State Board of Equalization

Taxpayers' Rights Advocate's
2010-11 Annual Report

PROPERTY AND BUSINESS TAXES

Publication 316

BOARD MEMBERS

BETTY T. YEE
First District
San Francisco

SEN. GEORGE RUNNER (RET.)
Second District
Lancaster

MICHELLE STEEL
Third District
Rolling Hills Estates

JEROME E. HORTON
Fourth District
Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim
Executive Director

TAXPAYERS' RIGHTS ADVOCATE OFFICE

State Board of Equalization

450 N Street, MIC:70
PO Box 942879, Sacramento, CA 94279-0070
Toll-Free: 888-324-2798 • Fax: 916-323-3319
Internet: *www.boe.ca.gov/tra/tra.htm*

Todd C. Gilman, *Advocate*	916-324-2798
Dan Leddy, *Manager*	916-319-9237
Laureen Simpson, *Lead Technical Advisor*	916-445-0218
Patricia Carpenter, *Tax Advocate Technician*	888-324-2798
Joseph Santos, *Tax Technician*	888-324-2798

Property Tax Technical Advisors

Mark Sutter, *Lead*	916-324-2797
Laura Bowman-Dirrim	916-445-8267

Business Taxes Technical Advisors

Rhonda Krause	916-445-8321
Brian Fikes	916-323-2103
Will Fikry	916-319-9756
Rose Moreno	916-324-2681
Diana Tay	916-323-0439

Tax Appeals Assistance Program

Craig Shaltes, *Senior Tax Counsel*	916-324-2216
Michael Larkin, *Tax Counsel*	916-324-8788
Richard Carpenter, *Program Coordinator*	916-319-9199

Copies of this publication may be ordered from the Taxpayers' Rights Advocate Office by calling 888-324-2798, by writing to the address above, or by downloading from the website shown above.

LETTER TO THE EXECUTIVE DIRECTOR

February 2012 -

Ms. Kristine Cazadd
Executive Director[1]

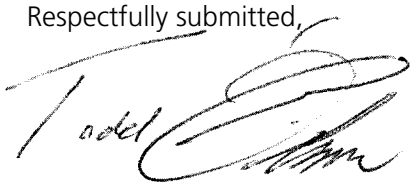
Dear Ms. Cazadd:

I am pleased to present the Taxpayers' Rights Advocate's 2010-11 Property and Business Taxes Annual Report. This report:

- Highlights accomplishments of the Taxpayers' Rights Advocate Office during the past year;
- Describes our involvement in important new projects to assist taxpayers;
- Identifies current issues we are working to resolve;
- Provides an update on the expansion of the Tax Appeals Assistance Program; and
- Contains examples of cases illustrating the services our office provides.

California continues to show signs of a weak economy as evidenced by the number of taxpayers and individuals still struggling to make ends meet while facing economic challenges in their everyday lives. With tax revenues becoming the focal point of discussion, the Board of Equalization is making every effort to collect taxes and fees owed to the state. Ensuring that taxpayers' rights are protected during this economic downturn is paramount. The Taxpayers' Rights Advocate Office will continue to work with Board of Equalization staff and the public to be sure the rights of individuals are protected while the interests of the state are served.

Respectfully submitted,



Todd C. Gilman
Taxpayers' Rights Advocate

[1]Ms. Cazadd's title on the front of this 2010-11 Annual Report is shown as "Interim Executive Director." Effective October 1, 2011, the Board approved Ms. Cazadd's new title of "Executive Director."

CONTENTS

Letter to the Executive Director

Taxpayers' Rights Advocate Office 1
- Vision 3
- Mission 3
- Goals 3
- Profile 4
- Public Outreach 6
- Contacts Received in 2010-11 7

Property Tax Issues 9
- Case Resolution 11
  - About the Property Tax Case Statistics 11
  - Examples of Property Tax Cases 12
- Emerging Issues 13
- Other Activities 13

Business Taxes Issues 15
- Case Resolution 17
  - About the Business Taxes Case Statistics 17
  - Examples of Business Taxes Cases 19
- Issue Resolution 21
  - Accomplishments—Changes Implemented, Concerns Resolved 22
  - Work in Process—Issues Identified 26
  - Enhancing Taxpayer Service and Experience—Suggestions for Future Initiatives 30

Tax Appeals Assistance Program 33
- About the Program 35
- Case Resolution 35

Appendix 37
- Appendix 1—Harris-Katz California Taxpayers' Bill of Rights 39
- Appendix 2—Morgan Property Taxpayers' Bill of Rights 49
- Appendix 3—Outcome of Business Taxes Cases 52
- Appendix 4—Most Common Issues in Business Taxes Cases 53

TAXPAYERS' RIGHTS ADVOCATE OFFICE

VISION

To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers[2] and the government.

MISSION

To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes.

GOALS

- To ensure that taxpayers coming to the Taxpayers' Rights Advocate Office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed.
- To identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws; to bring those issues to the attention of Board of Equalization (BOE) and county management; and to work cooperatively on making changes to laws, policies, and procedures where necessary.
- To meet taxpayer needs by opening appropriate channels of communication, providing education, and finding creative solutions to unresolved problems.
- To promote BOE staff's commitment to honor and safeguard the rights of taxpayers.

[2] The term "taxpayers" in this publication means payers of sales and use taxes, special taxes and fees, and property tax.

PROFILE

Taxpayers' Bills of Rights Mandate a Taxpayers' Rights Advocate

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (see Appendix 1) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts, which currently include approximately 1,360,000 taxpayers, are provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special taxes and fees programs administered by the BOE, currently affecting approximately 255,000 taxpayers in 20 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The *Morgan Property Taxpayers' Bill of Rights* (see Appendix 2) was added in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws.

Each Taxpayers' Bill of Rights provides for a Taxpayers' Rights Advocate (Advocate). For instance, the designation of an Advocate for sales and use tax matters is found in Revenue and Taxation Code section 7083 (see Appendix 1), and beginning with section 5904 for property tax issues (see Appendix 2).

A summary of the taxpayers' rights statutes that apply to the tax and fee programs administered by the BOE can be found in BOE publication 70, *Understanding Your Rights as a California Taxpayer.*

Legal Responsibilities of the Taxpayers' Rights Advocate

The responsibilities of the Advocate are specifically delineated in the law. Consistent with the Taxpayers' Bills of Rights, the Advocate:

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE employees;
- Monitors various BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- Ensures taxpayer educational materials are clear and understandable; and
- Coordinates statutory Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

How Legal Responsibilities are Fulfilled

The Taxpayers' Rights Advocate (TRA) Office fulfills its legal responsibilities by taking the following actions:

Facilitates resolution of taxpayer complaints or problems

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in either the audit or compliance areas. Taxpayers also call to convey their frustration or to seek assurance or confirmation that staff action is lawful and just. The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps to eliminate potential misunderstandings. Taxpayers

are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

Occasionally a taxpayer or a BOE employee contacts the TRA Office complaining about discrimination or harassment. TRA Office staff work with appropriate BOE management to resolve the complaint. The BOE is committed to a discrimination/harassment-free environment and the Advocate confirms that BOE staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

Monitors programs and recommends policy or procedural changes

In cases where the law, policy, or procedures do not currently allow any change to the staff's actions, but a change to the law, policy, or procedure appears warranted, the TRA Office actively works toward clarification or modification. Several of the past recommendations for policy or procedural changes, suggestions for enhancements to staff training materials, and proposals for legislative change have resulted from direct contacts with taxpayers.

Ensures information and guidance provided is easy to understand

The TRA Office suggests new legislation, participates in task forces and committees charged with procedure and regulation revisions, and routinely reviews proposed revisions to taxpayer educational materials to ensure they are easy to understand. TRA Office staff assist in providing information to the public at large through participation in public forums and business fairs.

Coordinates Taxpayers' Bill of Rights hearings

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California, including publicizing the hearings. Immediately after the hearings, the TRA Office works with appropriate areas of the BOE or counties to address issues and concerns conveyed to the Board Members by presenters and provides follow-up reports to the Members when requested.

Cooperation with Advocates of Other Government Agencies

The BOE's Advocate meets on a regular basis with the Advocates from the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service to discuss common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, have allowed all the agencies serving California taxpayers to have a better understanding of taxpayer issues. California taxpayers also benefit from the TRA Office's ongoing relationships with the other California advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the advocates.

Differences Between Implementation of the Business and the Property Taxpayers' Bills of Rights

The major difference for the TRA Office between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints, as outlined below.

Business taxes

The BOE is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Executive Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Executive Director and is independent of the business and property taxes programs. When complaints relating to the BOE's business taxes programs are received in the TRA Office, the office has direct

access to all BOE information and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and BOE staff in resolving problems. If the Advocate disagrees with actions taken by BOE staff and is unable to resolve the situation satisfactorily with program management, the issue is brought to the Executive Director for resolution.

Property tax

In contrast, the TRA Office works with county assessors, tax collectors, and auditor-controllers (most of whom are elected officials), plus clerks to the county boards of supervisors when responding to property taxpayers' concerns. The TRA Office also works cooperatively with the California Assessors' Association on statewide issues. Although the TRA Office does not have the legal authority to overturn local actions, TRA Office staff are generally successful in soliciting cooperation and ensuring that taxpayers receive proper treatment under the law. In cases where there is no procedural or legal authority to remedy a problem—and a change does appear justified—the TRA Office recommends specific policy, procedural, and/or legislative changes.

Please see the *Business Taxes Issues* and *Property Tax Issues* chapters of this report for examples of how taxpayers' complaints are resolved in each of these areas.

PUBLIC OUTREACH

The public becomes aware of the services offered by our office in a number of ways. For instance, information is included about the TRA Office in many BOE publications and standard correspondence, the public can learn about and contact the office via the BOE website or by telephone, and TRA Office staff members make presentations at public events.

Publications and Standard Correspondence

- Information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights is contained in publication 70, *Understanding Your Rights as a California Taxpayer* (September 2011), which is available in all BOE offices and on the BOE's website.
- Publication 145, *California Taxpayer Advocates—We're Here for You* (March 2010), provides contact information for the Advocates from the Board of Equalization, Franchise Tax Board, Employment Development Department, and Internal Revenue Service. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center, *www.taxes.ca.gov* (search for "California Taxpayer Advocates").
- The TRA Office's toll-free number (888-324-2798) is printed on the BOE's permits and licenses.
- An article about the services provided by the TRA Office is published each year in the newsletters provided to taxpayers.

Email and Telephone Contacts

- The TRA Office's webpage, *www.boe.ca.gov/tra/tra.htm,* can be accessed from the BOE's home page. The webpage contains a video introduction to the TRA Office and provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free number is included as an option on the automated phone tree for all field offices in the Second and Third Equalization Districts.

Public Events

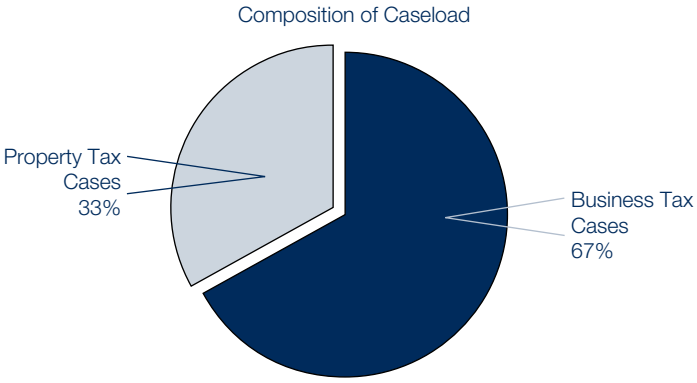
The public learns about the services of the TRA Office at the following types of events:

- Board hearings: The Advocate or TRA Office staff is present and available to answer questions or assist taxpayers arriving for their hearings before the Board Members in Sacramento. Due to BOE budget constraints, the Advocate is available to assist taxpayers at the Culver City Board hearings by telephone only. Publications 70 and 145 (described on page 6) are also available to those attending the Board hearings.
- Board Member-sponsored events: The Advocate or designee attends all of the Small Business Fairs and Seminars and the Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organization representatives, makes presentations, and provides written materials about the TRA Office.
- Non BOE-sponsored events: Direct contacts with the public are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the Professional Business Women's Conference, the IRS Nationwide Tax Forum, and the California Small Business Day in Sacramento. The BOE Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals. In June 2011, the TRA Office's two Tax Appeals Assistance Program counsels spoke at a meeting of the Los Angeles Bar Association regarding a new BOE appeals training program for tax professionals, which the Tax Appeals Assistance Program counsels helped to develop.

CONTACTS RECEIVED IN 2010-11

Cases

TRA Office cases totaled 863 in fiscal year 2010-11, a 17 percent decrease from the 1,043 cases the previous fiscal year. This year's composition of cases was similar to last year's. The TRA Office caseload was comprised of 67 percent business taxes cases and 33 percent property tax cases; last year the mix was 65 percent business taxes cases and 35 percent property tax cases.



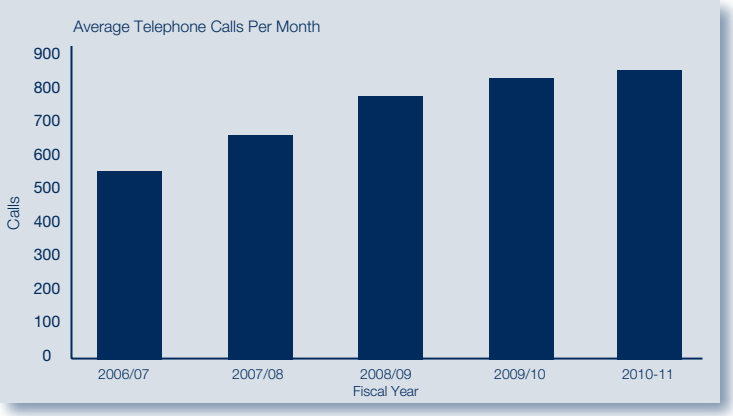
Increasing each year for the past four years, the BOE website accounted for the largest source of referrals for all TRA Office cases. In fiscal year 2010-11, taxpayers indicated they learned about the TRA Office via the BOE website in 19 percent of the property tax cases and in 29 percent of the business taxes cases. These referrals represent 26 percent of the total cases opened by the TRA Office in fiscal year 2010-11. Please refer to the ***Property Tax Issues*** and ***Business Taxes Issues*** chapters for listings of other important means by which taxpayers learned about the TRA Office.

This year, the TRA Office replaced its previous database used for tracking cases with new separate databases for business taxes and property tax cases. These new programs are more flexible and allow for the capture of a wider variety of information. For

instance, TRA Office staff are now able to record all relevant issues in each case, as opposed to being limited to three. The number of issues available to choose from was also increased to allow the TRA Office to track a wider variety of possible problem areas, which enhances the TRA Office's ability to identify systemic issues. Improvements also include features that provide increased accuracy in collecting and reporting data by allowing for more efficient input and retrieval.

Telephone Calls

Telephone call volume in fiscal year 2010-11 increased slightly from last year, at an average of 851 calls per month (not including calls that resulted in new cases), compared to 841 calls per month in fiscal year 2009-10. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the BOE through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the Franchise Tax Board. TRA Office staff responds by directing the caller to the appropriate BOE section, individual, information resource such as the BOE website, or to the appropriate state agency.



PROPERTY TAX ISSUES

CASE RESOLUTION

Property owners throughout the state contact the Taxpayers' Rights Advocate (TRA) Office for assistance and information. Although primary contact is with individual taxpayers, cases also originate from contact with attorneys, brokers, lenders, title and escrow companies, and government officials such as assessors, tax collectors, recorders, auditor-controllers, county supervisors, Board Members, and legislators.

The variety of issues represented by the cases requires that technical advisors in the TRA Office have broad knowledge and experience in property assessment and taxation. Since the technical advisors are appraisers by profession with experience in a county assessor's office or at the BOE, they can quickly determine how an issue should be resolved.

About the Property Tax Case Statistics

County of origin

The TRA Office worked 289 property tax cases in fiscal year 2010-11 compared to 365 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found for the most part, the population of the county tends to determine the number of cases from each county.

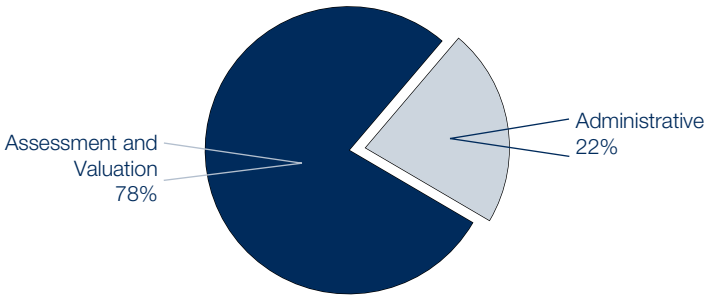
Ten counties represented 62 percent of the cases while those ten counties represent 67 percent of the state's population. Those counties were Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Modoc. Although Modoc County is one of the least populated counties, we had several contacts from taxpayers regarding a single assessment bond issue. Most counties had at least one contact with the TRA Office.

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals boards. The remaining cases are resolved through state agencies such as the BOE or the State Controller's Office. Multiple offices are often involved in the resolution of taxpayers' cases.

Types of cases

In fiscal year 2010-11, 78 percent of property tax cases were in the assessment and valuation category which includes topics such as value reductions, changes in ownership, appraisal methodology, exclusions, exemptions, assessment appeals, new construction, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 22 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.

Assessment and Valuation Related Issues Compared to Administrative Issues

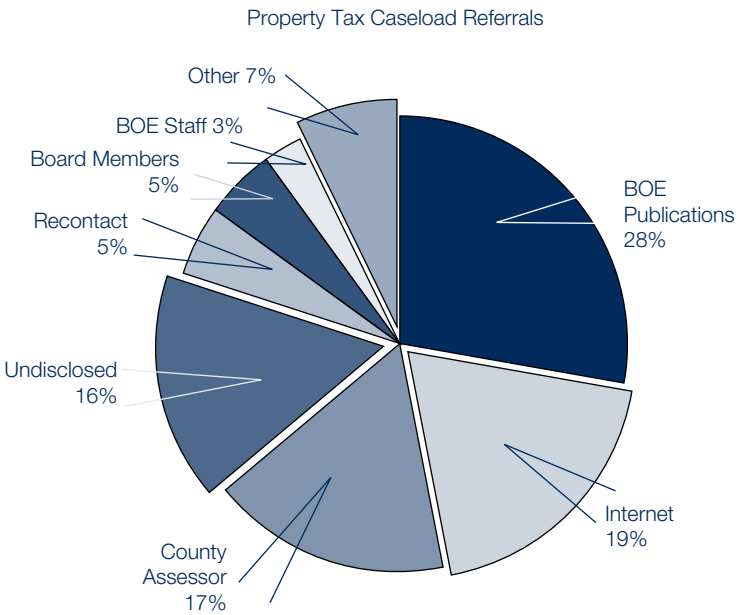


Issues related to the decline in the real estate market were again the primary reason that taxpayers contacted our office. The declining market was a component of almost all assessment and valuation cases.

Two specific change in ownership exclusion issues that we track each year, base year value transfers between parents and children and base year value transfers for taxpayers 55 years of age or older or persons severely and permanently disabled (Revenue and Taxation Code sections 63.1 and 69.5 respectively) accounted for nine percent of the total cases in fiscal year 2010-11 compared to eight percent of the total caseload for fiscal year 2009-10.

How taxpayers were referred to the TRA Office

In an effort to improve public service, the TRA Office attempts to identify the source of referrals. This year publications/media was the largest source of referrals, accounting for 28 percent of the property tax cases. County assessors accounted for 17 percent—similar to last year's 22 percent. The other important source of referrals was the BOE website at 19 percent.



Examples of Property Tax Cases

The following cases illustrate how taxpayers' issues are resolved by the TRA Office staff and indicate the range of services provided by the property tax technical advisors. Our role is usually one of review and explanation of processes and methodology, and facilitation of resolutions between taxpayers and county assessors.

Facilitation of agreement between taxpayer's agent and county

Taxpayer's agents often have the same problems that taxpayers have in navigating through the tax system. In this case, an agent representing the owners of a shopping mall was trying to help the county understand the details behind a transaction so that a proper valuation could be made. The agent had difficulty communicating with the county and turned to us for guidance. After reviewing the agent's opinion and the assessor's information, we facilitated a discussion between the parties. As a result, the agent's opinion was adopted, a value reduction was made, and the shopping center owners saved $75,000 in taxes.

Taxpayer confused by assessments and almost loses property to tax sale

If property taxes are delinquent for five years on a property, the county tax collector has the authority to sell the property to recoup the unpaid taxes. Sometimes owners fall behind and cannot catch up because penalties and interest accumulate so quickly.

The economy in recent years has made it difficult for most businesses to make a profit, especially travel related businesses. In this case, a motel was severely hurt by the downturn in the economy. Vacancy factors at the motel increased, and raising the room rates was not an option in that market. Income dwindled and property taxes could not be paid.

During this decline, the property was partially destroyed by a fire and this further reduced the income the property was generating. When the fire occurred, a reduction in the property's assessed value was recognized. As the repairs were made, those values were placed back on the assessment roll. This increasing and decreasing of assessments created confusion for the taxpayer who turned to the TRA Office for assistance.

A tax sale was pending so time was of the essence. We arranged for a face to face meeting with the assessor's staff and the taxpayer to ensure that both parties had a complete understanding of the assessments. That meeting proved to be what the taxpayer needed to fully understand and accept

the assessments. With the assurance that the assessments were correct, he secured financing to pay the delinquent taxes.

Taxpayer needs assistance working with the county

A taxpayer purchased a home in the early 1980's and their lender at that time required a cosigner. The cosigners, members of the buyer's family, never lived in the home and had no other connection with the property. They did not make any of the mortgage payments and did not claim any of the mortgage interest on their income tax returns. They were strictly cosigners.

The home was reassessed when the cosigners came off title prior to the taxpayer refinancing the property. Property tax law allows an exclusion from reassessment when a transfer is due to a financing relationship such as this. Looking at the deeds, however, it was impossible to tell whether the family members were owners or simply cosigners.

The county understood that the removal of the cosigners from title to the property may have been for financing purposes only and explained to the taxpayer the type of documentation needed to show the real story behind the transaction. The taxpayer was required to prove they made the mortgage payments by showing cancelled checks and showing that they took the mortgage interest deduction on their income taxes.

Recent tax returns and cancelled checks would not prove the intent of the parties at the time the property was originally purchased in the 1980's. The county needed documentation that dated back to the original purchase date, which was difficult for the taxpayer to produce, and because the assessor is presumed, by law, to have properly reassessed the property, the full burden fell on the taxpayer to provide the documentation of a transaction that occurred almost twenty years ago.

The taxpayer found the documents after a long search. We summarized those records so that the assessor could quickly resolve this matter. With our staff's persistence, the reassessment was reversed and the owners were able to keep their tax base from the early 1980's.

EMERGING ISSUES

Assessment Appeals Training

Assessment appeals are where taxpayers meet the assessment process head-on. All parties, including assessment appeals boards, assessors, board clerks, and taxpayers must fully understand the process so that fair and impartial hearings are conducted. In order to continually improve the impartiality of the process, we will continue to work with the BOE's County-Assessed Properties Division to help develop more training for staff and informational resources for the public.

Access to Information for Assessment Appeals

At the Board's Taxpayers' Bill of Rights Hearing in June 2011, the issue of taxpayers' access to assessor maintained information was brought to the Board's attention. In order for taxpayers to properly prepare for assessment appeal hearings, they are entitled to obtain certain information about comparable properties from the assessor under section 408 of the Revenue and Taxation Code. We work with the assessors to see that the taxpayers receive all the information that the law allows in a timely manner so that assessors and taxpayers are on equal terms at assessment appeal hearings.

OTHER ACTIVITIES

Each year, in addition to resolving cases, the TRA Office tries to improve the property tax system by

participating in a variety of other activities. These additional activities enable the office to benefit more taxpayers than just those helped through case resolutions. In 2010-11, the TRA Office staff was involved in the following activities:

In-Person Contact with County Officials

TRA Office staff attended California Assessors' Association (CAA) conferences this year to maintain contact with the 58 assessors and their key staff. The confidence and trust developed through these contacts allows the Advocate and the TRA Office staff to more effectively assist all taxpayers with their local issues and to find out about emerging issues developing at the county level.

Review of BOE-Prescribed Forms

The TRA Office participates in an annual review of BOE-prescribed forms used by all counties. Forms completed by taxpayers are a critical source of information for assessors in making the proper valuation of property. It is important that the forms are user-friendly so that taxpayers can easily and accurately provide the information requested. As part of this process, TRA Office staff ascertains if taxpayers are having trouble with the various forms and, if so, makes recommendations for improvements.

Review of County Websites

The TRA Office continues to examine county websites for the breadth and depth of information that taxpayers need. Since laws and procedures are ever-changing, this office's review process is ongoing. By gaining knowledge of what information is available, the TRA Office is better able to direct taxpayers to the resource that will most efficiently meet their information needs. Most counties have websites, and we hope to see the remaining counties employ this indispensable tool for providing information in a manner that allows the assessors to make better use of their diminishing resources.

Development of an Online Tutorial for Property Tax Bills

With the success of the video on assessment appeals a few years ago, the TRA Office began the process of developing a video that will explain property tax bills to the public. This year, by switching from a video format to an online tutorial format, we hope to make this information available to the public sooner and for a lower cost.

BUSINESS TAXES ISSUES

CASE RESOLUTION

The majority of the Taxpayers' Rights Advocate (TRA) Office's contacts consists of individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the BOE. All of these tax and fee programs are collectively referred to as "business taxes." Legislators and Board Members also contact the TRA Office on behalf of their constituents who have not been able to resolve a sales and use tax or special tax problem through normal channels.

A primary goal of the TRA Office is to ensure that taxpayers contacting this office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. The Advocate and his staff have extensive knowledge of BOE programs, policies, and procedures. This knowledge enables them to advise taxpayers of their rights and obligations, explain the tax law and BOE policy, and seek out creative and appropriate solutions that are acceptable to taxpayers and BOE staff. The TRA Office's independent status allows this office to focus on assisting taxpayers within the framework of the law with the cooperation of BOE management and staff.

Following is information regarding the business taxes cases the TRA Office worked on this year and some examples of cases that illustrate the services this office offers its customers.

About the Business Taxes Case Statistics

During fiscal year 2010-11, the TRA Office recorded 574 new business taxes cases, compared to 678 cases in the previous fiscal year.

Outcome of business taxes cases

Appendix 3 provides important information about the cases, categorized by office of origin. A specific BOE field or Headquarters office or the Franchise Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "TRA Office" was normally designated as the office of origin in cases where individuals wanted general information and guidance regarding a BOE process or procedure or if the case was a result of testimony at a Taxpayers' Bill of Rights hearing. The TRA Office tracked broad issue types (see below) and critical outcomes of the cases.

Customer Service Concerns. The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention. The Advocate and TRA Office staff view the manner in which taxpayers are treated as an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Customer service concerns that are tracked include:

- **Communication:** providing misinformation, not acknowledging a taxpayer's concerns, not referring the taxpayer to a supervisor when requested, failing to answer specific taxpayer questions, or not providing information or a notice;
- **BOE Delay:** slow response to an inquiry, or delay in issuing a refund or resolving the taxpayer's case;
- **Staff Courtesy:** lack of courtesy or respect shown to taxpayer indicated by staff demeanor, manner of handling the taxpayer's case, or comments made by staff; and
- **Education:** lack of information provided regarding tax law, BOE policy, or BOE procedures; or staff training issues.

The number of customer service complaints increased slightly this year but still remains relatively low (see Appendix 3). Eleven percent of the Business Taxes cases in fiscal year 2010-11 expressed concerns

related to customer service, compared with 10 percent in fiscal year 2009-10, seven percent in fiscal year 2008-09, five percent in 2007-08, and two percent in 2006-07. Although the increases may indicate a need for additional staff training, it seems likely that taxpayer difficulties related to the sluggish economy played a part as well. BOE collection staff has seen an increase in its workload as more taxpayers struggle to meet their obligations. In addition, based on contacts received by the TRA Office in fiscal years 2010-11 and 2009-10, it appears that a higher than average percentage of taxpayers are experiencing financial hardships, leading to stressful discussions with BOE collection staff.

Note: The customer service statistics were captured based solely on the taxpayers' statements or impressions of their situations. Therefore, these statistics do not necessarily indicate verified problems, but reflect the taxpayers' perception.

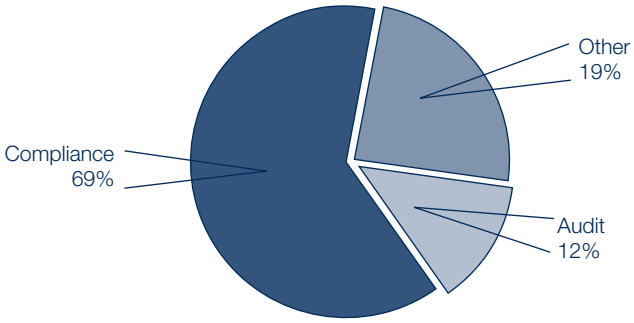
Agreed/Disagreed with Staff Case Handling. After investigating a taxpayer's concerns or contentions, the TRA Office is often able to confirm that staff's handling of the situation was consistent with legal, regulatory and procedural mandates. However, it is possible that staff handling of the case could change as additional information comes to light through the TRA Office's investigation and communication with staff and the taxpayer or the TRA Office recommends a different approach to produce a resolution that is satisfactory to both the BOE and the taxpayer. Occasionally, however, the TRA Office disagrees with one or more aspects of how BOE staff handled a case. These instances typically comprise a small percentage of the business taxes cases—for example, only two percent in fiscal year 2010-11 (see Appendix 3). A case is recorded as "disagreed with staff handling" only when the TRA Office finds that:

- Staff did not adhere to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- Staff caused unreasonable delays; or
- Staff violated the taxpayer's rights.

In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager containing the details of these cases, which provides management the opportunity to address specific training needs.

Taxpayer inquiries cover a wide range of issues

Types of Cases. Business taxes cases are sorted broadly into "compliance," "audit," or "other" categories. The "other" category represents consumer complaints, general information requests, and Franchise Tax Board matters. Of the 574 cases opened, 69 percent were compliance cases, 12 percent were audit cases, and 19 percent were categorized as "other."



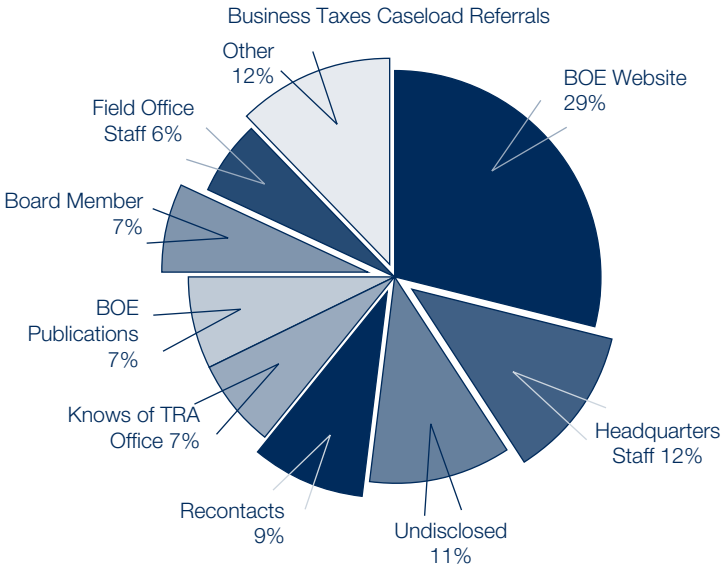
Specific Issues Leading to TRA Office Contacts. Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in Appendix 4.

Not surprisingly, many of the business taxes cases include the need for general information and guidance. Taxpayers often seek information on a

particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy. TRA Office staff provide guidance by recommending specific courses of action. The remaining most common issues in descending order were: Questioning Liability, Installment Payment Agreement, Levy, Customer Service Complaint, Audit Procedures, Petition/Appeals, Use Tax, Refund, Offers in Compromise, Bank Fee Reimbursement, Return/ Delinquency, Revocation, and Lien.

How taxpayers were referred to the TRA Office

In an effort to improve public service, the TRA Office attempts to identify the source of referrals to its office. As in the past, this year the BOE website was the largest source of referrals, accounting for 29 percent of the business taxes cases. BOE publications accounted for seven percent. Other important sources of referral were BOE headquarters staff (12 percent), field office staff (six percent), Board Members (seven percent), and the customer's familiarity with the TRA Office (seven percent).



Nine percent of the business taxes cases were recontacts. Less significant sources of referral included legislators, friends/colleagues, taxpayer representatives, other state agencies, and outreach events.

Examples of Business Taxes Cases

The following cases illustrate how taxpayers' issues are resolved by TRA Office staff and indicate the range of services provided by the business taxes technical advisors.

Consumer use tax billing procedure prevented taxpayer from exercising appeal rights

Issue. An individual requested assistance from the TRA Office because he had been billed for tax on the purchase of an automobile that he said he never purchased, and he had received correspondence from BOE collection staff. He stated he had documentation that showed the purchaser's signature on the sales contract was not his; the name, although similar, was not the same as his; and he never lived at the address shown on the sales contract. He was unsuccessful in contacting the BOE collector or receiving assistance from the local BOE office, and he feared the possibility of identity theft.

The TRA Office reviewed the BOE records to establish what evidence was used to conclude that this individual bought the automobile. The TRA Office also worked with a supervisor in the BOE's Centralized Collection Section to gather more information that could show mistaken identity. It was noted that the individual who contacted the TRA Office had signed a pre-addressed consumer use tax return with a pre-specified "purchase date," but indicated only a zero for the amount due. Consumer Use Tax Section staff had based the billing on this return, which they considered "Non Remittance."

Resolution. After the TRA Office brought this case to the attention of the collector's supervisor and discussed the individual's contentions, the supervisor suggested canceling the Non Remittance billing and issuing a Notice of Determination instead. The TRA Office agreed this was the correct way for BOE staff to respond to a return related to a specific purchase date that showed zero tax liability, if staff believed the person filing the return should have reported

a purchase amount and made a payment for the corresponding use tax due. The signer of this return should have received a Notice of Determination for a BOE-assessed liability, rather than a demand for payment of a self-assessed liability, since the self-assessed liability was actually zero. The considerable advantage provided to the individual was the ability to respond to a Notice of Determination with a Petition for Redetermination, thereby securing his right to appeal the billing.

TRA Office staff ensured that the individual understood the importance of filing his petition timely, which he did by submitting his petition and supporting documentation to the TRA Office. The TRA Office hand delivered the petition and documentation to the Petitions Section. Subsequently, the petitioner requested, and was granted, assistance with his appeal by the Tax Appeals Assistance Program.

Summary—Services Provided. The TRA Office independently researched the individual's contentions and the circumstances of the billing. In doing so, the TRA Office was able to bring facts to light that raised the possibility of mistaken identity of the automobile purchaser. The TRA Office's collaboration in this research with the Centralized Collections Section and its questions about the billing procedure led to the collector's supervisor making the helpful suggestion to correctly re-bill the individual so as to protect his appeal rights.

Artist understood his sales were not subject to tax, but was now told they were taxable

Issue. The TRA Office received a request from a Board Member's office to assist an artist who had been contacted by the Statewide Compliance and Outreach Program (SCOP) and was told it appeared he was failing to report tax correctly on artwork that he installed on real property. The artist, who had a seller's permit and was correctly reporting tax on noninstalled artwork, explained to the Board Member's staff and the TRA Office staff that he had learned at a BOE sales and use tax seminar many years earlier that his charges represented non taxable installation labor. However, he was now being told the charges were for taxable fabrication labor and that he may be classified as a construction contractor for sales and use tax purposes. He also mentioned that most of his installations were sold to municipalities and gave examples of artwork purchased for display in a city park and a community garden.

Both the Board Member's office and TRA Office encouraged the taxpayer to describe the details of his sales in writing and request written advice from the SCOP supervisor. He planned to do that, but he was concerned that he would not be able to pay the tax on prior sales, which would be significant if they were confirmed to be subject to tax. He asked the TRA Office to review his draft of a request for written advice.

Resolution. After speaking to the taxpayer, TRA Office staff realized that, although it appeared the exemption for installation labor did not apply, there was another tax exemption that might be applicable to many of his sales. The TRA Office explained to the taxpayer that R&TC section 6365, *Art works,* provides an exemption from tax for the sales or use of original works of art purchased by this state, a city, a county, or other local governmental entity for public display. The taxpayer was also referred to Sales and Use Tax Regulation 1586, *Works of Art and Museum Pieces for Public Display,* for additional information, and was advised to reference the regulation in his letter and to fully describe the details of his sales to governmental entities.

The TRA Office provided minor suggestions on the taxpayer's draft request for advice. The BOE's written response to the request indicated that most of the sales on which the taxpayer had not reported tax were exempt under R&TC section 6365.

Summary—Services Provided. The TRA Office independently assessed the taxpayer's situation, and based on TRA Office staff's knowledge of the law, was able to identify the correct application of tax to the sales of artwork. The TRA Office then assisted the taxpayer in acquiring written advice from the BOE that confirmed the sales were exempt and ensured that the taxpayer did not pay more tax than was legally due.

Bank levy captured funds not belonging to taxpayer

Issue. The TRA Office was contacted by a person whose personal bank account was attached by a BOE levy. She stated the liability was not hers, and she was not related to the taxpayer whose name was on the Notice of Levy. The BOE liability was related to her boyfriend's business.

R&TC section 6703 authorizes 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 by spouses or registered domestic partners are presumed to be community property, and to reach community property interests, the BOE attaches a spousal affidavit to the Notice of Levy. Section 688.030 of the Code of Civil Procedures (CCP) authorizes a third party to claim ownership of, or the right of possession to, the levied property. A third-party claim, which must be in conformity with CCP section 720.130, must be made in writing by the person claiming ownership and submitted prior to the BOE receiving the levied funds. If the third-party claim is received after the BOE has deposited the funds from the levy, the only recourse available to the claimant is to file a claim for refund.

The BOE's Compliance Policy and Procedures Manual section 753.210 describes the requirements for a third-party claim and provides that the BOE office issuing the levy is responsible for advising the third-party claimant of all the requirements for a valid claim and determining whether a claim conforms to the requirements of CCP section 720.130. All claims conforming to section 720.130 are to be immediately forwarded to the BOE's Legal Department, which will determine whether to release the levy or refer the matter to the office of the Attorney General for commencement of a third-party claim legal proceeding.

TRA Office Actions. TRA Office staff learned that BOE had not yet received funds captured by the bank levy, but that the BOE office issuing the levy had not informed the person who complained to them about her personal account being attached about the requirements for a third-party claim. The TRA Office immediately contacted the District Principal Compliance Supervisor, who agreed to have district staff watch for the check from the bank and refrain from negotiating it, pending receipt of a third-party claim. The TRA Office explained the claim process to the person, and assisted her in submitting her claim and documentation to the BOE district office within one day. In the interim, the bank sent the funds to the BOE. The Legal Department conducted a review of the claim and advised that a third-party claim legal proceeding would not be initiated. Accordingly, the district office returned the check to the bank for re-deposit.

Summary—Services Provided. The TRA Office moved quickly to ensure that the claimant was informed of the requirements for filing a timely third-party claim. Its quick action in initiating contact with responsible staff in the district office prevented the levied funds from being deposited by the BOE before the third-party claim could be considered. These actions helped the claimant avoid the claim for refund process.

ISSUE RESOLUTION

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and

laws to improve and ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, suggestions received from BOE staff, and issues identified by TRA Office staff, recommendations are presented to the program staff for evaluation. The TRA Office then works with BOE staff to assist in the development and implementation of policy, procedure, or law changes to address any identified areas of concern.

Accomplishments—Changes Implemented, Concerns Resolved

The following changes to business taxes policies and procedures were accomplished this past year. In some cases, TRA Office concerns were resolved through improvements to the training and education provided to BOE staff and the public.

Guidance provided to staff regarding accepting returns filed in response to compliance assessments

Issue. If an active business with a seller's permit fails to file a return and does not respond to staff's inquiries concerning the non-filing of the return, staff may estimate the amount due and issue a billing for the estimated amount due. This is referred to as a "compliance assessment" or "CAS." Often, the taxpayer files the missing return after the CAS becomes final. If the amounts on the post-CAS return differ from the estimated amounts on the CAS, the return is processed as a Pending Taxpayer Original return. Collection staff then reviews the post-CAS return to determine if the taxpayer reported correctly, and may request supporting documentation for the amounts reported. If the information on the post-CAS return is accepted, the taxpayer's liability for the period is adjusted accordingly.

Sales and Use Tax Department staff asked whether there was a statute of limitations governing when a taxpayer would be allowed to submit a late return intended to replace a CAS. The TRA Office's research disclosed no statute that sets the timeframe whereby a taxpayer must take action to enforce their rights to correct a billing when the BOE has assessed an estimated tax for failing to file a return.

In considering the question from field staff, the TRA Office realized there did not appear to be written guidance for staff on how to proceed when a taxpayer sends a late return or other information to refute the amount billed through a CAS. For instance, TRA Office staff could find no written directions or guidelines to be used in verifying information provided on a post-CAS return.

Concern Resolved. The TRA Office recommended that written policy and procedures be developed for collection staff to follow upon the receipt of a post-CAS return. In response, Operations Memo 1180, *Adjustment and Cancellation of Compliance Assessments,* was issued on November 4, 2010, with guidelines for Sales and Use Tax Department and Special Taxes and Fees Division staff. For additional instruction, the operations memo references Compliance Help Resource Desk 51, *Adjustments to Billed Compliance—Guidelines.*

Policies and procedures developed regarding taxpayers making court ordered restitution payments

Issue. The TRA Office was contacted by a taxpayer who claimed she was harassed by a BOE collector. The taxpayer had been criminally prosecuted, was incarcerated, and ordered to pay restitution to three state tax agencies, including the BOE. The county probation department was charged with prorating the restitution payments between the three agencies. The taxpayer stated that, after making payments for about five years, her probation officer approved a reduction in the payments to BOE when she claimed she was no longer able to make the designated payments. The taxpayer objected when the BOE collector requested that the taxpayer submit financial documentation to support the reduction of the restitution payment amount.

Discussions between the TRA Office, the Legal Department, and the Sales and Use Tax Department resulted in concurrence that the collector should have made inquiries of the probation department or the court to confirm the adjusted payment amount was authorized by the court. This case brought to the TRA Office's attention the need for guidance to staff on how to proceed with collection cases while restitution payments are being made. TRA Office staff could locate no guidelines regarding BOE's authority or responsibility during this time.

The TRA Office brought its concerns to management's attention and, based on discussions, identified the following areas where written policy and procedures were needed for collection cases where taxpayers are making court-ordered restitution payments:

- What mechanisms are in place to monitor the payment of restitution payments and how should staff proceed if restitution payments are not made?
- What steps are needed to ensure that collection staff has access to the court order upon sentencing so that all details regarding restitution payments are known?
- What procedures will ensure that taxpayers are routinely informed that, regardless of the amount of restitution ordered by the court, their liability to the BOE is not discharged until paid in full?
- If the taxpayer has an additional BOE liability that is separate from the debt addressed by the court, how should BOE collection staff proceed with collection of the additional liability in light of the ongoing restitution payments?
- If collection staff becomes aware of a change in the taxpayer's financial situation while restitution payments are being made, can or should the BOE petition the court for an adjustment to the payment amount or date certain to complete the payments?

The Investigations Division of the Legal Department generally receives information regarding the details of sentencing, including any restitution payment orders, and indicated they could assist collection staff when the taxpayer is not complying with the terms of the disposition or plea agreement while serving out his or her probation.

Concern Resolved. In response to the TRA Office's concerns, a work group was formed to address the need for procedures and policies to guide staff actions when taxpayers are ordered to make restitution to the BOE. The effort was led by the Legal Department's Special Operations Branch, with participation from the Sales and Use Tax Department, the Special Taxes and Fees Division, the Investigations Division, and the TRA Office. A new database was developed to track restitution cases, a number of legal issues and procedural questions were addressed, and an operations memo was produced to provide guidance to staff. Operations Memo 1169, *Guidelines and Procedures for Court Ordered Restitution Payments,* was published on March 28, 2011, to provide procedures on how to process court ordered payments for restitution, fines, penalties, and investigative costs made to the BOE. In addition, Operations Memo 1169 identifies the departments responsible for:

- Handling documents and payments associated with incoming court ordered restitution, fines, penalties, and investigative costs;
- Processing R&TC section 6829 dual determinations for corporate officers ordered by the court to pay on behalf of corporations;
- Handling court ordered restitution cases in default;

- Monitoring restitution payments and accounts; and
- Initiating legal action.

Notice of proposed R&TC section 6829 dual billings are now provided to dualees

Issue. Corporate officers and other individuals who have been held personally liable for the liabilities incurred by terminated corporations, limited liability companies, etc. under R&TC section 6829 ("dualees") have contacted the TRA Office on a number of occasions to seek information about the determination (billing). Often, the individuals have expressed concern that they were not aware that they were to be personally billed or they received no explanation as to how the BOE determined they were personally responsible.

In researching the basis for the dual determinations, TRA Office staff learned that there was no policy in place in either the Centralized Collections Section or in field offices to provide the dualee with a copy of the investigation and staff recommendation which is prepared for management approval and provides the basis for the dual determination.

The TRA Office was concerned that taxpayers are not afforded due process when an individual is billed for a liability without an adequate explanation as to why he or she was billed. As more than one dualee explained to the TRA Office, it was difficult to prepare an effective petition for redetermination (appeal) without knowing staff's position. The TRA Office recommended that new procedures be promulgated to routinely provide a copy of all R&TC section 6829 dual investigations, including the basis for staff's recommendation, to dualees once approved for billing.

Concern Resolved. The Sales and Use Tax Department developed a standard report (letter) to be routinely provided to R&TC section 6829 dualees explaining the basis of the billing and how requirements for personal responsibility are deemed met. On November 24, 2010, the Tax Policy Division informed the Sales and Use Tax Department employees that the new BOE-1515, *Notice of Proposed Determination,* is available for use and the Principal Compliance Supervisor, Principal Auditor, or designee is required to send the letter to the proposed responsible person(s) immediately after the investigation for a R&TC section 6829 dual determination is completed and approved by the district office or the Centralized Collection Section. The BOE-1515 explains the basis for holding the person personally liable and his or her appeal rights, and states that, upon request, staff will provide copies of the supporting documentation referenced in the letter, with the exclusion of any confidential information pertaining to other parties. If the recipient fails to respond to the letter within 15 calendar days, the dual determination package will be submitted to the Audit Determination and Refund Section for final review and approval. In the event the billing is cancelled, staff is required to notify the original recipient(s) of the BOE-1515 of the cancellation by sending a BOE-1516, *Cancellation of Proposed Determination.*

Policy clarified regarding exemption from levy—social security deposits

Issue. Section 704.080 of the Code of Civil Procedure (CCP) states, in part, that certain payments such as social security benefits, when directly deposited by the government or its agents, are automatically exempt from levy action and the individual is not required to file a claim of exemption with the BOE. As an example, this section provides ". . .$2,425 are exempt where one depositor is the designated payee of directly deposited social security payments. . ."

However, if a taxpayer receives their social security benefits via a check, there is no automatic exemption if the BOE captures these funds through a levy. Rather, the taxpayer will have to file for an exemption with the BOE. Further, if the taxpayer's

social security funds are comingled with other funds, the taxpayer will likely be required to prove that the social security funds were not spent prior to the levy being served.

Taxpayers who receive social security deposits via check instead of via direct deposit may not be receiving equal treatment under the law in regard to the legal exemption from levy. The TRA Office proposed consideration of a policy clarification such that if a taxpayer files a claim of exemption stating that their social security funds have been captured through a levy sent by BOE (and provides supporting documents), the BOE would release or refund the captured funds using the same limits set forth in CCP section 704.080. In addition, proposed policy would provide that, if a taxpayer is able to show that social security funds were received and deposited, they would not be required to prove that the social security funds were not spent prior to the levy being served.

Concern Resolved. The Sales and Use Tax Department, the Property and Special Taxes Department, and the Legal Department were in agreement with this proposed policy, and the Sales and Use Tax Department drafted an operations memo to clarify policy regarding social security benefits. Operations Memo 1178, *Levy Policy on Social Security Deposit Accounts,* issued on November 4, 2010, provides guidance to staff on how to proceed when notified that funds in excess of the automatic exemption amount (for social security direct deposits) exist and when taxpayers claim that funds captured include social security benefits deposited by check, thereby providing clarification of the policy set forth in Compliance Policy and Procedures Manual section 753.260.

Although Operations Memo 1178 is designated for public release, the TRA Office has recommended that the Sales and Use Tax Department also consider incorporating into a BOE publication the detailed information in the operations memo concerning requirements for filing an exemption claim.

R&TC section 7096, Claim for Reimbursement of Bank Charges, was amended to allow reimbursement of fees caused by erroneous processing or collection action

Issue. The BOE, as part of its administrative duties with respect to the collection of taxes, is authorized to seize property of a delinquent taxpayer, and may issue a levy or order to financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of the taxpayer. However, under R&TC section 7096, if the BOE erroneously issues a levy or notice to withhold, and that error resulted in bank charges or third party check charges incurred by the taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. The TRA Office is charged with the responsibility of reviewing and approving these reimbursement claims.

Occasionally, an erroneous BOE action other than a levy or notice to withhold has resulted in the imposition of bank or third party check charges. For example, a taxpayer's bank account may have been charged incorrectly for an electronically-transferred payment made in connection with an installment payment agreement, causing an overdraft condition in the bank account. Although the BOE is able to reverse the erroneous debit, the law contained no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

Concern Resolved. The TRA Office suggested a legislative change, approved by the BOE's Legislative Committee for BOE sponsorship on January 27, 2011, that would amend R&TC section 7096 to allow a taxpayer to claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE. The change that the TRA Office proposed was consistent with the original intent of section 7096, as well as with provisions in R&TC section 21018,

administered by the Franchise Tax Board (FTB), which allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors. Amendments to section 7096 were signed into law on October 9, 2011, as part of Assembly Bill 242, the BOE's omnibus business taxes bill. The TRA Office now intends to work with the BOE's Legislative Section to prepare suggestions for similar amendments to equivalent special taxes laws administered by the BOE.

Work in Process—Issues Identified

As a result of taxpayer contacts and review of trends, policies, and procedures within the BOE, the TRA Office has recommended consideration of the following issues and is working with staff to develop solutions:

R&TC section 7096 and equivalent special taxes laws should be amended to change deadline for claiming reimbursement of bank charges

Issue. R&TC section 7096 (b) provides that a claim for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold or an erroneous processing or collection action by the BOE must be filed within 90 days from the date of the levy or notice to withhold or the processing or collection action. However, this provision proved problematic concerning a request for reimbursement of bank charges received by the TRA Office in 2010-11. BOE staff agreed the levy issued to the taxpayer's financial institution was in error. However, the taxpayer never received a copy of the Notice of Levy because the BOE sent the Notice to an incorrect address. The levy attached the taxpayer's Individual Retirement Account, causing an early withdrawal penalty and bank fees. The financial institution remitted the funds more than two months following the issuance of the Notice of Levy, and its notice to the taxpayer at that time was the first notice the taxpayer received about the levy. The TRA Office was not able to approve reimbursement of the bank fees because the taxpayer did not file his claim for reimbursement within 90 days from the date of the levy.

Work in Process. The TRA Office intends to examine the possibility of amending section 7096 (b) and equivalent special taxes statutes to allow the taxpayer to meet the deadline while providing for circumstantial variations such as this case exhibited. For example, an amendment to R&TC section 7096 (b) could provide that the claim must be filed within 90 days of the later of: the release of the erroneous levy by the BOE, the receipt by BOE of funds received due to erroneous BOE levy or action, or the date the bank charges were incurred.

Clarification is needed on the requirement for a taxpayer to confirm a request for an appeals conference or Board hearing

Issue: The TRA Office received complaints from some taxpayers or their representatives that they were contacted by a BOE collector and asked to pay a liability for which they had filed a timely petition. Upon researching the matter, it was found that the taxpayer had not responded to correspondence from the Sales and Use Tax Department's Petitions Section. It is the practice of the Petitions Section, when the taxpayer's dispute cannot be resolved at this level, to require the taxpayer to confirm its request for an appeals conference and/or Board hearing to avoid having the appealed determination become final. The TRA Office questioned the validity of this practice. In response to the TRA Office's inquiry, the Legal Department confirmed the requirement for the taxpayer to reaffirm its request for an appeal conference or Board hearing was allowed by provisions of the Rules for Tax Appeals, specifically Regulation 5218, *Review of the Petition by the Assigned Section,* which states in subdivision (e):

(e) Agreement or Disagreement. If the petitioner agrees with the Board staff's findings, or fails to request an appeals conference and/or oral hearing, a notice of redetermination will be issued in accordance with such findings. If the petitioner disagrees with any portion of Board staff's findings, and indicates that disagreement by requesting an appeals conference conducted under article 6 of this chapter, or by requesting or confirming a previous request for an oral hearing, Board staff from the assigned section must prepare a summary analysis.

Work in Process. To ensure that taxpayers are aware of the need to respond to the Petitions Section to avoid loss of their appeal rights, the TRA Office asked the Appeals Division to include an explanation of the requirement to reaffirm their desire for an appeal conference or Board hearing in BOE publication 17, *Appeals Procedures—Sales and Use Taxes and Special Taxes.* In addition, a suggestion was made to the Legal Department to amend subdivision (e) of Regulation 5218 to clarify this matter.

The Legal Department is working on a draft of amendments to Regulation 5218 that include changes to subdivision (e) clarifying the BOE policy. The amendments are due to be proposed at the next update of the Rules for Tax Appeals. The Appeals Division is drafting revisions for publication 17 and for the BOE-416, *Petition for Redetermination.*

TRA Office staff met with management from the Sales and Use Tax Department and the Special Taxes and Fees Division to explore how Regulation 5218, subdivision (e) was being implemented by the various BOE units responsible for processing petitions. Some procedural differences were discovered regarding whether or not confirmation of a desire for Board hearing is required. The Sales and Use Tax Department's Petitions Section asks for a confirmation of hearing request for all consumer use tax cases and for sales and use tax cases in which the taxpayer has been non-responsive during the section's review process. However, if a tax representative or taxpayer states in the petition that it desires a Board hearing no matter what the Petitions Section's analysis discloses, a confirmation of hearing request is not required. In contrast, the Special Taxes and Fees Division does not require confirmation of hearing request on any of the petitions it processes.

The TRA Office will continue to work with the Legal Department, the Sales and Use Tax Department, and the Special Taxes and Fees Division to ensure that BOE policy is clearly conveyed to taxpayers and to ensure consistent treatment of taxpayers in the petition process is addressed.

Management should be given discretion to consider reinstatement of revoked accounts with an Installment Payment Agreement

Issue. Compliance Policy and Procedures Manual (CPPM) 751.090, *Conditions of Reinstatement,* provides in part that, in order for BOE 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 fifty dollars per active location *[increased to $100 effective January 1, 2010])* and completing all required forms.

6. Clearing any other causes for revocation of the permit or license.

In general, the TRA Office agrees with the policy of requiring the taxpayer to pay all self-assessed delinquent balances in full before allowing reinstatement, while allowing reinstatement before payment in full in the case of audit-determined liabilities. However, the TRA Office has become aware of cases where collection staff have acted upon the recognition that the interests of the state are best served by reinstatement of the permit prior to payment in full of self-assessed liabilities, with the approval of an installment payment agreement.

The TRA Office has suggested that the BOE revise policy to allow management to consider approving acceptance of a taxpayer's payment proposal for self-assessed liabilities as a condition of reinstating a revoked account. If approved, this policy will:

- Ensure uniformity among collection staff regarding the interpretation of when a payment plan may be considered as a pre-requisite to reinstatement;
- Act as an incentive for taxpayers to file their returns timely and accurately, even if they are unable to make timely payment;
- Allow taxpayers to pay their delinquent taxes via a payment plan while operating their business legally, subject to the BOE's determination that the payment agreement and reinstatement are in the state's best interests; and
- Provide financial assistance to California taxpayers, many of whom are facing financial hardships due to current economic conditions.

This policy change does not require a law change. R&TC section 6832 states in subdivision (a):

> "(a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement."

Further, the TRA Office's recommendation is consistent with BOE 2011 Legislative Suggestion No. 3-14, which proposed to add R&TC section 6070.5 to the Sales and Use Tax Law to provide that the BOE may refuse to issue a seller's permit to any person who has an outstanding liability with the BOE and has not entered into an installment payment agreement. This law change was approved by the Governor on October 9, 2011, as part of Assembly Bill 1307.

Work in Process. The Sales and Use Tax Department is conducting research regarding this proposal.

BOE-wide access to signed BOE-82 (Authorization for Electronic Transmission of Data) *and BOE-392* (Power of Attorney) *is needed*

Issue. The TRA Office periodically hears concerns voiced by taxpayers or their representatives that they are required to provide multiple copies of authorization forms BOE-82, *Authorization for Electronic Transmission of Data,* or BOE-392, *Power of Attorney,* to different units within the BOE. The TRA Office suggested to the Tax Policy Division that a taxpayer should be able to provide a BOE-82 or BOE-392 to BOE once and have the authorization be available to any BOE staff that has a business reason to review it.

Work in Process. It is likely this issue will be addressed through one or more BOE Digital Office Vision initiatives that are either being planned or are underway. As part of the Digital Audit Project these forms will be on a common drive and accessible to multiple sections/departments. A pilot for the Digital Audit Project involving two field offices and the Tire Fee Program was completed in fiscal year 2010-11 and full implementation to expand the project was begun at the end of the fiscal year. A Scan on Demand Analysis is underway, with the goal of identifying those documents that are necessary to keep in sales tax files and are candidates for scanning upon initial receipt. Other initiatives are underway to plan for organized e-document storage. The TRA Office has conveyed its requests for centralized storage of the BOE-82 and BOE-392 to the teams working on the Digital Audit Project and the Scan on Demand Analysis.

Investigations Division Procedures Manual and Statewide Compliance and Outreach Program Guidelines should be published on BOE website

Issue. In an effort to improve public access to audit and compliance policies and procedures, the entire Audit Manual and Compliance Policy and Procedures Manual are available to taxpayers and stakeholders on the BOE website. This allows BOE taxpayers to obtain a clear understanding of what to expect during the registration, audit, and collection processes. Publication of these manuals is consistent with the BOE's ongoing efforts to be a more transparent agency by using a variety of means to make information more easily accessible to the public and its employees.

The Investigations Division, under the BOE's Legal Department, administers the BOE's criminal investigations program by planning, organizing, directing, and controlling all criminal investigations for the various tax programs administered by the BOE. The Division's goals are to identify tax evasion problems and new fraud schemes, and actively investigate and assist in the prosecution of crimes committed by individuals who violate the laws administered by the BOE. The TRA Office suggested that, consistent with other BOE procedural manuals, the Investigations Division Procedures Manual be made available on the BOE website, after being redacted to eliminate any confidential or proprietary material.

The purpose of the Sales and Use Tax Department's Statewide Compliance and Outreach Program (SCOP) is to educate business owners regarding their sales and use tax reporting responsibilities, ensure businesses have the required state tax and fee permits, provide a field presence for the BOE, and address the tax gap that exists between sales and use tax revenue due under existing laws and the actual amount that is reported and paid. The TRA Office was aware that written guidelines were available for SCOP staff, and asked the Sales and Use Tax Department to consider making these available to the public, consistent with BOE's other procedural materials.

Work in Process. Legal Department and Sales and Use Tax Department management agreed with the TRA Office's suggestion to publish procedures for the Investigations Division and SCOP on the BOE's website. The process for readying the Investigations Division Procedures Manual for publication was underway at the close of fiscal year 2010-11. Guidelines for SCOP were organized, reviewed and placed into clearance in July 2011. Once approved, the Sales and Use Tax Department will begin the process of incorporating non-confidential information into the Compliance Policy and Procedures Manual, which is available on the BOE's website.

Notice of Proposed Determination letters should be issued for dual determinations other than R&TC section 6829

Issue. As described on page 24, in fiscal year 2010-11, the Sales and Use Tax Department

developed a standard report (letter) to be routinely provided to R&TC section 6829 dualees explaining the basis of the billing and how requirements for personal responsibility are deemed met. The new BOE-1515, *Notice of Proposed Determination,* is sent to the proposed responsible person(s) 15 days prior to final review and billing. The BOE-1515 outlines the basis for holding the person personally liable under R&TC section 6829, explains their appeal rights, advises them to respond within 15 days if they disagree, and explains that they may obtain copies of documentation relied on by staff to determine the person's liability.

The new policy is working well and is providing taxpayers an opportunity to resolve their liability at an early stage, in some cases without the need to go through a lengthy petition process. The TRA Office believes that all taxpayers being held liable for the debt of another entity should be afforded the same due process and, accordingly, proposed that the Sales and Use Tax Department mirror the process of issuing Notice of Proposed Determination letters to responsible persons under R&TC section 6829 for all other types of dual determinations, such as successors, predecessors, and questionable ownership.

Work in Process. The Sales and Use Tax Department agreed with the TRA Office's proposal, and set up an assignment to draft policy for issuing Notices of Proposed Determination for all other duals and to develop appropriate versions of the BOE-1515 letter for other proposed dual determinations.

Staff should be reminded of the requirements for a valid Power of Attorney

Issue. The TRA Office periodically receives complaints about BOE staff's insistence on accepting only BOE-prescribed Power of Attorney form BOE-392 in order to authorize another person or persons to act on the taxpayer's behalf. The TRA Office suggested it would be helpful to remind staff of the elements that must be present in a Power of Attorney and that, in lieu of the standard BOE form, any written document containing these elements will be accepted, as provided in Rules for Tax Appeals Regulation 5523.1, *Power of Attorney.*

Work in Process. The Sales and Use Tax Department agreed to look into this suggestion, but noted that the staff education effort would need to be agency-wide.

ENHANCING TAXPAYER SERVICE AND EXPERIENCE—SUGGESTIONS FOR FUTURE INITIATIVES

On occasion, the TRA Office advances a proposal for consideration and finds that, regardless of the value of the suggestion, BOE resources may not be available to bring the proposal to fruition. The TRA Office realizes there is a need to prioritize the use of state resources to maximize the realization of BOE's vision and goals while acting in the best interests of the state. However, in line with the TRA Office's goal to identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws, the TRA Office will be using this space to document valuable proposals for which the means of implementation may be available in the future.

Taxpayers should be allowed to initiate installment payment agreement requests online

Background. The BOE has discretion under the law to allow an Installment Payment Agreement (IPA) in cases of financial hardship, thereby accommodating a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the state. As described in Compliance Policy and Procedures Manual 770.010, under certain circumstances a Streamlined Installment Payment Agreement (SIPA) may be offered to a taxpayer with a liability between $500 and $5,000, if specific criteria are met. Under a SIPA, the taxpayer is not required to provide any

financial documentation. Some taxpayers have suggested to the TRA Office that BOE consider allowing taxpayers to go online and request their own payment arrangement and not have to be burdened by submitting financial information when tax liabilities are small. In researching this suggestion, we noted that the Franchise Tax Board (FTB) has a policy of allowing individuals to request an installment payment agreement (IPA) online, by mail, or by phone under certain circumstances. (For instance, FTB's criteria include an outstanding balance of $25,000 or less, the taxpayer agreeing to pay in 60 months or less, and the taxpayer having filed all required personal income tax returns.) We understand that FTB's policy is not to routinely require the submission of financial records with the IPA request (see *www.ftb.ca.gov/online/eia/index.asp).*

In 2009, BOE eServices began working on requirements to implement online IPA requests as part of its eServices Expansion Project. However, the Online IPA project was eliminated in June 2010. Electronic services projects were significantly impacted by BOE's mandate to implement various major pieces of new legislation, and a decision was made to replace the Online IPA project with the Online Accounts Receivable Payments project based on a return on investment analysis.

Suggestion. The TRA Office suggests the BOE consider reviving and completing the Online IPA project as resources become available, considering the quantity of work already completed on it. It appears likely that giving taxpayers the ability to propose an IPA online, such as a Streamlined Installment Payment Agreement, with automatic acceptance if predetermined criteria were met, could greatly reduce collection staff workload. In addition, this system could provide more consistent treatment of taxpayers statewide. This suggestion is consistent with BOE's vision of allowing taxpayers to be able to retrieve and enter their information easily, how they want it and when they want it, thereby better positioning BOE to maximize voluntary compliance with the tax and fee programs it administers. It also helps to fulfill two of the goals in the BOE's 2010-2015 Strategic Plan:

- *Goal 1 – Improve the Taxpayer Experience,* making it easier to do business with BOE electronically; and
- *Goal 4 – Enhance Operational Effectiveness,* by leveraging technology to provide a customizable website that will offer taxpayers information that is useful to their businesses.

Current Constraints. The TRA Office understands this suggestion cannot be undertaken until the completion of the eServices Expansion Project, which is scheduled to last into late 2012. However, the idea will also be considered in conjunction with work on the Centralized Revenue Opportunity System (CROS).

TAX APPEALS ASSISTANCE PROGRAM

ABOUT THE PROGRAM

The BOE serves as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include review of final actions of the Franchise Tax Board involving the state's Franchise and Personal Income Tax Laws.

The Taxpayers' Rights Advocate (TRA) Office created the Tax Appeals Assistance Program in fiscal year 2005-06 to allow low-income taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. Five law schools participate in the program: the University of the Pacific McGeorge School of Law in Sacramento, the Loyola Law School in Los Angeles, the Chapman University School of Law in Orange, the Golden Gate University School of Law in San Francisco, and the University of San Diego School of Law in San Diego. All interactions with participating law schools are overseen by the TRA Office, which also provides instructors for the students.

The program is offered to appellants who are appealing decisions of the Franchise Tax Board with less than $20,000 in dispute, if the dispute relates to one of the following issues:

- Penalties
- Head of household
- Residency
- Innocent spouse
- Interest abatement
- "California Method" (R&TC section 17041, subdivision (b)) -
- Federal action (notice of proposed assessment based on an action by the Internal Revenue Service)
- Statute of limitations (assessments or refunds)
- Child and dependent care credits
- Exemption credits
- Other state tax credits
- Personal income tax deductions
- Corporate minimum tax

In fiscal year 2009-10 the TRA Office expanded the Tax Appeals Assistance Program to assist individuals appealing BOE consumer use tax billings, and in 2010-11 the program added Cigarette and Tobacco Products Licensing Act violation appeals. The first contact letters to prospective clients with cigarette and tobacco licensing appeals of less than $20,000 were sent out in June 2011.

The Tax Appeals Assistance Program has been well received by all five law schools and the program's clients. The TRA Office will continue to work with the Appeals Division, the Sales and Use Tax Department, and the Special Taxes and Fees Division to develop guidelines and parameters for adding additional business taxes appeals to the program.

CASE RESOLUTION

Since its inception, the program has grown from one law school with a few students instructed by one BOE tax counsel, to five law schools with over 40 students instructed by two BOE tax counsels. As noted previously, the program was expanded starting in September 2009 to accept appeals of consumer use tax billings, and in June 2011 to accept cigarette and tobacco products licensing act violation appeals.

During fiscal year 2010-11, 164 franchise and income tax appellants were accepted into the program, and 100 cases were resolved (including some cases

that were accepted prior to July 1, 2010). This year, 192 individuals appealing consumer use tax determinations were accepted into the program, and 103 cases had been resolved as of June 30, 2011. Beginning in June 2011, 27 licensees appealing BOE notices of Cigarette and Tobacco Licensing Act violations were accepted into the program.

The Tax Appeals Assistance Program makes a positive difference in the lives of its clients. This year's completed cases have fulfilled the purposes of the program, which are to:

- Educate and assist taxpayers in voluntarily complying with California's tax laws while minimizing their tax compliance burden, and
- Enhance the preparation and quality of the appeals that come before the Board Members.

APPENDIX

APPENDIX 1

The Harris-Katz California Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

7080. Title. This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

7081. Legislature's findings and declarations. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

7082. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

7083. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

7084. Education and information program. (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

7085. Identification of taxpayer noncompliance by board. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

7086. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

7087. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

7088. Evaluation of employee's contact with taxpayers. (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or

her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

7089. Plan to timely resolve claims and petitions. No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

7090. Procedures relating to protest hearings. Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.

(b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

7091. Reimbursement to taxpayer. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

7092. Investigations for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1)"Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

7093.5. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that

recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

7093.6 Offers in compromise. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified funal tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met.

For purposes of this subdivision, a "qualified final tax liability" means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest of association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(l) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

7094. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuan to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars ($1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

7094.1. Return of property. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

7095. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

7096. Claim for reimbursement of bank charges by taxpayer. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

7097. Preliminary notice to taxpayers prior to lien.
(a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error.

In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

7098. Notice preliminary to suspension. For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

7099. Disregard by board employee or officer.
(a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against

the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

7099.1. Protection of taxpayer communications.
(a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communications.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) "Tax advice" means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, "federal tax advice" means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) "Tax shelter" means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

APPENDIX 2

The Morgan Property Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

5900. Title. This part shall be known and may be cited as "The Morgan Property Taxpayers' Bill of Rights."

5901. Findings and declarations. The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

5902. Administration. This part shall be administered by the board.

5903. "Advocate." "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

5904. Property Taxpayers' Advocate; responsibilities. (a) The board shall designate a "Property Taxpayers' Advocate." The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

5905. Additional duties. In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures, with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

(1) Taxation of real and personal property in California.

(2) Property tax exemptions.

(3) Supplemental assessments.

(4) Escape assessments.

(5) Assessment procedures.

(6) Taxpayer obligations, responsibilities, and rights.

(7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.

(8) Property tax appeal procedures.

5906. Additional duties. (a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

(1) Whether the forms and their instructions promote or discourage taxpayer compliance.

(2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

(1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.

(2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

(3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

5907. Employee evaluations. No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

5908. Educational assistance. Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

5909. Written rulings. (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents

the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer' s failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

5910. Report to board. The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

5911. Legislative intent. It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

APPENDIX 3

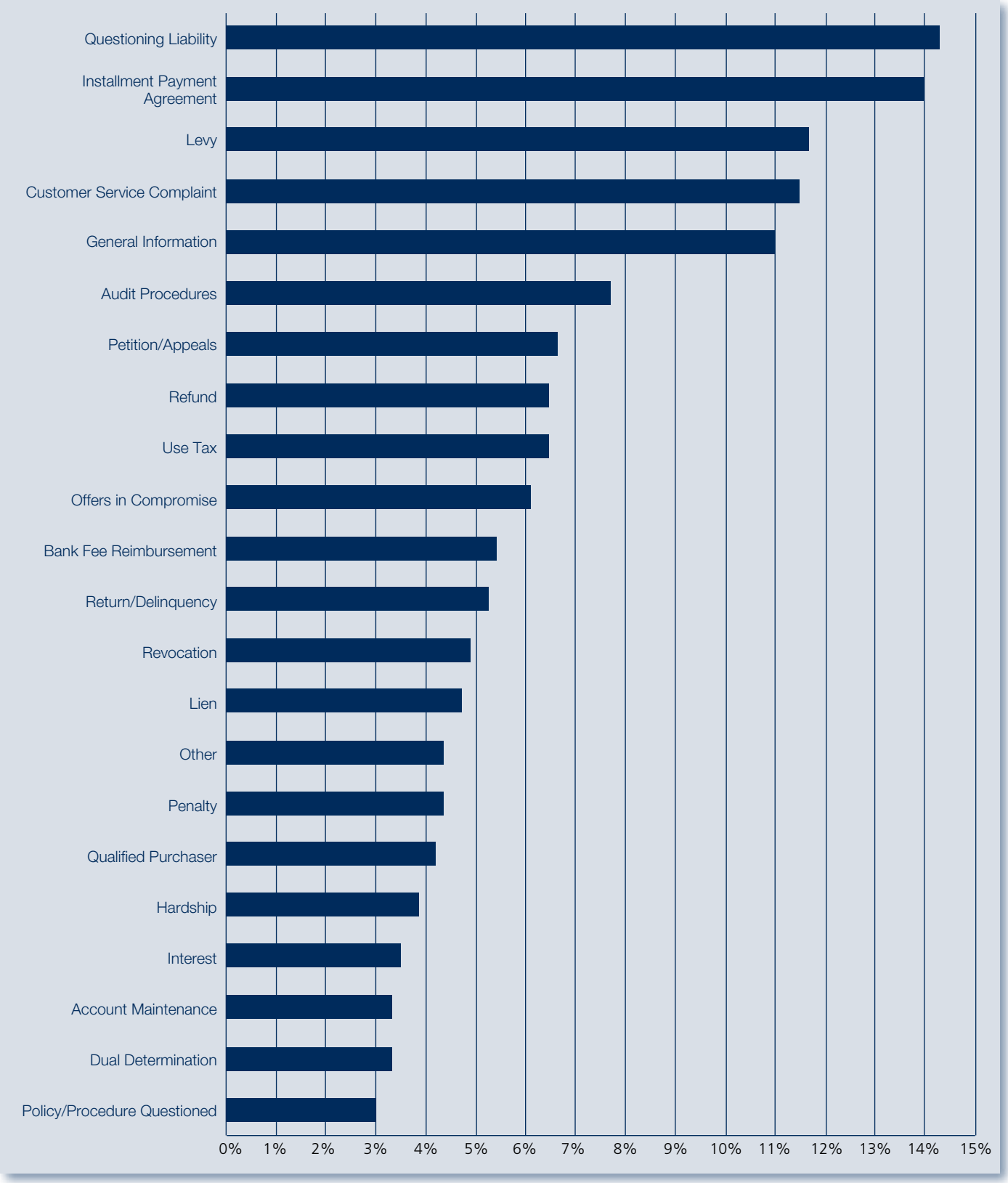
Outcomes of Business Taxes Cases

Office of Origin	Cases by Issue Type			Total Cases	Customer Service Concerns	Disagreed with Staff Case Handling	Case Handling Changed
	Audit	Compliance	Other				
Norwalk (AA)	5	8	0	13	3	1	2
Van Nuys (AC)	7	26	1	34	4	0	4
West Covina (AP)	3	6	1	10	1	0	1
Ventura (AR)	1	16	0	17	1	1	6
Culver City (AS)	3	24	1	28	6	0	6
San Francisco (BH)	4	8	0	12	1	0	3
Oakland (CH)	3	18	1	22	3	1	6
Irvine (EA)	2	24	3	29	4	1	6
Riverside (EH)	7	12	1	20	2	0	3
San Diego (FH)	3	18	1	22	3	0	5
San Jose (GH)	6	21	2	29	5	0	10
Santa Rosa (JH)	2	14	0	16	2	0	4
Sacramento (KH)	6	41	1	48	7	3	15
Out-of-State (OH)	3	2	2	7	2	1	2
Appeals Division	2	4	2	8	3	0	2
Audit Determination and Refund Section	0	10	4	14	2	0	5
Board Proceedings Division	0	2	4	6	0	0	0
Centralized Collection Section	4	64	6	74	7	0	17
Consumer Use Tax Section	0	9	3	12	2	0	3
Investigations	2	1	1	4	1	0	0
Offers in Compromise Section	1	2	0	3	1	0	1
Petitions Section	1	3	1	5	0	0	0
Return Analysis Unit	1	6	0	7	0	1	3
Settlement Section	0	3	0	3	0	0	0
Special Operations Branch	0	4	0	4	0	0	1
Special Taxes and Fees Division	3	11	3	17	1	0	1
Statewide Compliance and Outreach Program	2	2	0	4	2	0	0
Taxpayer Information Section	0	0	1	1	0	0	0
Use Tax Administration Section	0	13	1	14	1	0	3
Other Government Agencies	0	4	12	16	0	0	0
Other	0	20	55	75	2	0	1
Total	**71**	**396**	**107**	**574**	**66**	**9**	**110**

Notes: A number of outcomes are tracked for business taxes cases. Not all outcomes are applicable to all cases. The category of "Other" in Office of Origin includes cases where there is no particular office of origin - for example, contacts from the public asking questions about how tax applies, requesting general information, or reporting a business they believe is charging sales tax incorrectly; and various Headquarters units for which the cases are too infrequent to track separately.

APPENDIX 4

Most Common Issues in Business Taxes Cases



Note: Individual business taxes cases may involve a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.

NOTES

NOTES

State Board of Equalization
450 N Street, MIC:70
PO Box 942879, Sacramento, CA 94279-0070
Toll-Free: 888-324-2798 • Fax: 916-323-3319
Internet: *www.boe.ca.gov/tra/tra.htm*