



STATE BOARD OF EQUALIZATION

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May 24, 2016

VIA INTERNET

Dear Interested Party:

The Compliance Policy and Procedures Manual (CPPM) and the Audit Manual (AM) are guides for the Board of Equalization (BOE) staff in administering tax and fee programs. The manuals are available to the public and can be accessed from the BOE web page at <http://www.boe.ca.gov/sutax/staxmanuals.htm>.

The Business Tax and Fee Department is proposing to revise the following CPPM and AM chapters to incorporate current policies and procedures:

- CPPM Chapter 2, *Registration*
- CPPM Chapter 5, *Returns*
- CPPM Chapter 7, *Collections*
- AM Chapter 4, *General Audit Procedures*

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed CPPM or AM revisions, you may contact the BOE at CPPM.RevisionSuggestions@boe.ca.gov. Your comments or suggestions must be received by BOE no later than **July 25, 2016**, in order to be considered by staff. Thank you for your consideration.

Sincerely,

Chief, Tax Policy Division
Business Tax and Fee Department

CERTIFICATE OF REGISTRATION, USE TAX (TAT SC) — WHEN ISSUED 215.040

Certificates of Registration — Use Tax permits are issued to out-of-state sellers who are engaged in business in California, ~~and to Indian retailers making sales on a reservation to non-Indians or to Indians not residing on a reservation (see CPPM section 265.065).~~ In addition, persons may voluntarily register for the purpose of collecting use tax from their California customers, even though they are not engaged in business in California.

INDIAN RETAILERS

265.065

The state is precluded from imposing a tax on an Indian on a reservation. Therefore, sales made by an Indian retailer on a reservation are not subject to sales tax. If the transaction is not subject to the sales tax, the use tax generally applies. Although the state is precluded from imposing a tax on an Indian on a reservation, use tax is imposed on the customer, not on the Indian retailer. Furthermore, the state may impose a collection obligation upon an Indian retailer on a reservation. Therefore, except as noted below, an Indian retailer operating on an Indian reservation must register with the BOE if the Indian retailer is making sales to non-Indians or to Indians not residing on a reservation. In this situation, the Indian retailer should obtain a Certificate of Registration - Use Tax (TAT SC).

Note: A Certificate of Registration – Use Tax (TAT SC) is not required if an Indian retailer is only selling meals, food or beverages at eating and drinking establishments on the Indian reservation.

If the Indian retailer's business location is not on a reservation, the state may impose a tax on the Indian retailer. In this situation, sales tax applies to retail sales made by the Indian retailer and the Indian retailer should obtain a seller's permit (TAT SR).

PAYMENT OPTIONS

505.112

When taxpayers file a prepayment or return online and owe taxes or fees, they are given several payment options. They can pay direct from their bank account (ACH debit), pay by credit card, or pay by check or money order. Please see CPPM section 510.035 for payment requirements for mandatory Electronic Funds Transfer (EFT) participants. In addition, most taxpayers with past due liabilities can make a payment online from their bank account or with a credit card. For more information regarding credit card payments, see CPPM section 505.115.

To make an ACH debit payment from a bank account, taxpayers must log in on the BOE website with their User ID and password, or by using the Express Login method. A unique express login code is assigned to each account (see CPPM section 505.030). To make an online payment from a checking or savings account, taxpayers need the following information to complete the transaction:

- Bank account number,
- Bank routing number, and
- Account type (checking or savings).

If taxpayers want to pay by check or money order when they file prepayments or returns online, they must select the “Pay by Check” option. After the filing is electronically submitted, a voucher will print below the confirmation page. The voucher shows the amount due, including penalty and/or interest, if applicable. Mailing instructions are included on the voucher.

RETURNS FILED OUTSIDE OF STATUTE OF LIMITATIONS

540.015

Staff should not request or direct taxpayers to file original or amended returns outside of the applicable statute of limitations to bill the taxpayer for the unpaid liability. If a taxpayer did not previously file a return for the reporting period, staff generally should not request or direct the taxpayer to file an original return more than eight years after the due date by which an original return should have been filed. If the taxpayer previously filed a return, staff generally should not request or direct a taxpayer to file an amended return more than three years after either: the due date if the original return was timely filed; or the date it was actually filed if filed after the due date. However, if original or amended returns are received and the statute of limitations to bill the taxpayer for the unpaid liability reported on the return has expired, the following action(s) should be taken:

- **Return(s) filed without remittance** – The return(s) must be stamped and marked “Unbilled – Statute of Limitations Expired” and sent to the taxpayer’s central file using the Documentum procedures on eBOE. A comment indicating the receipt of the return(s) should be entered into IRIS and ACMS (if applicable).

- **Return(s) filed with full or partial remittance** – Sales and Use Tax return(s) should be forwarded to the Return Analysis Unit (RAU) and Special Taxes and Fees return(s) should be forwarded to the Return Processing Branch (RPB) for further processing. If the return is received with payment in full, RAU/RPB will post the return and payment. If there is only a partial payment received, RAU/RPB will post the return(s) and create an adjustment in IRIS so that the total amount due equals the total amount of the payment received. This will ensure that a billing will not be issued to the taxpayer for any unpaid and uncollectible balance reported on the return. A comment should be entered in IRIS explaining the adjustment(s) made.

OVERPAID RETURNS

540.070

A return which has definitely been found to ~~be overpaid~~ include an overpayment will be identified with the total amount of remittance, a check mark and the letters “OP” entered just below the space provided for “Total Amount Due and Payable.” See Exhibit 2.

Taxpayers generally should not claim a deduction on a current return to adjust for an overpayment reported on a prior return. The correct procedure is to file a claim for refund for the overpayment. For more information on allowable return adjustments for prior overpayments, see Audit Manual section 0401.05

Only in the very limited circumstances where a taxpayer makes an unintentional overpayment of prepayments on their tax return may the resulting credit be applied to a subsequent return. Return Analysis Unit (RAU) is the only unit authorized to approve this procedure.

ADJUSTMENT AND CANCELLATION OF COMPLIANCE ASSESSMENTS 540.175

After a compliance assessment (CAS) is created, staff may determine that it needs to be adjusted or cancelled. However, a CAS for failure to file a return may not be adjusted based on a new estimate. The goal of any CAS adjustment is to reflect the correct amount of tax due. If a return is filed after the CAS is issued, staff must determine whether an adjustment is necessary depending on the facts and circumstances of the taxpayer's operations and information available to the BOE. In the absence of an acceptable return filing, the CAS may only be adjusted based on an audit, Field Billing Order or comparable review of the taxpayer's records.

There is no statute of limitations for accepting taxpayer returns or documentation to support a Compliance Assessment Adjustment (CAS ADJ). However, refunds of any overpayments must be requested within the applicable statute of limitations specified by Revenue and Taxation Code (RTC) section 6902 and similar Special Taxes and Fees statutes.

Since the issuance of a CAS will create a financial obligation for the period of liability and will clear the delinquency in IRIS, the taxpayer cannot file the return for that period online. The procedures in this section outline staff responsibilities when a paper return is filed to adjust the CAS.

Field Operations Collection Staff (Sales and Use Tax Accounts)

When a tax return is received for a period where a CAS has been billed, the collector is responsible for determining if the CAS should be adjusted to the amount reported on the return. The determination to adjust the CAS will be based on the type of business, supporting documentation, prior returns, or any other evidence available to the BOE. Supervisors must approve any adjustments and enter comments in IRIS on the REV RE screen for each Financial Obligation (FO). The return should be forwarded to the Cashier Section with "CAS ADJ" written on the top of the front page of the return. Subsequent returns filed for the same period to correct any discrepancies will also be marked as CAS ADJ returns and not amended returns. A copy of the return should **not** be forwarded to RAU or Petitions, and all issues concerning evident tax shortages or computation errors should be addressed before forwarding the returns to the Cashier Section for processing.

If the evidence available suggests that the CAS should not be adjusted to the amounts shown on the return, the return should still be forwarded to the Cashier Section for processing. Comments should be entered in IRIS explaining why the CAS should not be adjusted. The taxpayer should be contacted and given the opportunity to revise the return or provide substantiation for the figures submitted.

Once a CAS adjustment is initiated, an assignment is created for the approver in the IRIS Assignment Control (ASC) subsystem. The authority to approve CAS adjustments generally resides at the Business Taxes Administrator I level or higher. If a District Administrator or Principal Compliance Supervisor temporarily authorizes a Business Taxes Compliance Specialist or Business Taxes Specialist I to approve CAS adjustment

assignments, an advanced written notification of the delegation and its expected duration must be submitted to the Petitions Section. The Petitions Section will ensure the CAS has been approved by a valid approver before processing the assignment.

Changing the start or close-out date of an account will not cause a billed CAS to automatically adjust. After the start or close-out date is updated in IRIS and staff determines an adjustment is warranted, an assignment should be created in the IRIS Assignment Control, approved by the supervisor, and routed to the Petitions Section for processing. Assignment task notes should be updated if there is a change to the start or close-out date. Notes regarding the basis for the change and the applicable period and method used to establish the measure of tax should be entered on the REV RE screen and in the assignment task notes.

CAS adjustments exceeding \$50,000 require Deputy Director approval, and must be available as a public record for at least 10 days prior to its effective date. A report should be sent to the Petitions Section listing the steps taken to confirm the accuracy of returns filed or other basis for adjustment. A claim for refund should accompany the report if an overpayment results from an adjustment. A timely claim for refund is required for all overpayments.

Return Analysis Unit (RAU) Staff

When RAU receives a tax return for a period that was included in a billed CAS for failure to file a return, the following procedures should be followed:

1. When the return is received with an effective file date (e.g., postmark) prior to the CAS
 - a. The return takes precedence. When the return is loaded into IRIS, the CAS will automatically be cancelled and the return will replace the CAS in the primary FO in IRIS. The edit on the return will be "CAS Canc" and RAU handles the return.
 - b. If the CAS does not cancel automatically, RAU handles the adjustment. The CAS may not auto cancel when there has been an accepted Declaration of Timely Mailing (BOE-135-A), the return posted incorrectly to the wrong period or account, or when the return was originally received with no account number or period and was posted as unidentified.
2. When the return received has an effective file date after the CAS
 - a. A return sent directly to RAU in reply to the CAS determination which has not been processed in IRIS as a Pending Taxpayers Original (PTO) should be forwarded to the Cashier Section for processing. "CAS ADJ" should be written on the top of the return to ensure the Cashier Section processes the return as a PTO and not an amended return.
3. When the return received is for more tax than the CAS
 - a. After the return is processed by the Cashier Section, it is worked by RAU. Approval from the office/section that initiated the CAS is not needed.

- b. The return will have either the CAS + ADJ or CAS + PTO edit on it. The CAS + ADJ edit is triggered when the return loads onto IRIS and the system automatically adjusts the CAS in the primary FO. The adjustment will appear on the REV SV screen. The CAS + PTO will appear on the REV FW screen.
- c. If the taxpayer filed a timely petition for redetermination of the CAS determination, RAU will create an assignment for the Petitions Section to adjust the CAS to the level of the return. The increase to the petitioned determination must be made in accordance with RTC section 6563.
- d. If the CAS determination is final, the resulting increase will be billed by RAU.
- e. If the return contains computational errors, RAU will send a letter to the taxpayer and issue a determination if appropriate.

Petitions Section Staff

Other than assignments received by RAU for processing of returns filed by the taxpayer, the Petitions Section will only accept CAS adjustment assignments that have been reassigned in the IRIS Assignment Control by an authorized approver for the following conditions:

- A tax return is not required to be filed due to the business closing out prior to the CAS period, and a cancellation of the CAS is needed,
- A change in the start date which requires the cancellation of a CAS,
- A change in the start or end date requires an adjustment to the CAS based on the updated number of days included in the CAS period, or
- The CAS is for fixtures and equipment (F&E) only and staff's investigation has revealed cancellation or an adjustment to the CAS is warranted.

Petitions Section staff review CAS adjustment assignments for the following:

- Creation of an assignment by RAU, any return edit notes, and comments entered when returns are filed,
- District recommendation,
- Ongoing audits,
- Statute of Limitation,
- Existing appeals or claims for refund,
- Adjustments requiring Deputy Director approval and Public Record posting,
- Penalty relief requests,
- The impact on and adjustments to successors and dual determinations, and
- Duplicate return filings for different amounts.

Audit Determination and Refund Section (ADRS) Staff

ADRS staff is responsible for processing adjustments to all paid-in-full, final determinations except for relief of penalty requests which are processed by the

Petitions Section. CAS adjustment assignments are reviewed in the same manner as those processed by the Petitions Section.

Staff Responsible for Special Taxes and Fees (STF) Accounts

The procedures for STF accounts are the same as for Sales and Use Tax accounts except as noted below.

It is the function of STF compliance staff to determine whether the amounts reported on returns filed after a CAS are acceptable. Each situation should be evaluated on a case-by-case basis. Depending on the nature of the tax or fee program, the information should be based on other returns filed on the account, industry averages, information from other state agencies, and information available from related Sales and Use Tax accounts, if applicable. It is the responsibility of the Business Taxes Administrator I (or their designee) to approve CAS adjustments.

There is equivalent internal staff for STF accounts that perform the tasks that District Office Compliance, RAU, and Petitions staff perform for Sales and Use Tax accounts. The functions dedicated to the RAU and Petitions Section apply to the equivalent staff for STF accounts. As with Sales and Use Tax accounts, adjustments exceeding \$50,000 must be posted to the Public Record. The Principal Compliance Supervisor should forward a written report to their Audit Section's staff responsible for handling petitions. The report should list the steps taken to confirm the accuracy of the returns filed or the basis for the adjustment.

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/~~and~~ 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 ~~highest probability of successful collection~~ cases most likely to require collector intervention to resolve (the ACCES A work list) and descending to the ~~lowest~~ 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 polices and making decisions that are in the State's best interest.

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 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.

**WHEN A CORPORATE SUSPENSION
DUAL DETERMINATION SHOULD BE ISSUED**

764.072

Corporate suspension duals 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 duals 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 duals 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.

Please note that the entire section 0401.05 is not shown here. The following text is a proposed addition to this section.

TAX AUDITING

0401.05

Return Adjustments for Prior Overpayments

Taxpayers generally should not claim a deduction on a current return to adjust for an overpayment reported on a prior return. The correct procedure is to file a claim for refund for the overpayment. Nevertheless, under certain circumstances, a taxpayer may be entitled to claim a tax paid purchases resold, returned merchandise, or bad debt deduction in a later reporting period.

Only in very limited circumstances where a taxpayer makes an unintentional overpayment of prepayments on their tax return may the resulting credit be applied to a subsequent return. Return Analysis Unit (RAU) is the only unit authorized to approve this procedure.

RTC section 6904 and equivalent special taxes and fees statutes require every claim for refund be in writing and state the specific grounds for the claim. RTC section 6905 and equivalent special taxes and fees statutes further provide that failure to file a timely claim for refund constitutes a waiver of any demand against the state for the overpayment. In a situation where a taxpayer erroneously overpays the BOE, a claim for refund must be filed with the BOE. This can be especially critical for taxpayers whose records are later audited. The following example illustrates the problems that can result from a taxpayer taking this kind of self-help deduction instead of filing a timely claim for refund.

ABC Corporation (ABC) overpaid use tax on its third quarter 2012 return for a fixed asset purchase. The error was discovered in mid-2013. ABC reduced the taxable amount reported on its second quarter 2013 return by the overstated fixed asset purchase amount. ABC did not file a claim for refund.

During a subsequent audit of ABC's records, the deduction claimed on the second quarter 2013 return was disallowed. The overpayment should have been claimed by ABC filing an amended third quarter 2012 return and timely filing a claim for refund. By the time the error was discovered, the statute of limitations for filing a timely claim for refund for the third quarter 2012 overpayment had expired, and the amount disallowed for the second quarter 2013 was correctly assessed in the audit. If the error is discovered past the statute date allowed for the claim for refund, the taxpayer has no further recourse.