan is not auto approved, but is accepted by the collector, it must then be approved by the supervisor. A BOE-407-CN must then be sent to the taxpayer. If the taxpayer is unable to make the request online, the collector will send a BOE-407 that includes the new liabilities, and outlines the terms of the agreement. The BOE-407 must be received by the collector, entered into ACMS and approved by the supervisor before the new payment plan is confirmed.

ADMINISTRATIVE REVIEW UPON TERMINATION**770.031**

A taxpayer's request for an administrative review upon termination of a payment plan by BOE will be conducted at a time convenient for the taxpayer but within the 15-day period mentioned in CPPM section 770.025. The taxpayer may choose the district or branch office to hold the administrative review. For STFD accounts, the administrative review will be held in BOE Headquarters in Sacramento if convenient or by conference call.

The review will be informal and the reviewing officer will be a compliance supervisor who, if at all possible, will not be the assigned collector's direct supervisor. The reviewing officer will verbally notify the taxpayer of the time and place of the administrative review when possible, and may also send a BOE-407-AR, *Payment Plan - Notice of Administrative Review*, to the taxpayer's address of record. The reviewing officer will document this action in ACMS.

The reviewing officer will advise the taxpayer that the issues subject to discussion are limited to the reasons for terminating the payment plan. Any documentation presented at the review must relate to the reasons why the taxpayer defaulted on the payment plan.

Within 5 calendar days following the administrative review, the reviewing officer must issue a written decision to the taxpayer and the originating office indicating whether the payment plan was:

1. Reinstated,
2. Referred back to the district for further evaluation, or
3. Terminated.

If the reviewing officer determines that the original payment plan terms should be modified, the termination will be reversed and the case sent back to the originating office. The originating office will re-evaluate the circumstances and modify the agreement accordingly. Modification of a payment plan can only occur with the mutual consent of the taxpayer and the reviewing officer. If the terms of the original agreement are modified, a new BOE-407 must be completed.

CANCELLING A PAYMENT PLAN**770.032**

A payment plan in Active status can be cancelled using the Modify Promise to Pay screen in ACMS. The three different cancellation status types are Cancelled, Taxpayer Cancelled, and Legal Cancelled (see CPPM section 770.020). Cancellation of a payment plan in Pending status can only be accomplished by having a supervisor deny approval in ACMS.

A taxpayer whose payments are automatically debited can request BOE to stop debiting the account at any time. Taxpayers can request cancellation either verbally or in writing. Taxpayers are advised in writing on the BOE-407 that a request to cancel the agreement and stop a debit payment must be received at least five business days prior to the due date of a payment. This allows BOE staff time to process the request prior to the next scheduled payment. Regardless of the manner in which a cancellation request is received, it must be processed immediately to avoid the taxpayer's bank account from being erroneously debited.

After cancelling the payment plan, the collector should send the taxpayer a BOE-407-C, *Payment Plan – Notice of Automatic Payment Cancellation and Termination*, which can be accessed in ACMS. The letter advises the taxpayer that the automatic payment has been cancelled and the payment plan will be terminated after 15 days. The collector must wait for the 15-day period to pass before taking collection action.

ANNUAL REVIEWS**770.033**

All payment plans lasting more than a year must be reviewed every 12 months, at a minimum. The review will be recorded in ACMS notes. As part of the review, collectors must verify the taxpayer's current income by obtaining recent payroll stubs, copies of the taxpayer's current income tax returns, etc. Collectors should also review the original BOE-403-E, *Individual Financial Statement*, to see if any claimed expenses previously allowed have been paid off by the taxpayer. If the taxpayer has paid off some claimed expenses, the amount of payment previously directed to that debt is to be paid to the BOE. When performing a review of an existing payment plan, staff will use the appropriate review letter in ACMS when requesting updated financial documentation from the taxpayer. The review letters are the BOE-59, *Payment Plan – Review (Individual)*, and the BOE-61, *Payment Plan – Review (Non-Individual)*.

Accounts in the Promise to Pay work state (XX05) for 365 days will automatically be routed to the Promise Review state (XX65). If the account routes to a different state within that time (e.g., routes to new ACCES Model state to transition from ACCES A to ACCES B), the 365 time frame starts over. Accounts in the Promise Review state will be placed on the appropriate collector's work list. Collectors will review the agreement as discussed above and, when appropriate, route the account back to the Promise to Pay state. When ACMS routes the accounts into the Promise Review state, the payment plan remains in effect and any scheduled debit payments or promise reminder notices scheduled to be mailed to the taxpayer will continue. Existing payment plans determined to still be in the State's best interest will be manually routed back into the Promise to Pay state by the collector.

If cancellation of a payment plan is necessary, collectors will route the account to their supervisor. Accounts remaining on the Promise Review state for more than 15 days are automatically routed to the work list of the assigned collector's supervisor.

When performing an annual review of a payment plan, staff must check to see if any liability periods will become 30 months old prior to the next annual review. Liability periods exceeding 30 months may be nearing the 3-year statute of limitations for filing liens, and are subject to BOE's lien policy outlined in CPPM section 757.000. Prior to requesting a lien, staff will mail a BOE-407-L, *Notice of Intent to Lien*, to the taxpayer. If the taxpayer does not remit payment for the aged liability periods within 45 days of the BOE-407-L mailing date, staff will initiate the lien request through ACMS.

SUCCESSFUL COMPLETION - RELIEF FROM FINALITY PENALTY**770.035**

Pursuant to RTC section 6832(e) for sales and use tax and similar provisions for special taxes and fees, the BOE will relieve finality penalties for taxpayers who satisfactorily complete payment plans under certain conditions. To be eligible for relief, the liability must be BOE-assessed and the payment plan must be entered into within 45 days of the finality date of the Notice of Determination or Redetermination.

Relief of finality penalties will not be granted when:

1. The determination includes a fraud penalty. Fraud requires clear and convincing evidence of a deliberate intent to deprive the state of tax legally due, or intent to evade the payment of tax. Fraud is a step beyond a 10% penalty for negligence or intentional disregard of the law.
2. The taxpayer fails to complete the proposal as agreed. This does not include payments which are late due to circumstances beyond the taxpayer's control including, but not limited to, late U.S. Postal Service delivery of timely mailed payments and checks dishonored due to bank error.

This section only applies to relief of the finality penalty assessed on a determination pursuant to RTC section 6565. All other requests for relief from penalty such as those under RTC section 6592, 6833, and similar provisions for special taxes and fees, must be requested through the process outlined in CPPM section 535.055.

For payment plans made online that are automatically approved, the finality penalty is included in the payment plan, so relief is not automatically granted or processed. Therefore, on a monthly basis, each office must obtain the ACMS Promise Reports and identify the auto-approved accounts that qualify for relief of the finality penalty. These reports can be found on the SUTD SharePoint page on eBOE, with access limited to supervisors. After the auto-approved accounts are identified, the collector will select a review date on the ACMS Modify Promise to Pay screen for a future date. The future date should be a date just prior to when the payment plan will be completed to prevent the finality penalty amount from automatically being debited.

After the payment plan is completed, the collector will make a recommendation for relief of the finality penalty to the supervisor, and if appropriate, the supervisor will forward the request to the administrator. If appropriate, the administrator will notify the Petitions Section that the finality penalty is to be adjusted out of the taxpayer's liability. If, in the opinion of the administrator, relief should not be granted, the administrator should provide the reason to the collector's supervisor.

INTERAGENCY OFFSETS**771.000****GENERAL****771.010**

The Government Code authorizes any state agency to request payment from any other state agency that owes money to a person or entity when that person or entity owes a liability to a state agency. This procedure is called “offsetting.”

Government Code section 12419.4 provides that the state has a lien for any taxes due the State from any person or entity, upon any and all personal property belonging to such person or entity and held by the State or amount owed to such person or entity by the State. The lien shall apply to all such property held or such amount owed by an agency of the State while such person or entity owes any taxes to that agency or another agency of the State. This lien does not apply to salary or wages owing to officers or employees of the State.

In order to enforce the lien, the Board of Equalization (BOE) must send written notification to the agency holding money for refund and include the taxpayer’s name, the amount due, and request that payment be sent to the BOE to be “offset” against the person’s liability.

Compliance staff should consider requesting offsets for all final amounts owed by a taxpayer that are greater than 90 days old, pursuant to the conditions outlined in CPPM 771.020.

FRANCHISE TAX BOARD (FTB) OFFSET REQUESTS**771.015**

If a tax or fee payer owes a liability to the BOE, staff may request an offset through FTB as part of the FTB Interagency Intercept Collections (IIC) Program. In conjunction with the State Controller’s Office (SCO), the IIC program intercepts state payments that are due to individuals, including FTB personal income tax refunds, Unclaimed Property Division claim payments, and California State Lottery winnings. FTB handles offset requests on a first-come, first-serve basis. Other agencies may be competing for the same funds; therefore, the window of opportunity to request an offset is very short.

Offset Against Individuals

The FTB offset request for individual or partnership accounts is made using the ACMS system. The responsible collector working the account initiates an offset request using the “FTB Offset Request” Fast Path button in ACMS. The Fast Path button allows responsible collectors to update offset request information at any time. The Special Operations Branch (SOB) electronically submits offset request changes (add/delete/change) to FTB on a weekly basis.

Offset Against Corporations/LLCs

The FTB offset request function for corporate and LLC accounts is not currently available in ACMS. Actions on these types of accounts are handled by SOB.

FTB provides SOB with a list of all corporate and LLC accounts scheduled to receive FTB refunds. Upon receiving this list, SOB identifies each offset item by searching IRIS to locate all pertinent BOE account numbers and notifies the appropriate district or unit regarding the offset. These requests are a priority, and the responsible collector must respond promptly with a recommendation to either accept or deny the offset when SOB directs an offset request to him or her. SOB faxes the offset request memo back to FTB either the same day or, at the latest, the following business day after receiving it from FTB.

SELECTION OF ACCOUNTS FOR FTB OFFSET**771.020**

Accounts selected for offset must meet the following conditions:

1. Taxpayer is a sole proprietor or individual partner and the social security number is available, or Taxpayer is a corporation or LLC and the corporate/LLC number issued by the Secretary of State's office is available, or Taxpayer is a corporate officer or LLC member against whom a dual liability has been established.
2. There is a final liability which exceeds \$250.00.
3. There is a documented record of at least three billing or collection notices sent to the debtor.
4. Taxpayer is not in bankruptcy or has received a discharge from bankruptcy. A petition in bankruptcy carries with it an automatic stay, so the offset of the liability is withheld until the debtor receives a discharge or the automatic stay is lifted. The refund to be offset must be for a tax period subsequent to the bankruptcy filing date.
5. The request for offset is made on the correct entity. (The person did not give another person's social security number; there was not an erroneous trace — father and son or person with same name; or the billing was made against the wrong person.) If an erroneous offset occurs, it is the BOE's responsibility to issue the refund.
6. If the taxpayer is on a payment plan, an offset should still be requested for final liabilities greater than 90 days old. Payment plan forms (BOE 407 series) include language to notify the taxpayer of the BOE's ability to initiate an offset against their property held by another state agency.
7. 7. The refund is community property or sole property of the taxpayer. If the FTB refund is determined to be community property, it is subject to an offset for debt incurred by either spouse before or during the marriage. Debt incurred after the dissolution of the marriage, or while the couple lived apart, is not the responsibility of the non-liable spouse and not subject to offset (see CPPM section 753.240). Staff should look for dissolution of marriage or that the couple is living apart. If the couple is living apart, the income of each spouse is separate property.

When requesting an FTB offset, staff has the responsibility of establishing proof of current marriage and that community property rights exist before placing an offset on a non-liable spouse income tax refund. Offsets will only be placed on non-liable spouses that file income tax returns separately, and when it is established that the refund is community property. Evidence to be considered in determining marital status and community property includes, but is not limited to, the following:

- Marriage Certificate
- Previous income tax returns filed as married
- Court records
- Loan application or credit report showing married status
- Dissolution of the marriage/divorce decree
- Legal separation agreement
- Pre-nuptial/post-nuptial agreements establishing sole and separate property
- Evidence of living apart (lease agreements, etc.)
- Insurance policy (auto, property, and life insurance)
- Death of either of the spouses

While not all of these sources may be available, it is the responsibility of the assigned collector to determine that sufficient evidence was obtained. Staff should document in ACMS the evidence supporting the FTB offset on the non-liable spouse and must obtain supervisory approval before requesting an offset on a non-liable spouse. An offset request remains in place until the action is taken to remove it, therefore the collector will need to confirm marriage and community property for a non-liable spouse each year.

If an offset occurs, the taxpayer will receive a letter of notification and staff must be prepared to handle calls from the affected taxpayer. Taxpayers should be told to telephone the FTB only if the taxpayer has a tax problem involving the FTB. If the liability is paid in full or it becomes apparent that it will be paid in full without the offset, or if conditions for offset are no longer met, the FTB offset should be promptly removed.

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) OFFSET REQUESTS 771.030

The Employment Development Department (EDD) offset request for all entities is not available in ACMS. Offset requests for these entities are processed manually through SOB. EDD provides SOB with a list of all entities scheduled to receive EDD refunds. SOB identifies each item by searching IRIS to locate all pertinent BOE account numbers and notifies the appropriate district or unit regarding the offset. As in the case of FTB, EDD also handles the offset requests on a first-come, first-served basis; the window of opportunity to request an offset is very short. Once SOB notifies the responsible collector in the district offices or Headquarters units, they must make the determination to accept or deny the offset. The responsible collector will respond to SOB as a priority in order to process the offset request and forward it to EDD. The offset request must be done on the same day or, at the latest, the following business day in order for the BOE to receive the offset funds.

ALCOHOLIC BEVERAGE CONTROL (ABC) OFFSET REQUESTS**771.040**

Business and Professions Code section 23959 states, “if an application [for an alcoholic beverage license] is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes due from the applicant under ...the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.”

ABC periodically transmits a “Refund Schedule for Sales Tax” to the Board of Equalization that lists the applicant’s name, address, and amount of funds available for offset. These transmittals from ABC do not arrive on any particular schedule, but they do have a deadline of 14 days from the date of the notice to request offset of the funds. These refunds typically occur because an ABC license applicant, after paying the fee for a license, has withdrawn their application and ABC is refunding the fee paid. SOB staff conducts the same search and notification process for ABC offset requests as for the other types of offset requests.

DEPARTMENT OF HEALTH CARE SERVICES (DHCS) OFFSET REQUESTS **771.050**

The DHCS, which administers the Medi-Cal program, annually distributes over \$4 billion to California health providers. Among their clients are physicians, dentists, chiropractors, optometrists, pharmacies, hospitals, ambulance services, and retailers of hearing aids, prosthetic devices, wheel chairs, etc.

Confirmation of provider participation can be acquired from the DHCS Provider Enrollment Division, at (916) 323-1945. DHCS should be furnished with the taxpayer’s social security number or federal identification number, and most recent business address to confirm their participation in the program.

Requests for offset are made via a memo to SOB who will request offset under the provisions of Government Code section 12419.5.

FUNDS DUE TAXPAYERS FROM OTHER STATE AGENCIES**771.070**

Although SOB initiates the majority of offset requests, the district offices may find funds owed to a delinquent taxpayer by agencies that are not monitored by SOB, such as bonds subject to refund posted with Contractors State License Board or the Bureau of Automotive Repair. Upon receipt of a written request from the district office, SOB staff may request an offset of funds from any state agency that owes a taxpayer a refund.

DISTRICT REQUESTS FOR OFFSET TO SPECIAL OPERATIONS BRANCH **771.080**

District offices and Headquarters units requesting to offset funds from another agency are required to provide a memo to SOB with the following information:

1. Taxpayer’s name, exactly as it appears in IRIS.
2. Taxpayer’s mailing address.
3. Amount of the taxpayer’s liability.
4. A summary of the account history.
5. Name and address of the agency that is holding funds available for offset.
6. Any documentation or information showing the taxpayer is to receive funds from the respective agency.

**SPECIAL OPERATIONS BRANCH
OFFSET NOTIFICATION TO DISTRICT OFFICE**

771.090

SOB notifies the responsible collector in the district office or Headquarters unit via e-mail when an offset is available. SOB uses two standard sets of email notifications and ACMS comments; one set for ABC/EDD offsets and a separate set for FTB offsets.

Sample Email and ACMS Comments for ABC/EDD Offsets

Subject: ABC/EDD Offset/Account Number/Taxpayer's Name

There is an ABC/EDD offset available in the amount of \$(offset amount) on the above account. Please review the account and determine if the offset should be taken. In order for the BOE to receive the funds, please respond by the end of the day. If you have any questions, please contact me at (phone number) or by reply email.

Once the responsible collector responds with a decision, SOB enters comments in ACMS similar to the following:

Special Operations received notice from ABC/EDD of an offset available in the amount of \$(offset amount). The account was reviewed and (Collector's Name) replied via e-mail to accept/decline the offset.

Sample Email and ACMS Comments for FTB Offsets

Subject: FTB Offset/Account Number/Taxpayer's Name

There is an FTB offset available in the amount of \$(offset amount) on the above account. **NOTE: Before we can offset this amount, the Pre-Intercept Notice* requirement must be met. Also, 30 days must have passed from the Demand date for each period in which an offset is requested.** Please review the account and determine if the offset should be taken. In order for the BOE to receive the funds, please respond by the end of the day. If you have any questions, please contact me at (phone number) or by reply email.

**Pre-Intercept Notice (see below) is generally the last blurb found on the Demand billing: The Franchise Tax Board (FTB) administers the Interagency Intercept Collection Program in conjunction with the State Controller's Office. FTB is authorized to redirect a refund owed to a tax or fee payer to the Board of Equalization (BOE) to offset the tax or fee payer's liability under California Government Code section 12419.5. If you have any questions or objections to the liability on this notice, contact the BOE office indicated above within 30 days from the date of this notice and a BOE representative will review and discuss your account with you. You have 30 days from the date of this notice to either remit payment in full, contact the BOE, or provide documentation to the BOE to show the liability is not due. Failure to respond within 30 days from the date of this notice will result in the BOE forwarding your account to FTB to proceed with intercept collections.*

Once the responsible collector responds with a decision, SOB enters comments in ACMS similar to the following:

Special Operations received notice from FTB of an offset available in the amount of \$(offset amount). E-mailed (Collector's Name) regarding the Pre-Intercept Notice requirement, the 30-day waiting period from the Demand date, and whether the offset should be accepted/declined. The account was reviewed and (Collector's Name) replied via e-mail to accept/decline the offset.

OFFERS IN COMPROMISE**772.000****GENERAL****772.010**

The Offer in Compromise (OIC) program is available to all taxpayers and feepayers (hereafter taxpayers) that do not have the income, assets, or means to pay their liability within a reasonable period of time, in most cases within 5 to 7 years. Generally, if an OIC is accepted, the taxpayer's liability is eliminated and liens are released.

In order to participate in the OIC program, taxpayers must meet the following requirements:

1. The account is closed (not active) and the liability is final. (Note: Effective 1/1/09 through 1/1/13, the BOE will consider an OIC for open and active businesses under certain conditions.
2. The taxpayer is not disputing the liability.
3. The person making the offer is not involved or associated with the same, or similar, type of business.
4. The liability is assessed by the Board of Equalization (BOE), is final, and there is no evidence of tax reimbursement.

If after reviewing an account, it appears the taxpayer is a good candidate for the OIC program, the responsible collector may invite the taxpayer to participate by sending Form BOE-908, *Offers in Compromise Program*, and/or an OIC application (Form BOE-490 or BOE-490-C). Form BOE-908 is available in ACMS through the Actions menu under Send Correspondence, and through the Send Letter fast path button at the account level.

FRAUD**772.020**

An OIC will **not** be considered in situations where the taxpayer has been convicted of criminal (felony) fraud. However, taxpayers who have been assessed a civil fraud penalty may participate in the OIC program. In these cases, the BOE requires a **minimum** offer of the tax plus the fraud penalty. The minimum offer requirement may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. Usually, this situation occurs in partnership accounts where the intent to commit fraud can be clearly attributed to another partner.

PROCESSING AN OFFER IN COMPROMISE PROPOSAL**772.030**

All OIC proposals must be filed with the OIC Section using Form BOE-490, *Offer in Compromise Application* (for individuals, sole proprietors, married couples and domestic partners), or Form BOE-490-C, *Offer in Compromise Application for Corporations, LLCs, Partnerships, etc*

All OIC proposals must be filed with the OIC Section using Form BOE-490, *Offer in Compromise Application* (for individuals, sole proprietors, married couples and domestic partners), or Form BOE-490-C, *Offer in Compromise Application for Corporations, LLCs, Partnerships, etc*.

Individuals that have multiple tax liabilities with the BOE, Franchise Tax Board (FTB), or Employment Development Department (EDD) may use the *Multi-Agency Application*, Form DE-999CA. All three application forms are available to BOE staff and the public via the BOE's website at <http://www.boe.ca.gov/pdf/de999ca.pdf>.

The taxpayer is required to complete and sign the application and provide all the required supporting documentation (see Check List of Required Items on page 2 of the OIC application). The OIC package should be submitted to the district office responsible for the account.

The district office or headquarters division will examine the OIC package, ask the taxpayer to provide any missing information, and prepare a memorandum summarizing the account (instructions for completing the memorandum are detailed below, see bullet point 3). The district office or headquarters division may not reject, deny, or negotiate an OIC based on its review of the application and will forward all OIC requests to the OIC Section within 30 days from receipt, regardless of the documentation provided to that point.

If there is an existing Installment Payment Agreement (IPA), the district office or headquarters division should advise the taxpayer to continue remitting its payments as promised. The OIC Section will notify the taxpayer to terminate the IPA, when appropriate. The district office or headquarters division is responsible for monitoring scheduled payments and must follow up manually once ACMS routes the account to the OIC Section. Existing Earnings Withholding Order (EWO) payments and offsets from other state agencies will also continue while the OIC Section is reviewing the OIC. In most cases, suspend collection actions if there is no existing IPA or EWO. Contact the OIC Section prior to taking any *new* collection action, or if delaying collection action will jeopardize the BOE's ability to collect.

Some OIC proposals may involve partnership accounts. If only one partner has requested an OIC, the district office or headquarters division should suspend collection actions only for the partner requesting the OIC.

Forward the following information to the OIC Section within 30 days:

1. The completed application (BOE-490, BOE-490-C, or DE-999CA) which must indicate an offered amount and include the taxpayer's signature.
2. All of the supporting documentation provided by the taxpayer.
3. A memorandum summarizing the account status for each of the following points (please indicate "not applicable" or "not available" if the points do not apply):
 - a. How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?
 - b. How old is the liability? What collection actions have been taken and what were the results? Has the account been written-off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history that answers these questions.
 - c. What is the source of the funds being offered? Is the taxpayer taking out a loan, borrowing from a family member, etc.?
 - d. What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgments, etc. If the taxpayer is currently on an installment payment agreement, what is the payment amount and what is the due date? If there is an EWO in place, what is the amount the BOE is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?
 - e. Is the taxpayer still involved with the business that generated the liability? Did the taxpayer incorporate? Was property transferred to a spouse or a relative? Will a nominee lien be issued?

PROCESSING AN OFFER IN COMPROMISE PROPOSAL**(CONT.2) 772.030**

- f. Is the taxpayer located inside or outside of the state? If the taxpayer is located outside of the state, is the BOE receiving voluntary payments? If so, how much and what is the due date of the payment(s)?
- g. What is the taxpayer's age, physical condition, and earning ability? Are there any special circumstances that may affect the taxpayer's financial situation over the next several years? Is the taxpayer eligible for retirement, social security, unemployment, or disability benefits? Does the taxpayer have any medical conditions or health problems? Does the taxpayer have any special skills or expertise? Provide any other information that could affect the taxpayer's finances and include the taxpayer's spouse, dependents, or other relatives, if appropriate.
- h. If a corporation requests an OIC, will a RTC section 6829 dual determination for personal liability of corporate officer(s), be issued? Is there a possibility of issuing a corporate suspension dual determination?
- i. Did the taxpayer file bankruptcy? If so, what was the result of BOE's claim? Did the taxpayer receive a discharge? Please include the chapter filed, petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.
- j. Was a security deposit or personal guarantee posted to the account? Provide the date, amount, and type of security posted. Was the security liquidated and applied to the account? Provide the date and amount applied. NOTE: All security posted to the account, whether a bond, personal guarantee, or a Time Certificate of Deposit, must be liquidated and applied to the balance before an OIC will be considered. A surety bond is a viable asset upon which the BOE can and should make a claim as soon as it has been determined no other collection remedies exist. A demand will be placed on a surety bond prior to accepting an OIC.

OFFER IN COMPROMISE SECTION — PROCESSING APPLICATIONS**772.040**

In accordance with BOE policy, all OIC applications sent to the OIC Section are acknowledged in writing, within 12 working days of receipt. The taxpayer receives an acknowledgement letter along with a copy of Form BOE-324-OIC, *Privacy Notice*. The OIC Section inputs comments in ACMS after the acknowledgement letter and privacy notice is mailed.

The OIC Section assumes control of the account in ACMS while the offer is under consideration, unless there are partners who are not involved in the offer.

SECURING THE OFFERED AMOUNT**772.050**

The taxpayer is not required to post the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when it is appropriate to fund the offer. However, if funds are received in the district office, they should be processed as an "OIC deposit" (see CPPM 772.090 for detailed instructions.)

In many instances, the offered funds are provided by relatives or friends not associated with the business entity. These deposits are processed as third-party deposits in accordance with CPPM 772.090.

If an OIC is not accepted, the deposited funds are either applied to the liability or returned to the taxpayer, based on the written direction of the taxpayer. If a third party posted the deposit, the written direction of the third party is needed. When the BOE retains an OIC deposit, it is applied to the taxpayer's liability using the date the funds were received as the effective date of payment.

PROCESSING ACCEPTED OFFERS**772.060**

The OIC Section will evaluate all OIC requests to determine if they are consistent with statutory requirements and BOE policy. If the offer is formally accepted, the OIC Section will initiate the approval process.

Upon approval of the accepted offer, the OIC Section will apply the offered funds, adjust balances, release liens, remove offsets, and input IRIS/ACMS comments. The OIC Section will send the taxpayer an acceptance letter indicating the periods of liability that have been compromised along with copies of lien release documents and a statement of balance. In addition, a public records notice may be issued if the compromise exceeds \$500.

If the compromise involves a partnership, the partner making the offer is relieved from debt upon acceptance of the offer. Any partner that was not included in the OIC request is responsible for the remaining balance due after the offered funds are applied to the liability. The OIC Section will make comments in IRIS/ACMS to indicate that a partner's offer has been accepted and will remove that partner from account records. However, that partner's name will remain in account history and comments.

PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS**772.070**

If an offer is not acceptable, the OIC section notifies the taxpayer in writing of the rejection, denial or withdrawal and provides an explanation for the decision. The OIC Section also adds comments to ACMS and routes the account back to the district office to proceed with collection action.

If the taxpayer posted the offered amount, the funds are applied to the account or returned, depending on the taxpayer's written instructions. Credit interest will not be granted on OIC deposits returned to the taxpayer. In addition, a refund will not be issued if the source of the deposited funds is an equity loan where a lien subordination or partial release of lien was issued by the BOE to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.

If the taxpayer posted the offered amount with the district office or headquarters division, the district office or headquarters division is responsible for issuing a refund. If the funds were submitted to the OIC Section and deposited through the Cashier, the Audit Determination and Refund Section will issue the refund. The OIC Section will send a request to the appropriate office and initiate the refund process.

APPEALS**772.080**

A denied or rejected Offer is not subject to administrative appeal or judicial review.

**PROCESSING OFFER IN COMPROMISE
FUNDS RECEIVED AT THE DISTRICT OFFICE****772.090**

Funds received as deposits pending acceptance of an OIC will continue to be processed as 2B Deposits. As such, the district office Security Tax Technician will post them to the Security Deposits system in the Security Posting (SEC PO) screen. Form BOE-487, with the words "Offer in Compromise Deposit" hand-written at the top will then be submitted to the district office cashier for processing. The cashier will process the deposit in the same manner as regular security, using the Entity's TIN and the S/D switch. Cashiers must add comments indicating that this is a 2B deposit pursuant to a pending compromise offer.

As an added requirement, if a third-party is posting the deposit on behalf of the taxpayer, the Security Tax Technician must so reflect it in the SEC PO screen and provide the PAYOR's TIN to the cashier. The cashier will enter the TIN in CSH RO on the PAYOR TIN field. This will serve to specifically identify the person making the deposit. The deposit will still be processed using the Entity's TIN and the S/D switch as previously instructed.

Disbursing & Applying Offer In Compromise Funds Upon Acceptance of an Offer in Compromise

When the OIC Section notifies the district offices or headquarters division of the acceptance of an OIC, the Security Tax Technician will initiate the disbursement of the 2B deposit based on current procedures. *However, a separate check for the exact amount of the deposit must be issued.* Payment application information and effective date must be furnished to the cashier by the Security Tax Technician. The payment document furnished to the cashier, which in most cases will be a DIF DA screen print, must have the words "Offer in Compromise Payment" hand-written at the top. The effective date of payment should be the date the funds were presented for deposit.

OIC funds are not to be processed in the same manner as cashed out security. Upon presentation of the disbursement check by the Security Tax Technician, the cashier will process these remittances by entering CHK in the Remit Type and *will not* enter CSD in the Special Remit field in CSH RO. The cashier will process the remittance using the payment application information and the effective date provided by the Security Tax Technician. The cashier must add comments to indicate that this was a payment from a 2B deposit pursuant to an accepted OIC. The Security Tax Technician must notify the OIC Section that the funds have been applied via telephone at (916) 322-7931 or fax at (916) 322-7940.

Refunds of any OIC deposits must be made promptly after receiving directions to that effect from the OIC Section. The Security Tax Technician must add comments detailing the reason for the refund.

INNOCENT SPOUSE AND EQUITABLE RELIEF**773.000****INNOCENT SPOUSE****773.010**

When a husband and wife or registered domestic partnership (registered with the Secretary of State) owe a tax/fee to the Board of Equalization (BOE), both parties are individually and jointly liable for the amount due when the account is registered as a co-ownership or a partnership. (Hereinafter, a reference to “spouse” shall also refer to a registered domestic partner.) However, California law recognizes that it is not always reasonable or equitable to hold a spouse liable for the liability when certain conditions exist. Innocent Spouse (IS) claims usually occur when spouses divorce, separate, or no longer live with one another. Generally, the requesting spouse claims that he or she was not involved with the business when the liability was generated. The burden of proof for this claim rests with the requesting spouse.

To seek relief, the claiming spouse must submit a written request for IS relief to the BOE within the later of:

1. One year from the date the BOE first made contact about the tax owed.
2. Five years from the due date of the return filed without payment of tax.
3. Five years from the date the liability became final.

The written request must contain:

1. The account number.
2. The period for which IS relief is requested.
3. The basis for the IS request. This includes documentation that establishes that the requirements below have been met.

The claiming spouse may meet this requirement by completing Form BOE-682A, *Request for Innocent Spouse Relief*, which is located in Publication 57. Innocent Spouse Relief Form BOE-682A is also available on the BOE website (www.boe.ca.gov) or in any BOE office.

Relief or partial relief of liability may be granted if all the following qualifying conditions are met:

1. A liability is incurred under the Sales and Use Tax Law or the Special Tax Law administered by the BOE.
2. The liability is attributable to the non-claiming spouse.
3. The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse’s circumstances would not have had reason to know of, the liability.
4. It would be inequitable to hold the claiming spouse liable, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.
5. The claiming spouse makes a timely request for IS relief in writing to the BOE.
6. At the time the spouse makes a request for IS relief, the claiming spouse:
 - a. Is no longer married to, or is legally separated from, the non-claiming spouse.
 - b. The claiming spouse is no longer a member of the same household.

INNOCENT SPOUSE**(CONT.) 773.010**

The written request for IS relief or a completed Form BOE-682A, along with the supporting documents, is sent to the Board of Equalization, Offers in Compromise (OIC) Section (MIC:52), P.O. Box 942879, Sacramento, CA 94279-0052. The non-claiming spouse is notified of the IS request and is given the opportunity to provide documentation to support or counter the claiming spouse's request.

When the outcome of the claimant's IS request is determined, both parties will be notified by letter. The letter will explain how relief will affect the liability period(s) and will also address lien issues.¹

If the claiming spouse receives relief as an Innocent Spouse, he or she may be entitled to a full refund of monies collected either voluntarily or involuntarily. However, the claiming spouse's written request for refund must be submitted within the statute of limitations for claims for refund. Therefore, when making a payment(s) the claiming spouse should be provided with Publication 117, *Filing a Claim for Refund*, and informed to submit a Form BOE-101, *Claim for Refund or Credit*, if applicable.

EQUITABLE RELIEF**773.020**

A claiming spouse whose request for IS relief is denied may still be eligible for "Equitable Relief." Instructions for filing an Equitable Relief (ER) claim as an innocent spouse are contained in the denial letter sent to the claimant by the OIC Section.

The claimant has 30 days from the date of the denial letter to file a request for ER. If the claiming spouse does not respond within 30 days, the BOE assumes that the claiming spouse is not interested in pursuing equitable relief and the OIC Section will close the case file.

If the claiming spouse responds within 30 days and would like to pursue an ER claim, the OIC Section will examine the following factors to determine if it is inequitable to hold the claimant liable for the existing liability:

1. Would the claimant suffer an economic hardship if relief is not granted?
2. How much knowledge did the claimant have regarding the understatement or non-payment of the liability?
3. Did the claimant receive a significant benefit because the liability was not paid?
4. Is the liability attributable to the claimant or the non-claiming spouse?
5. Does the claimant have the legal obligation under a divorce decree or agreement to pay the liability?
6. Did duress or abuse towards the claimant contribute to the understatement or nonpayment of liability?
7. Did the claimant comply with the BOE's laws during the period of liability or subsequent periods?
8. Does the non-claimant's spouse or registered domestic partner support the request for relief of liability?

¹ IS cases may result in partial relief being granted on a particular period of liability. In these cases, the claiming spouse's name is not removed from registration and the claiming spouse may not receive a single party release of lien. Although the claimant may receive real property through a divorce settlement, the property may have been transferred without a clear title (quit claim). A single party release of lien may not remove the effects of our tax lien for the non-claiming spouse's ownership interest or for the community property interests.

EQUITABLE RELIEF

(CONT.) 773.020

If the OIC Section approves the claimant's request for equitable relief, both the claiming spouse and non-claiming spouse are notified. Should the claimant's request for equitable relief be denied, the claimant may file a request for reconsideration with the OIC Section. Taxpayers who are denied ER are entitled to reconsideration by the BOE; see Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*.

If the ER claim is approved, the claimant is relieved of the unpaid liability; however, he or she is **not** entitled to a refund of payments collected.

SUBPOENA DUCES TECUM**774.000****AUTHORITY AND USE****774.010**

Government Code section 15613 authorizes the Board of Equalization (BOE) to issue a subpoena duces tecum if, in the course of conducting an audit or investigation of a taxpayer's business, the BOE representative is denied access to business records necessary to carry out his or her official duties.

INFORMATION NEEDED**774.020**

The district administrator or Special Taxes Division administrator must authorize, and the appropriate Chief of Field Operations or Special Taxes Division Chief must approve, all requests for the legal staff to draft a subpoena duces tecum. The request must include:

1. The purpose for which the records are needed.
2. The date, time of day, and place for the person to appear.
3. The name and position title of the Board of Equalization representative before whom the person must appear.
4. A list of the records sought and the period of time to which the records relate.
5. The name, nature, and location of the business to which the records relate and the name, address, and relationship to the business of the person who has custody and control of the records.
6. A statement indicating the specific reason, or reasons, why examination of the records sought is material and necessary to the audit or investigation.
7. A statement showing that demands have been made for the records and the response to such demands.
8. Any additional information that will disclose the full circumstances of the situation requiring the use of a subpoena duces tecum.

This information is necessary to ensure against infringements of the taxpayer's constitutional guarantees relating to unreasonable search and seizure and due process of law. The subpoena and the declaration of materiality (under penalty of perjury) supporting the issuance of the subpoena must clearly identify the particular records being requested and specify the reasons why their contents are necessary and material to the work of the Board of Equalization in carrying out its duties. A sample request for a subpoena duces tecum is included at the end of this chapter.

PREPARATION AND SERVICE OF SUBPOENA AND DECLARATION**774.030**

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

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

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

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

**SAMPLE REQUEST FOR A SUBPOENA DUCES TECUM
STATE OF CALIFORNIA**

**EXHIBIT 1
BOARD OF EQUALIZATION**

MEMORANDUM

To: Stephen Rudd, Chief Date: Month Day, Year
Field Operations Division, Equalization Districts 3 & 4
and Centralized Collection Section

From: [Name]
[District Office Name] District Administrator

Subject: Request for Subpoena Duces Tecum Permit:
[Name 2], Inc. SR XX 123-456789
DBA: -- and -- --
1234 Busy St., Ste. 123
Anytown, CA. 12345

The above referenced taxpayer is a corporation. A Sales and Use Tax Audit for the period October 1, XXXX through September 30, XXXX is in progress. The taxpayer is currently represented by Mr. [Name 3], EA. Mr. [Name 3] has informed the auditor that the president of the company, Mr. [Name 4], is unwilling to provide source documentation to support sales and purchases. Partial documentation such as, the 2004 & 2005 Federal Income Tax returns and a compilation of Total Sales have been provided to date. All efforts to obtain the necessary remaining records for completion of the audit have been exhausted, therefore a Subpoena Duces Tecum is requested.

- a. Name and address of the person or entity upon whom the subpoena is to be served:
[Name 2], Inc.
DBA: -- and -- --
1234 Busy St., Ste. 123
Anytown, CA. 12345
- b. Name, Title and Telephone number of the Board employee who will examine the documents:
[Name 5], Senior Tax Auditor
(XXX) XXX-XXXX
- c. The Board Address where the documents are to be examined:
Board of Equalization
1234 Review Way, Suite 123
Survey, CA. 12345
- d. Date and time when records are to be furnished:
Date: As specified by Legal Division.
Time: 10:00 a.m.
- e. The time period covered by the documents that are being requested:
October 1, XXXX through September 30, XXXX
- f. The specific documents that are being requested:
* Sales Invoices/Contracts and Purchase Invoices
Accounting Journals for Sales and Purchases
Bank Statements & Cancelled Checks

COLLECTIONS

PREPARATION AND SERVICE OF SUBPOENA AND DECLARATION

(CONT.3) 774.030

g. Efforts that have already been made to obtain the documents being sought:

Attached is a listing of our verbal attempts to obtain the taxpayer records as well as copies of written letters.

Our written requests for records have been:

* Refused

Attachments

cc: [Name 6], District Principal Auditor
[Name 7], Supervising Tax Auditor

DISCHARGE FROM ACCOUNTABILITY**776.000****GENERAL****776.010**

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

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

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

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

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

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

WRITE OFF DOES NOT RELIEVE THE TAXPAYER OF LIABILITY**776.020**

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

WRITE OFF RECOMMENDATION**776.030**

The write off recommendation is processed using the online system. For detailed instructions on how to initiate a write off in the online system, see IRIS Cheat Sheets located on eBOE. When preparing a recommendation to request a discharge from accountability, a description of the significant points of the investigation and the results of the collection actions taken is required.

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

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

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

SOB will either:

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

REASONS FOR RECOMMENDATION**776.035**

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

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

TAXPAYER DECEASED**776.040**

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

TAXPAYER CANNOT BE LOCATED**776.050**

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

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

OUT-OF-STATE JURISDICTION**776.060**

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

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

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

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

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

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

INACTIVE CORPORATION**776.070**

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

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

ATTORNEY GENERAL AGREEMENT**776.080**

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

TAXPAYER WITHOUT ASSETS OR INCOME**776.090**

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

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

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

BALANCE OUTLAWED**776.100**

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

SMALL BALANCE - DOES NOT JUSTIFY FURTHER COLLECTION EFFORT**776.110**

Reason code eight is “Small balance - does not justify further collection effort.” A district compliance supervisor will approve these types of accounts after a reasonable effort has been made to collect the liability. To avoid costly collection efforts out of proportion to the amount to be realized, SOB will process district-approved requests for write off of balances of \$500.01 through \$5,000.00 on closed-out accounts. Only a minimum explanation of previous collection efforts will be required from the districts. (See CPPM section 776.180 for automatic write off of balances of \$10.01 through \$500.00.)

A reasonable effort is defined as collection effort(s) where the cost is commensurate with the amount to be realized. For example, conducting a number of field calls to collect an item of less than \$5,000 goes beyond a reasonable effort.

SMALL BALANCE - DOES NOT JUSTIFY

FURTHER COLLECTION BALANCE

(CONT.) 776.110

SOB will generally accept and approve write offs for small balances on closed-out accounts when the amount of tax, penalty and interest is \$500.01 through \$5,000 and the account meets the following conditions:

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

SPECIAL OPERATIONS BRANCH NOTIFICATION

776.150

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

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

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

AUTOMATIC WRITE OFF OF BALANCES OF \$500.00 OR LESS

776.180

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

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

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

**AUTOMATIC WRITE OFF OF BALANCES OF \$500.00 OR LESS
WRITE OFF CHECKLIST**

(CONT.1) 776.180

1

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

Prepared by: _____ **Date:** _____

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

Date Attempts to Locate Debtors, Assets, and Personal Information

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

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

EDD _____ FTB _____ DMV _____

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

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

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

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

_____ Field call made to verify operation.

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

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

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

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

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

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

_____ Real property checked in RealQuest or CLEAR.

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

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

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

AUTOMATIC WRITE OFF OF BALANCES OF \$500.00 OR LESS

(CONT. 2) 776.180

WRITE OFF CHECKLIST

CONTINUED

Date Attempts to Locate Debtors, Assets, and Personal Information

- _____ Determined if successor liability exists and successor billing done, if warranted.
- _____ Contacted prison/institution for taxpayer release date, if applicable.
- _____ Contacted landlord to obtain address, employment, payment/bank information, and copy of lease agreement, if applicable.
- _____ IRIS alpha checked for related accounts.
- _____ Voter registration checked to locate and verify address.
- _____ Checked for contractor's or other occupational licensing. (Provide current status of license if any.)
- _____ For auto dealerships, verified status of dealer's license, whether there is a deposit or bond, and checked for salesperson's license.
- _____ Verified documentation regarding proof of death and checked for probate.
- _____ Credit report obtained. (Attach copy and enter date report was obtained: _____.)
- _____ Checked ACMS for vessel and aircraft ownership and liens placed with FAA and U.S.C.G.
- _____ Obtained physician's statement or medical record from taxpayer to verify disability.
- _____ Security checked and applied, if available.
- _____ Taxpayer age verified and entered in ACMS write off summary.

Collection Efforts

- _____ Taxpayer contacted for payment.
- _____ FTB offset placed in ACMS.
- _____ Levies sent (community property/spousal blurb used to locate and attach community property).
- _____ Liquor license withhold placed and/or license seized. (Attach ABC printout showing license status.)
- _____ Referral to Special Operations Branch (previously AG referral) for out of state collection.
- _____ Lien filed (including nominee lien, if applicable).
- _____ Earnings Withholding Order (EWO) issued if applicable, including referral for spousal EWO, if feasible.
- _____ Keeper/Till Tap ordered for other active businesses owned by taxpayer, if any.

OTHER PROGRAMS**799.000****REWARD PROGRAM****799.005**

Revenue and Taxation Code section 7060 provides for a rewards program for information resulting in the identification of underreported or unreported sales and use taxes. If a person indicates that, for a reward (monetary compensation), he or she has information that would enable the Board of Equalization (BOE) to recover sales tax revenues, the person should be advised that, to date, the Legislature has not appropriated funds for the reward program. Although no reward money is currently available, an appeal to the person's sense of fair play (equal treatment/payment of taxes for all) and responsibility as a good citizen may result in the person divulging the information.

CONTROLLED SUBSTANCES**799.090**

Assembly Concurrent Resolution (ACR) 143 deals with the illegal sales of narcotics and other illegal drugs (Controlled Substances). Under the Controlled Substances program, the BOE will be contacted by FTB and will issue determinations when there are assets being held by the arresting authorities or some other third party that can be levied upon or when FTB has monies to refund to the taxpayer because FTB has reduced the amount of its liability.

The Controlled Substances program is controlled by headquarters and the Sacramento District Office. This procedure, however, should not deter staff from issuing determinations on controlled substances and following-up with collection action on those cases where the district office identifies a cause or is contacted directly by a FTB field office, local police authorities, or some other source.

If a loss of assets is probable through regular determination procedures, existing jeopardy determination procedures should be utilized. Headquarters should be contacted immediately and the levy initiated for collection on a same-day basis when possible. Experience with these types of cases has shown that any delays in levying upon the assets may result in the loss of the assets to attorneys or other third parties. If the assets are going to be retained by the arresting authorities as evidence, a levy should still be served to establish the BOE's priority lien.

IDENTITY THEFT PROGRAM**799.100**

Identity theft occurs when a person makes an unauthorized use of another person's personal identifying information for any unlawful purpose, such as to evade tax. Even though the perpetrator may be a family member or friend, it cannot be assumed that a person authorized such use of their personal information merely because of their relationship to the perpetrator.

The discovery of identity theft may arise from an audit or collection activity. It may also be discovered after a person unlawfully uses another person's name and personal information when applying for a permit or license without their consent, thus making the other person appear to be the person responsible for any debts incurred. However, merely adding a person's name and personal information, including a signature or electronic signature, when applying for a permit or license does not always establish an intent to evade tax. A person may have received authority and consent from the other person to act on their behalf in specified circumstances. For example, if a partner completes the permit application for him or herself as well as another partner, the act of registering for the other partner may not have been done with the intent to evade tax.

In the event a tax or fee liability is accrued on an account where a person alleges to have been fraudulently registered to that permit, the district office or headquarters section that discovers the alleged identity theft or forgery is responsible for evaluating the evidence and having the account adjusted if appropriate. If staff other than the responsible collector or auditor becomes aware of the possible identity theft, the information should be sent for review to the district or section responsible for the collection of the liability.

Staff is responsible for clearing an innocent party of any BOE liability resulting from identity theft or forgery. However, staff is **not** responsible for pursuing or identifying the perpetrator. In all cases, staff should send a memo to the Investigations Division with all pertinent information and any documentation obtained as evidence to support that identity theft has occurred, so they may begin an investigation and take appropriate action. The Investigations Division is responsible for contacting law enforcement.

Evidence

The innocent party is responsible for providing staff with documentary evidence supporting the claim of identity theft. Documentation may include the following:

- Police and/or court reports;
- Documentation that shows a fraud alert has been placed on credit reports;
- A copy of the Identity Theft Affidavit filed with the Federal Trade Commission (FTC). (The FTC serves as the federal clearinghouse for complaints by victims of identity theft.);
- Written responses of results of investigations by creditors, banks, or companies that provided the perpetrator with unauthorized goods or services;
- Written responses of results of investigations by district attorney's office or other investigators supporting the claim of identity theft;
- Copies of other applications and business records relating to transactions and accounts that show that those transactions involved identity theft;
- Affidavits from landlords, vendors, accountants, or bookkeepers supporting a claim of identity theft;
- Deposition from a private handwriting expert certifying a forged signature; or
- A birth certificate indicating that the innocent party was a minor at the time the application was signed which may indicate identity theft occurred.

IDENTITY THEFT PROGRAM

(CONT.) 799.100

This list of documentation is not intended to be all inclusive and not all of the items listed are required to substantiate claims of identity theft.

Procedure

The responsible district or section will examine the evidence. The district principal compliance supervisor or headquarters section supervisor should contact other potentially affected sections or departments (e.g., Centralized Collections Section, Special Operations Branch, Special Taxes and Fees Department, and district offices) when a related account, or tax or fee program, is identified that may have additional pertinent information. Once the responsible district or section is satisfied the documentation supports the identity theft, the district principal compliance supervisor or headquarters section supervisor should review the case, and if in agreement, should approve a request for a legal adjustment to the account.

Staff will use a BOE-200-A, *Special Operations Action Request*, which is available in the Automated Compliance Management System (ACMS), to request a legal adjustment. The BOE-200-A is then sent to one of the following for final approval:

Section/District	Final Approval
District Offices	District Administrator
Centralized Collections	Section Administrator
Headquarters Operations	Division Chief
Special Taxes and Fees	Division Chief
Legal Department	Chief Counsel

Once the request for a legal adjustment has been approved, the approving party should forward the BOE-200-A to Special Operations Branch (SOB) for adjustment. Staff originating the request should put detailed comments in IRIS (CTS CM screen) under the TIN number for the individual.

SOB will process and approve the adjustment in IRIS using the adjustment type code "IDT" on the "Maintain Legal Adjustments for Account" screen (DIF LA). Once the adjustment is completed, SOB staff will generate a statement of account in IRIS, which will include bill note #999 (free form text) that explains the adjustment performed, and provide it to the innocent party.

If liens have been filed in the innocent party's name, a separate BOE-200-A should be completed and sent to SOB requesting a release of lien filed in error, or requesting a single party release of lien. SOB will send the lien release directly to the county recorder unless otherwise instructed by the innocent party or an escrow company acting on behalf of the innocent party.

After the adjustment is made, copies of all file documents should be forwarded to the Internal Audit Division (MIC 54).

TOP 500 PROGRAM**799.200**

Revenue and Taxation Code (RTC) section 7063 directs the BOE to make public each quarter a list of the 500 largest sales and use tax delinquencies (liabilities) in excess of one hundred thousand dollars (\$100,000). The list is available on BOE's website.

Effective July 1, 2012, state governmental licensing entities that issue professional or occupational licenses, certificates, registrations, or permits, are generally required to suspend or refuse to issue or renew a license if the applicant's or licensee's name is included on the list of the 500 largest sales and use tax delinquencies. The Department of Motor Vehicles (DMV) is required to suspend the license of any person whose name is on the list. The State Bar of California and the Alcoholic Beverage Control Board (ABC) are generally not mandated, but at their discretion, may participate with the application of this section of the law. The Contractors State License Board may also suspend, or refuse to issue or renew the license of any person whose name is on this list. For further information see Business and Professions Code (BPC) sections 494.5, and 7145.5.

The law also prohibits a state governmental agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on the Top 500 list. For further information see Public Contract Code Section 10295.4.

For purposes of compiling the Top 500 list, a liability means an amount owed to the BOE that meets all of the following criteria. The liability must be:

1. Based on a determination deemed due and payable or self-assessed by the taxpayer;
2. Recorded as a notice of state tax lien in any county recorder's office in this state; and
3. For an amount of tax delinquent for more than 90 days.

For purpose of the Top 500 list, a liability does not include any of the following, and, therefore, may not be included on the Top 500 list:

1. A liability that is under litigation in a court of law;
2. A liability for which payment arrangements have been agreed to by both the taxpayer and the BOE and the taxpayer is in compliance with the arrangement; and
3. A liability of an individual or business taxpayer under federal bankruptcy protection, and the taxpayer has not yet exited or emerged from bankruptcy.

Each quarter the list of the Top 500, with respect to each liability, will include all of the following:

1. The names of the person(s) liable for payment of the tax and their last known address(es);
2. The amount of the liability as shown on the notice or notices of state tax lien including any applicable interest or penalties, less any amounts paid;
3. The earliest date that a notice of state tax lien was filed;
4. The telephone number of the Compliance Policy Unit (CPU) located in Headquarters, for taxpayers to contact if they believe their name was included on the list in error;
5. The number of persons that have appeared on the list who have satisfied their liability in full, along with the total dollar amounts that have been applied to the related liabilities; and
6. Any payments made toward liabilities on the list if requested by the taxpayer.

Thirty (30) days prior to making a liability a matter of public record on its website, the BOE shall send a preliminary written notice (BOE-1401, *Possible Public Disclosure of Tax Delinquency*) by certified mail, return receipt requested to each person or persons liable for the payment of tax. The notice will advise each person(s) of the BOE's intent to place their name on the list and the basis for the action.

CPU will use the Automated Compliance Management System (ACMS) to send the BOE-1401 notices, which will include the responsible collector's name and contact information. The notice will provide warning to the person(s) that if their name is included on the list, it may lead to the loss or denial of their professional or occupational licenses, including driver licenses, pursuant to BPC section 494.5, and prevent them from entering into contracts for the acquisition of goods or services with California state agencies as noted in Public Contract Code section 10295.4. If within 30 days after the issuance of the notice, the person(s) does not remit the amount due, or make arrangements with the BOE for payment of the amount due, the delinquent amount shall be included on the list.

Once the tax delinquencies are published, the BOE will provide the state governmental licensing agencies, via Secure File Transfer, a "Certified List" of the Top 500 largest sales and use tax delinquencies for purposes of administering BPC section 494.5. These agencies shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's (our taxpayer) name is included on the "Certified List."

Each state licensing agency shall determine whether an applicant or licensee is on the "Certified List." If applicants or licensees are listed, the licensing agency shall then deliver, within 30 days of receipt of the list, a preliminary notice to the applicants or licensees stating the intent to suspend or withhold issuance or renewal of their licenses. The notice will include CPU's address, a telephone number for immediate contact, and the *License Suspension Release* form (provided by the state agency suspending the license) in the event the licensees wish to challenge the submission of their names on the "Certified List."

Taxpayers challenging the submission of their names on the list will complete the form and make a timely written request (explained below) for release to CPU. The criteria for release are:

1. The applicant or licensee has complied with the tax obligation, by either payment of the unpaid taxes or entry into a payment plan;
2. The applicant or licensee has submitted a request for release not later than 45 days after receipt of the state licensing agency's preliminary notice; or
3. The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. BPC section 494.5(h)(3) defines financial hardship as a financial hardship as determined by BOE where the taxpayer is unable to pay any part of the outstanding liability and is unable to qualify for a payment plan. In order to establish existence of a financial hardship, the taxpayer shall submit any information requested by BOE, including information related to reasonable business and personal expenses, for purposes of making that determination. Hardship requests will be considered on a case by case basis.

TOP 500 PROGRAM**(CONT.2) 799.200**

The BOE must remove the taxpayer's name from the Top 500 list no later than five business days from the occurrence of any of the following:

1. The person(s) liable for the tax has contacted the BOE and entered into a payment plan to satisfy the liability. However, if the person fails to comply with the payment plan after having their name removed from the list, the BOE shall add that person's name to the list without providing additional written notice. District offices should notify CPU if a payment plan is terminated. This notification should include the reason for termination and indicate if all criteria for inclusion on the Top 500 list have been met;
2. The BOE has received notice, or discovered that the delinquent taxpayer is under federal bankruptcy protection;
3. The BOE has analyzed the delinquent taxpayer's bankruptcy case docket and papers confirm that there are no more assets to pay down an aged, dischargeable delinquency; or
4. The Special Operations Branch (SOB) has approved the liability for write-off because it is uncollectible. Once Field Operations Department (FOD) staff determines that an account eligible for the Top 500 list should be written off, the write-off should be initiated and sent to SOB as soon as possible. Notify CPU once the write-off has been initiated so CPU can refrain from placing the taxpayer on the list until the write-off occurs. It may take over 30 days before the write-off is approved by SOB and sent to the State Controller's Office. With a new Top 500 list posting roughly every 90 days, the write-off process may not be completed before the next Top 500 list is posted.

HEADQUARTERS RESPONSIBILITYCompliance Policy Unit (CPU)

Each quarter, CPU will:

1. Coordinate with the Technology Services Department (TSD) to extract a list of candidates that may qualify for the Top 500 list from ACMS, based on the required criteria stipulated above. The list will be sent to FOD to determine if all the criteria have been met for inclusion on the list;
2. Consult with the Offer-In-Compromise (OIC) Section or SOB as appropriate for accounts being reviewed for an OIC or write-off to determine if the accounts should be placed on the list;
3. Post the Top 500 Tax Delinquencies on the BOE's website once the accounts have been certified by FOD;
4. Provide state governmental licensing agencies with the quarterly "Certified List" of the Top 500 largest sales and use tax delinquencies pursuant to section 7063 for purposes of administering BPC section 494.5, and act as a point of contact with state licensing agencies, licensees, and FOD to facilitate tax resolutions;
5. Receive "License Suspension Release" requests from taxpayers wishing to challenge their placement on the Top 500 tax delinquency list and distribute them to FOD for processing of tax payment arrangements; and
6. Notify licensees on the outcome of their License Suspension Release requests. Copies of these responses will be mailed to state governmental licensing agencies related to the licensee. The BOE will respond within 45 days from the date CPU received the License Suspension Release request. In the event the BOE is unable to complete the release review within 45 days after receipt of the licensee's request for release, the release should be granted and the BOE shall notify the licensing agency to reinstate the applicable license with retroactive effect back to the date of the erroneous suspension, and the suspension shall not be reflected on any licensee's record.

Special Operations Branch (SOB)

Once an account on the list has received final approval by SOB for write-off, SOB shall immediately notify CPU, so that the account may be removed from the list.

FIELD OPERATIONS DEPARTMENT (FOD)

To determine the potential liabilities to be placed on the Top 500 quarterly list, each district office will receive a list of potential candidates for review. The list includes accounts for which the respective district office is responsible for performing collection activity. Once the district office has determined whether all the criteria has been met for inclusion on the list, the district office administrator will return the list via email to the CPU shared group email address (BTFDTop500@boe.ca.gov) certifying which accounts on the list qualify for posting on the Top 500 website. After determining whether candidates can be included on the list and responding to CPU, staff in the district offices must continue to monitor those accounts until the Top 500 list is published. Any change in status must be communicated to CPU as soon as possible. As used below, the term “qualifying liabilities” means individual differences that solely, or in combination, cause the account to qualify for listing on the website. The district offices must ensure that:

1. The qualifying liabilities have been final for more than 90 days;
2. The BOE has recorded a notice of state tax lien for the qualifying liabilities in a California county recorder’s office;
3. The current delinquency amount due for the qualifying liabilities is in excess of \$100,000;
4. The qualifying liabilities are not under litigation in a court of law;
5. The qualifying liabilities are not in the appeals process. For the purpose of this process, if all of the tax liability, with the exception of the penalty and interest, has been paid and a refund request has been submitted, we will consider this as an appeal;
6. The taxpayer is not in bankruptcy status;
7. The account is not on a payment plan;
8. The mailing address is current by checking EDD, DMV, Franchise Tax Board (FTB), Clear and/or other available search tools;
9. For partnerships, husband-wife co-ownerships, and registered domestic partnerships, ensure that all listed taxpayers are liable for the qualifying liabilities. If individual partners are liable for lesser amounts, specify those amounts on the list. If all partners are liable for the full amount, no special notation will be required;
10. The qualifying liabilities were not discharged in bankruptcy. Discharged liabilities will not be adjusted off of the taxpayer’s total outstanding tax liability when a lien survives the discharge and remains in place. If a liability was discharged in bankruptcy but a lien remains in place, collection against the property subject to the lien may occur, however not against the individual who was discharged in bankruptcy. Therefore, discharged liabilities cannot be included in the calculation of liabilities qualifying a taxpayer for listing. Verify the taxpayer qualifies for listing based only on the non-discharged liabilities that remain subject to collection action. To determine liabilities subject to collection after a bankruptcy, check for a legal case entry on LGL LC and comments regarding a discharge on the LGL LC screen, a “bankruptcy summary, discharge review” comment in ACMS, or contact SOB, Bankruptcy Team;

TOP 500 PROGRAM

(CONT.4) 799.200

11. The accounts have not been written off. An account is considered written off when it has been approved by all required levels within SOB;
12. The taxpayer does not qualify for License Suspension Release. Review taxpayers' "License Suspension Release" requests received by CPU and determine if taxpayers qualify for the license suspension release by agreeing to pay the liability in full or by entering into reasonable payment plans. Once taxpayers agree to either form of payment, FOD should notify the taxpayer of the agreement using current acceptance documents. There may be instances where taxpayers will send their release requests directly to FOD offices instead of CPU. In this case, the district offices should begin working the account and immediately send a copy of the Release Request via email (PDF) to CPU or fax a copy to CPU at 916-322-4530; and
13. Immediately notify CPU of the outcome of the License Suspension Release review so that state licensing agencies can be informed whether or not to release the license suspension.

FOD will continue to be responsible for collection of accounts posted on the Top 500 list. Returned mail updates will be sent from CPU to the responsible district office to determine if a better address exists by using skip tracing tools such as EDD, DMV, FTB and Clear, etc. If a better address is found, the address should be updated in IRIS and ACMS. The information should also be relayed to CPU who will then generate a new letter from ACMS and mail it to the taxpayer. CPU will ensure that the account is not posted to the list if the BOE-1401 letter is generated less than 30 days from the next list update. Returned mail labeled as *unclaimed* and or *refused* need not be further researched and will be included on the list.

Once an account has been posted on the Top 500 list, it should be closely monitored for any changes that would require it to be removed from the list. CPU must be contacted immediately by email if it is necessary to remove an account from the list. RTC section 7063 requires that the taxpayer's name must be removed from the list within five business days after the BOE is notified of an action that disqualifies it from placement on the list.