

STATE BOARD OF EQUALIZATION

Taxpayers' Rights Advocate's

2016-2017

ANNUAL REPORT

Property and Business Taxes

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January 2018

Mr. David J. Gau
Executive Director

Dear Mr. Gau:

I am pleased to present the Taxpayers' Rights Advocate's 2016-17 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; and
- Contains examples of cases illustrating the services our office provides.

This will be the last annual report from my office as the Taxpayers' Rights Advocate for the Board of Equalization. On July 1, 2017, the Taxpayer Transparency and Fairness Act restructured the State Board of Equalization and separated its functions among three separate government entities to guarantee impartiality, equity and efficiency in tax appeals, ensure fair tax collection statewide, and uphold the California Taxpayers' Bill of Rights. The State Board of Equalization will continue to perform the duties assigned to it by the state Constitution, while all other duties were transferred to the California Department of Tax and Fee Administration (CDTFA) and the Office of Tax Appeals. Tax and fee payers need to know that their rights have not been impacted nor will they see any changes in how CDTFA administers tax and fee laws.

As of July 1, 2017, I report as the Taxpayers' Rights Advocate for the California Department of Tax and Fee Administration. With this change, my office and I stand ready to work with California tax and fee payers on issues and concerns that have not been resolved through normal channels.

Respectfully submitted,



Todd C. Gilman
Taxpayers' Rights Advocate

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TAXPAYERS' RIGHTS ADVOCATE OFFICE

VISION

To be a trusted voice of reason and fairness when resolving issues between taxpayers¹ 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.

¹ The term "taxpayers" in this publication means payers of sales and use taxes, special taxes and fees, and property taxes.

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 960,000 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 tax and fee programs administered by the BOE, currently affecting approximately 1,035,000 taxpayers in more than 31 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](#)).

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 and county employees;
- Monitors all tax and fee programs administered by the BOE and property tax programs administered by counties for compliance with the Taxpayers'

Bills of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;

- Works with BOE staff to ensure that taxpayer educational materials are clear and understandable; and
- Coordinates statutory Business and Property Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

How the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

Facilitates resolution of taxpayer complaints or problems

The Taxpayers' Rights Advocate (TRA) Office generally assists taxpayers who:

- Have been unable to resolve a matter through normal channels;
- Want information regarding BOE and county procedures;
- Claim their rights have been violated in the assessment or collection of tax; or
- Seek confirmation that staff action is lawful and consistent with approved policy.

The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps 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. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

The Advocate oversees the Tax Appeals Assistance Program, which allows taxpayers who have filed an appeal with the BOE the opportunity to seek free legal assistance. For more information, see the *Tax Appeals Assistance Program* chapter.

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 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.

The TRA Office routinely takes part in ongoing policy discussions, adding the perspective of taxpayers' rights, by participating in BOE committees' interested parties meetings and division chiefs meetings; conducting focused issues discussions with department management or designees; and taking part in inter-departmental working groups charged with the development of policy change recommendations.

In 2016, the Advocate undertook key roles related to the BOE's focus on customer service. The Advocate now serves as the executive liaison to the Board's Customer Service and Administrative Efficiency Committee. In addition, the Advocate serves as the Chair of the BOE's Customer Service Action Committee, which addresses enterprise-wide policies and practices related to how the BOE interacts with tax and fee payers.

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 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. After the hearings, the TRA Office

works with appropriate areas of the BOE or counties to address issues and concerns conveyed to Board Members by presenters and provides follow-up reports to the Members when appropriate. The TRA Office also prepares responses to presenters outlining how their concerns were addressed and posts those responses on the BOE website.

Cooperation with Advocates of Other Government Agencies

The BOE's Advocate meets quarterly with the Taxpayer Advocates from the Franchise Tax Board (FTB), the Employment Development Department (EDD), and the Internal Revenue Service (IRS), as well as the Small Business Advocate in the Governor's Office of Business and Economic Development (GO-Biz) 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 tax 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 implementation of 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 all BOE departments. 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 with program management, the issue may be brought to the Executive Director for resolution. In addition, the Advocate has the authority under the Taxpayers' Bills of Rights to take certain actions to protect taxpayers from irreparable harm, such as issuing a stay of collection action, releasing levies, or ordering the return of levied funds. The Advocate may also make the decision to release or subordinate a lien when that action will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

Property tax

In contrast to the way the TRA Office resolves business taxes issues, property tax cases are primarily resolved directly with the county assessors, tax collectors, and auditor-controllers (all elected officials), as well as clerks of the assessment appeal boards. Additionally, the TRA Office works with the BOE's Legal Department and the County-Assessed Properties Division when required. 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.

The *Business Taxes Issues and Property Tax Issues* chapters of this report include 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 example, information is included about the TRA Office in many BOE publications, is accessible on Internet sites, and is provided by TRA Office staff in presentations at public events.

Publications

- **Publication 70**, *Understanding Your Rights as a California Taxpayer*, contains information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights, and is available in all BOE offices and on the BOE's website.
- **Publication 231**, *Hit the Wall Trying to Solve Your Tax Problem? We Can Help*, briefly summarizes how the TRA Office can help when normal channels do not work. Publication 231 is provided at many public events and is available on the BOE website.
- **Publication 215**, *Free Legal Help... Do You Qualify?*, explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the Advocate (see the *Tax Appeals Assistance Program* chapter of this report).
- **Publication 145**, *California Taxpayer Advocates – We're Here for You*, provides contact information for the Advocates from the BOE, FTB, EDD, IRS, and GO-Biz. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center website, www.taxes.ca.gov. This year publication 145 was reformatted and contact information was added for GO-Biz.
- Many BOE publications prepared for permit or license holders reference the TRA Office's toll-free telephone number.
- The TRA Office's toll-free number is printed on all BOE-issued permits and licenses.
- Articles reminding taxpayers about their rights and referencing publication 70 are published each year in BOE newsletters.
- Contact information for key TRA Office staff can be found at the back of this Annual Report.

Internet and Telephone

- The California Tax Service Center website, www.taxes.ca.gov, contains links to all California Taxpayer Advocates' webpages and the publication 145 brochure via the "Your Rights" option under the "Contact Us" tab.
- The TRA Office's webpage, www.boe.ca.gov/tra, can be accessed from any page of the BOE's website. The webpage contains a video message from the

Advocate introducing 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 available as an option on many BOE offices' phone trees.
- The TRA Office's toll-free number is now included in the AT&T white pages in major areas of California.

Public Events

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

- Monthly Board meetings: Copies of publications about the TRA Office and taxpayers' rights and the Advocate's current annual report are provided for individuals arriving for their appeal hearings before the Board.
- Board Member-sponsored events: The Advocate or designee attends Small Business Fairs and Seminars and 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 and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such the IRS Nationwide Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, 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.

CONTACTS RECEIVED IN FISCAL YEAR 2016-17

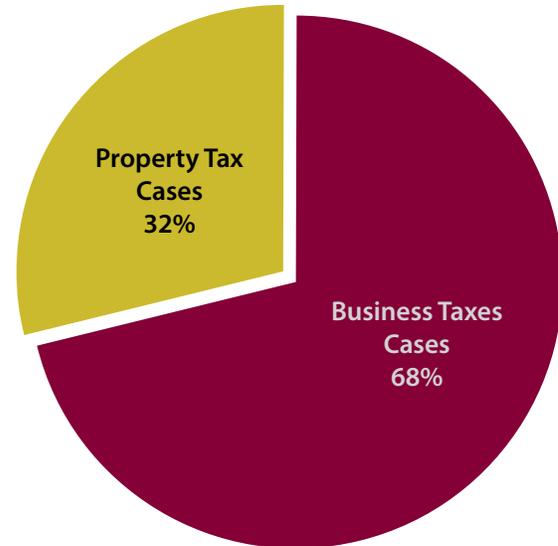
Cases

The TRA Office recorded 898 new cases in fiscal year 2016-17 compared to 658 cases in the previous fiscal year. The TRA Office caseload was comprised of 68 percent business taxes cases and 32 percent property tax cases.

As is generally the case, the BOE website and BOE publications accounted for the largest sources of referrals for TRA Office cases. The *Property Tax Issues* and *Business Taxes Issues* chapters include listings of other important means by which taxpayers learned about the TRA Office.

Telephone Calls

Telephone call volume in fiscal year 2016-17



decreased from the previous year, at an average of 397 calls per month, compared to 564 calls per month in fiscal year 2015-16. Eighteen percent of all calls resulted in new cases. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the TRA 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 or counties through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the FTB. TRA Office staff responds by directing the caller to the appropriate BOE section or individual, county office, information resource such as the BOE or county website, or to the appropriate state agency, with an invitation to call again if the caller is unsuccessful in making contact with the office to which they were referred.

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 tax agents, 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 and or at the Board of Equalization (BOE), they can quickly determine how an issue should be resolved.

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals board clerks. 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.

About the Property Tax Case Statistics

County of origin

The TRA Office recorded 286 new property tax cases in fiscal year 2016-2017 compared to 169 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found, for the most part, that the population of the county tends to determine the number of cases from each county. See [Appendix 3](#).

Types of cases

In fiscal year 2016-17, 64 percent of property tax cases were in the 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 36 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.

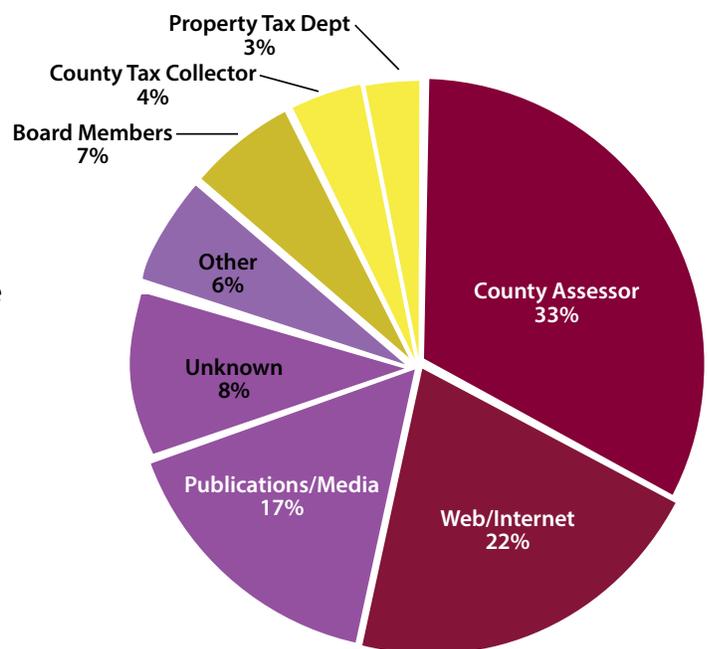
Specific property tax issues leading to TRA Office contacts

Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. Issues in each case were tracked and the most common are displayed in [Appendix 4](#).

How taxpayers were referred to the TRA Office

In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. This year county assessors were the largest source of referrals, accounting for 33 percent of the property tax cases while the BOE website accounted for 22 percent.¹

Property Tax Caseload Referrals



¹ The "Other" category consists of various types of referrals, each comprising two percent or less of the total, including re-contacts and county auditor-controllers.

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 usually involves review and explanation of processes and methodologies, as well as facilitation of resolutions between taxpayers and county departments.

Taxpayer given information in non-technical language

Issue. A taxpayer received a tax bill that she did not understand because English was not her first language. She had her daughter help her translate the assessment. Although the taxpayer's daughter was able to translate the information, she did not understand it.

Resolution. The TRA Office verified with the county assessor that the assessment was correct. Then the TRA Office explained in non-technical terms the assessment to the taxpayer's daughter. The taxpayer's daughter was able to convey the information to her mother who was satisfied with the tax bill.

Summary – Services Provided. The TRA Office's understanding of the assessment process allows them to explain technical and legal language in terms that can be understood by taxpayers. In this case, once the taxpayer had a better understanding of her tax bill, she was satisfied that it was correct.

Some transfers of real property are exempt from reassessment

Background. A change in ownership of real property can trigger a reassessment of value which causes an increase in property taxes. However, some property transfers are exempt. A transfer from a revocable trust to the trustors is exempt from reassessment because it does not result in an actual change in ownership.

Issue. A taxpayer who is the trustor of a revocable trust transferred property from the trust back to himself. He was reassessed at current market value creating a much higher property tax liability. The taxpayer's request to have the reassessment reversed was denied by the county assessor.

Resolution. The TRA Office helped the taxpayer

understand what documentation was needed to submit to the assessor's office to show that there was no real change in ownership. Once the taxpayer submitted the correct documents, the reassessment was reversed by the county assessor.

Summary – Services Provided. The TRA Office's understanding of trusts and how changes in ownerships are assessed allows them to help taxpayers submit the correct documents to the assessor's office to resolve their issues.

Taxpayer Appeals Timeshare Assessment and Wins

Issue. A taxpayer purchased a timeshare on the resale market. When the taxpayer received the property tax bill, she was assessed at a value significantly higher than what she paid for the timeshare. The taxpayer disagreed with the assessment, submitted an appeal, and contacted the TRA Office for assistance.

Resolution. The TRA Office contacted the assessor to discuss the assessment. The assessment was based on the fair market value of the timeshare and not the purchase price. The TRA Office discussed the appeals process with the taxpayer including how comparative sales of timeshares should be examined. Following this advice, the taxpayer presented her case at the Assessment Appeals Board and successfully argued that the assessment was incorrect. Ultimately, her assessment was lowered.

Summary – Services Provided. The TRA Office's understanding of the appeals and assessment process helped the taxpayer gather information to assist her prepare for the appeals hearing. As a result, the taxpayer won her appeal.

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 other agencies, and issues identified by TRA Office staff, the issues are resolved with the appropriate department or departments.

Taxpayer Base Value Transfer Approved

Issue. In our 2015-16 Annual Report, the TRA Office reported on an issue concerning the base year value transfer benefit under RTC section 69.5. Under this section, when a person reaches 55 years or older, they can transfer their tax base from one home to another home if certain conditions are met. One condition is that a purchased replacement dwelling be purchased one hundred percent. In this case, a taxpayer attempted to transfer the base year value of her current home to her deceased parents' home that she owned. However, because she purchased two thirds of the property (she inherited one third), her request was denied. She later completed an extensive remodel of her parents' home that the assessor considered a newly constructed home. She then submitted a second request to transfer the base year value of her original home to the newly constructed home, which was also denied.

Resolution. The TRA Advocate worked with the Property Tax Department and the Legal Department for clarification regarding whether or not 100 percent of the value of land on which a replacement dwelling is newly constructed must be purchased to qualify for the RTC section 69.5 base year value exclusion. The Legal Department opined that when a replacement dwelling is purchased, the land must also be purchased; however, when a replacement dwelling is newly constructed, the land does not have to be purchased to qualify under RTC section 69.5. In this situation, the taxpayer qualified for a base year value transfer from her home to the inherited property under the "newly constructed" replacement dwelling requirement of section 69.5(a)(1) because the land did not need to be purchased and all other requirements were satisfied. Once the assessor was notified of the opinion, the denial was reversed and the taxpayer was able to transfer her tax base to the new property.

Summary - Services Provided. One of the roles of the TRA Office is to make sure that the law is properly interpreted. In this case, the Advocate's continued involvement and request for a legal opinion was instrumental in resolving the issue in the taxpayer's favor.

TAXPAYER SERVICE IMPROVEMENTS BY COUNTIES

The TRA Office notes specific improvements counties have made in the services provided to the public. Each year we monitor and report on improvements that either directly or indirectly enhance service to the public. This year we are highlighting one county that has made significant strides forward.

San Francisco City and County

The City and County of San Francisco Assessor's Office implemented new technology and services to improve internal processes, assist staff, and provide better customer service to their diverse constituency.

Modeling Best Practices in Language Access for San Francisco's Diverse Constituents

The Assessor's Office implemented new policies to help staff interact with monolingual residents. Over 30 commonly used forms and documents were translated into Chinese, Spanish and Tagalog. Conference-in language translation services were implemented that can be accessed by staff at any time. A Translation Glossary of 191 commonly used terms for property tax assessment, recording, and other City functions was translated into Spanish, Tagalog, Chinese, Vietnamese, Korean and Russian to ensure consistency in translation. It is commonly referred to when creating translated documents or providing taxpayer assistance.

Prioritizing Transparency

The Assessor's Office published non-confidential roll data online in order to improve transparency of property tax valuations across the county.

Redesigning Public Website to be Easier to Use

The Assessor's Office designed a user friendly website that can be viewed on desktops and mobile devices. In addition, the website includes dedicated language pages that are easy to find for monolingual taxpayers.

Creating Convenience through Online Services

The Assessor's Office created a secure personal property filing portal to simplify the process and reduce redundant data entry for taxpayers.

Ensuring Accurate Forms for Taxpayers

Annually the BOE updates state forms to provide additional clarity or to reflect changes in the law.² To ensure taxpayers receive the most current and up to date information, the Assessor's Office linked the forms on their public webpage directly to the California Assessors' Association's consolidated forms service.

Focusing on Educating Taxpayers on their Rights

The Assessor's Office created ten new factsheets covering common topics of interest to taxpayers.

The factsheets include:

- Basics of Valuing Your Property
- Property Tax 101 for New Homeowner
- Things to Know During Property Transfer
- Value Change Due to New Construction
- Property Tax Savings for Homeowners
- Property Tax Savings for Seniors
- Property Tax Savings: Transfers in Family
- Thinking of Purchasing a Tenancy-in-Common property?
- Property Tax for All Business Owners
- Contest Your Property Value

These factsheets are in the process of being translated into multiple languages.

² The BOE recommends forms that pertain to local county assessments, exemption claims, exclusions, and changes in ownership for property taxation purposes.

BUSINESS TAXES ISSUES

CASE RESOLUTION

Approximately two-thirds of the Taxpayers' Rights Advocate (TRA) Office's cases consist of businesses and individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the Board of Equalization (BOE). All of these tax and fee programs are collectively referred to in this publication as "business taxes." The *Property Tax Issues* chapter discusses the remainder of the cases worked by the TRA Office.

A primary goal of the TRA Office is to ensure that taxpayers contacting the office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. Because the Advocate and his staff have extensive knowledge of BOE programs, policies, and procedures, they are able 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 them 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 the office offers its customers.

About the Business Taxes Case Statistics

During fiscal year 2016-17, the TRA Office recorded 612 new business taxes cases, compared to 489 cases in the previous fiscal year.

Outcome of business taxes cases

Appendix 5 provides important information about the business taxes cases, categorized by location. A specific BOE field or Headquarters office or Other Government Agency was designated as the location for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "Other" was normally designated as the location in cases where individuals wanted general information; or cases where the office was not disclosed. The

TRA Office tracked broad case types (see below) and critical outcomes of the cases.

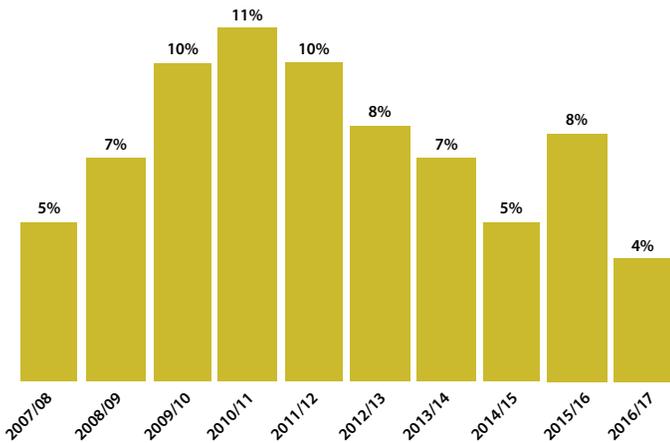
Customer Service Concerns. The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention because the manner in which taxpayers are treated is an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Accordingly, complaints from taxpayers regarding customer service are brought to the attention of the District Administrator or Headquarters section manager with a request to conduct an investigation into the taxpayer's allegations and inform the TRA Office of the findings. If the TRA Office notes a trend or pattern in either the types of complaints or complaints regarding specific BOE offices, the matter is brought to the attention of the Deputy Director, Field Operations Department.

Customer service concerns are categorized as:

- *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.

Both the number and percentage of customer service complaints were down this year (see Appendix 5 and Appendix 6). The percentage of business taxes cases in recent years expressing concerns related to customer service is illustrated on page 12.

Percentage of Business Taxes Cases with Customer Service Concerns



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

Disagreed with Case Handling. After investigating a taxpayer’s concerns, the TRA Office is often able to confirm that staff’s handling of the situation was consistent with legal, regulatory, and procedural mandates. Nevertheless, it is still possible that staff’s handling of the case could change. This may happen due to additional information coming to light through the TRA Office’s investigation and communication with staff and the taxpayer; or as a result of the TRA Office’s recommendation of a different approach to produce a result that is satisfactory to both the BOE and the taxpayer.

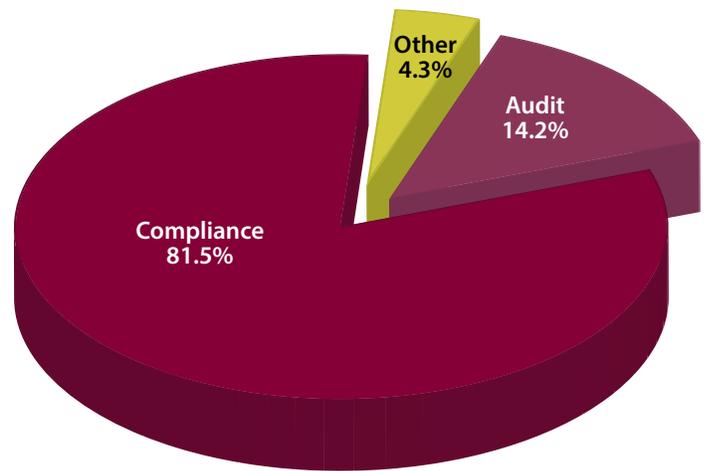
Occasionally, however, the TRA Office disagrees with one or more aspects of how BOE staff handled a case. These instances typically comprise a small percentage of the business taxes cases – less than one percent in fiscal year 2016-17 (see Appendix 5). A case is recorded as “disagreed with case handling” 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

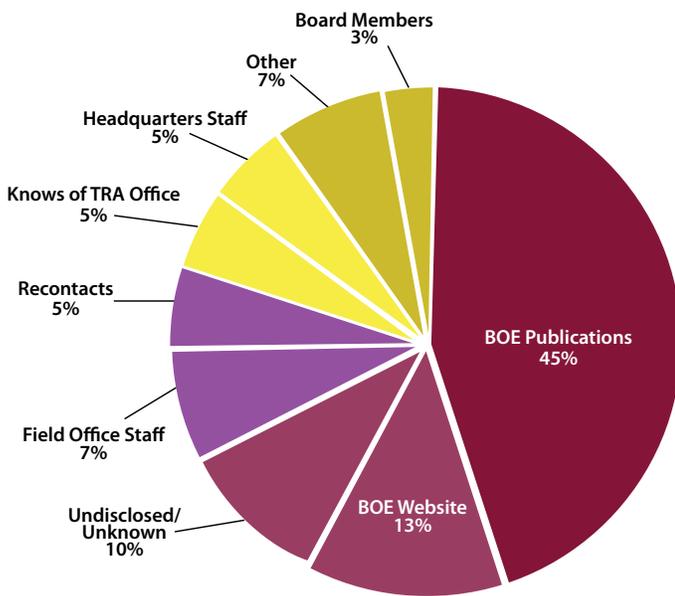
Types of Cases. Business taxes cases are sorted broadly into “compliance,” “audit,” or “other” categories. The “other” category represents consumer complaints, general information requests, and many of the matters involving other government agencies.



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 6](#).

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.

How taxpayers were referred to the TRA Office



In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. As is generally the case, the BOE website and BOE publications accounted for the largest sources of referrals.³

Examples of Business Taxes Cases

The following cases illustrate how taxpayers' issues are resolved by TRA Office staff with the cooperation of BOE staff, and indicate the range of services provided by the business taxes technical advisors. These four cases in particular demonstrate how the TRA Office's ability to take a fresh look at a case and focus attention on all aspects of the situation benefits the taxpayer and the BOE.

Taxpayer wrongly assessed use tax

Background. Pursuant to Sales and Use Tax Regulation 1620, when a vehicle is purchased and first functionally used outside of California and is brought into California within 12 months from the date of its purchase, it is reputedly presumed that it was acquired for storage, use, or other consumption in California and subject to use tax. In order to rebut the presumption, the purchaser must provide sufficient documentation as evidence to prove the vehicle

was purchased for use outside California during the first 12 months of ownership. If a purchaser brings a vehicle to California during the first 12 months of ownership and provides evidence that at the time of the purchase the purchaser had no intention that the vehicle or vessel would be used in California, this alone is generally sufficient to establish that it was purchased for use outside California.

Issue. A taxpayer contacted the TRA Office because he was issued a determination for use tax regarding a vehicle he purchased in Germany several months before he returned to California for treatment in a VA hospital. The taxpayer had been living in Germany for over 10 years. In addition, he was working in Germany as well as raising his family there. The taxpayer filed an exemption claim and provided documentation showing that he purchased his vehicle for use in Germany. The documents he provided included an invoice, a vehicle registration showing the vehicle was registered in Germany, and an international motor insurance card. However, his exemption claim was denied. According to staff, his only option at this time was to pay the liability in full or enter into a payment plan.

Resolution. The TRA Office received the documents from the taxpayer and conducted an independent investigation into the taxpayer's issues. The TRA Office found that the Consumer Use Section (CUTS) misinterpreted the documents that the taxpayer provided and presumed that the vehicle was originally delivered to a U.S. Port. In addition, the TRA Office called the seller who confirmed that the vehicle was delivered to Germany. Once this information was brought to the attention of CUTS, the billing was canceled and all payments made by the taxpayer were refunded.

Summary - Services Provided. The TRA Office is committed to helping taxpayers when they cannot resolve issues through normal channels. In this case, the TRA Office conducted an investigation and analyzed all relevant parts which resulted in the cancellation of the billing and a refund of taxes.

³ The "Other" category consists of various types of referrals, each comprising less than two percent of the total, including other agencies, legislators, customer service center, friends and colleagues, taxpayers' representatives, outreach events, and TRA Office information printed on permits.

Returns should not be transferred to shift the tax obligation to another

Background. In certain circumstances a taxpayer can be issued a dual determination for the unpaid sales tax liability of a corporation. A “dual determination” is an assessment made against a person for a tax liability that is also the obligation of another entity. For instance, a corporate officer can be issued a determination if the corporation is still active but suspended by the Franchise Tax Board (FTB) or the Secretary of State (SOS). A determination may also be issued against a corporate officer under RTC section 6829 once the corporation is closed. In any case, staff must conduct a thorough investigation based on the law and show evidence that they are responsible before a taxpayer can be issued a billing. Once the determination is issued, the taxpayer has the right to appeal the determination. Under no circumstance can staff close out the corporation’s seller’s permit and issue a new permit to an individual or a partnership solely because the corporation is suspended.

Issue. An individual contacted the TRA Office regarding the validity of a lien filed for sales tax liability he did not personally owe. He was frustrated because no one at the BOE would listen to him. The individual was operating a business as a corporation. All returns were properly filed under the corporation’s seller’s permit. However, no payments had been made. Although the individual never operated the business as a sole proprietor, the collector closed the corporation’s seller’s permit and told him to register as a sole proprietor because the corporation had been suspended by the Secretary of State. Staff, without the individual’s knowledge, moved all the returns from the corporate account to the new account. This individual now personally owed sales tax and was never afforded the right to appeal the liability. As a result, collection action was taken against him, including the filing of a lien.

Resolution. After reviewing policy and procedure, the TRA Office concluded that the actions taken by the collector to open a new permit and then move the sales and use tax returns to the new permit without the consent of the individual were not supported by agency policy. The TRA Office provided their findings to the Special Operation Branch (SOB) and

the Oakland District Office. At first, SOB recommended that the individual pay off the liability and submit a claim for refund. However, the TRA Office argued that he should have been issued a dual determination, and because he was not, he was not able to submit an appeal as would be his right if staff had followed policy and procedure. Ultimately, the TRA Office recommendation was accepted. As a result, the returns were transferred back to the original permit and the individual was issued a free release of lien.

Summary - Services Provided. TRA Office staff’s willingness to look at the situation from the taxpayers’ point of view, coupled with a depth of knowledge of BOE policies, enabled them to effectively make the case to the district office. As a result, the actions originally taken by the staff were reversed eliminating his liability and releasing the lien.

Independent reviews by the TRA Office help cancel liabilities billed under RTC section 6829

Background. Pursuant to RTC section 6829, any responsible person who willfully fails to pay or to cause to be paid any taxes of a corporation that has been terminated can be held personally liable for the unpaid taxes of that corporation including the interest and penalties on those taxes.

RTC section 6829 (b) provides:

The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

Regulation 1702.5 (b) (1) provides:

As used herein, the term “responsible person” means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. The fact that a person possesses any of the

aforementioned titles, in and of itself, is not sufficient to establish that the person is a “responsible person.”

Regulation 1702.5 (e) provides:

If the person is not an officer or a member or a partner or a manager with an ownership interest in the entity, the person is presumed to not be personally liable under subdivision (a), unless the Board rebuts this presumption with clear and convincing evidence.

Issue. In two cases, the TRA Office was contacted by taxpayers regarding RTC section 6829 determinations. Each taxpayer contended that he should not be held personally responsible for the sales and use tax liability of the corporation. In each case, the TRA Office conducted an independent review at the taxpayers' request.

Resolution

Case #1. A complete review of the case was conducted by the technical advisor. Although the taxpayer was an officer, he was only responsible for obtaining sales for the corporation during the liability period. There was no indication that he was responsible for the sales and use tax matters of the corporation. The TRA Office brought their findings to the district office and recommended canceling the billing. However, the district office disagreed. The taxpayer's next course of action would be to file an appeal. The TRA Office helped the taxpayer understand RTC section 6829 and the appeals process. The taxpayer gathered additional evidence and submitted a late appeal called an Administrative Protest. It was not until the Advocate's recommendation that the taxpayer's appeal was accepted. The case went before an appeals attorney who recommended a full adjustment on a liability over \$1 million dollars. In addition, the taxpayer received a refund on eligible funds.

Case #2. In the second case, the taxpayer contended that although he prepared the sales and use tax returns, he did not have the authority to make financial decisions for the corporation. At the time the taxpayer contacted the TRA Office, he did not know where to go. The TRA Office conducted an independent review. The evidence indicated that the taxpayer was not a corporate officer and did not have the authority to make decisions on behalf of

the corporation. The TRA Office helped the taxpayer gather additional information then worked with staff to get the billing canceled. Once the billing was canceled, the TRA Office remained active with the case and followed through with the Refund Section to ensure that all funds eligible to the taxpayer were refunded and requested a free release of lien. Although the free release was originally denied, the TRA Office successfully argued that the taxpayer never should have been billed; as a result, a free release was granted.

Summary - Services Provided. RTC section 7081 of the Taxpayers' Bill of Rights provides that the purpose of any tax proceeding between the BOE and a taxpayer is the determination of the taxpayer's correct amount of tax liability. In each case, the TRA Office took an active role in getting the billings canceled. In addition, the TRA Office stayed engaged with the appropriate areas of the BOE until the billings were canceled, the refunds were issued, and the lien was released.

Over several years, the TRA Office has participated in the evaluation of RTC section 6829 and helped draft revisions to policy and Regulation 1705.2, *Responsible Person Liability*. The TRA Office continues to work with the Business Tax and Fee Division (BTFD) in improving processes and guidance to staff and conducts reviews in response to taxpayer requests. Their independent reviews have been instrumental in helping taxpayers eliminate sales tax liabilities erroneously billed under section 6829.

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 BOE management for evaluation. The TRA Office then works with BOE staff 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 laws, policies, and procedures; or improvements to the training and education provided to BOE staff and the public were accomplished this past year.

Legal opinion clarifies the interpretation of law regarding taxpayers voluntarily moving to California within 12 months of purchasing a vehicle, vessel, or aircraft

Background. RTC section 6248 establishes a rebuttable presumption that out-of-state purchases of vehicles, vessels, and aircraft brought into California within 12 months of purchase are subject to tax in California under certain conditions. The presumption can be rebutted by evidence showing that the vehicle was not purchased for use in California. This evidence may include evidence of registration in the state it was purchased and other evidence that will help show that at the time of purchase the buyer did not intend to use the vehicle in California.

Issue. In 2014, CPPM Chapter 8, *Consumer Use Tax*, was revised. The revision added language that required a purchaser's move to California to be involuntary to rebut the presumption of section 6248. As a result, BOE staff was denying clearance requests and all exemption claims from taxpayers who otherwise qualified under RTC section 6248 and Regulation 1620. The TRA Office believed this paragraph was in conflict with the presumption of use test in the regulation and requested a legal opinion from the BOE's Legal Department.

Resolution. The legal opinion was issued and confirmed the TRA contention that a move to California did not have to be involuntary in order for a rebuttal to the 6248 presumption to be considered. In their written opinion, the BOE Legal Department found, in part, that a purchaser's voluntary move to California did not automatically prevent the purchaser from overcoming the presumption that a vehicle, vessel, or aircraft was purchased for use in California. Instead, a voluntary move was to be considered a factor to consider, along with all of the other facts and circumstances used in determining whether a vehicle, vessel, or aircraft was purchased for use outside of California.

Once the legal opinion was issued, the TRA Office continued to work with the BTFD to ensure that staff was informed of the changes. As a result, guidance to staff was issued, CPPM section 820.005 was amended, and BOE publication 52, *Vehicles and Vessels: Use Tax*, was updated to reflect the correct application of the law.

"Shot Gun" Levies not in accordance with BOE policy and procedure

Background. A levy is a collection tool used when a taxpayer has not voluntarily resolved a liability after it becomes due and payable. The levy is used to collect the taxpayer's interest in or right to money controlled by the taxpayer or a third party. Levies are most commonly served on financial institutions.

Issue. The TRA Office has found many instances where collectors have sent multiple levies to banks at the same time ("shot gun" levies) without evidence indicating the financial institution has assets of the taxpayer. This can result in over collection of the amount due and cause potential harm to the taxpayer. At this time, there is nothing in the BOE's policy and procedure specifying that "shot gun" levies are not permissible.

Resolution. The TRA brought this concern to the attention of BTFD staff. As a result, a memorandum has been provided to staff to inform them not to send out levies to multiple financial institutions without evidence of assets. This memorandum will be incorporated into Chapter 7, *Collections*, of the Compliance Policy and Procedures Manual.

Statements removed from Waiver of Limitation

Background. During an audit, taxpayers or their representatives are requested to sign a BOE 122, *Waiver of Limitation*, which allows the BOE to extend the statute of limitations for the period selected for audit.

Recently the following statements were added to this waiver:

- *The undersigned taxpayer understands and agrees that all of the information contained in this waiver, including the entity name and type of business, are correct. The undersigned understands and agrees that he/she shall immediately notify the auditor in writing of any changes in ownership or discontinuance of the business of the taxpayer after the date this waiver is signed.*

- *The undersigned certifies under penalty of perjury that the information contained on this waiver is correct, and that there has not been a change in ownership or discontinuance of the business of the undersigned taxpayer.*

Issue. Taxpayer representatives have expressed concern over the new language contained in the waiver. The representatives believe that they should not be held responsible for information that their client did not provide them, such as a change in legal entity. On the other hand, BOE staff has voiced their concerns regarding taxpayers who claim a waiver, although signed, to be invalid due to a legal entity change that occurred prior to signing the waiver and never disclosed to the auditor.

Resolution. The TRA Office worked with the BTFD to address this issue. As a result, the wording has been removed at this time. In the future, the TRA Office and the BTFD will work with tax practitioners to draft acceptable language for the waiver to satisfy all.

Policy and procedure updates regarding BOE audits of electronic records have been incorporated

Issue. As California businesses' use of electronic business records, along with the discontinuance of the production of paper records, has become more commonplace, audit staff is faced with the challenge of locating, accessing, and viewing "source documents" to verify the accuracy of taxpayers' summary records without violating the taxpayer's privacy. The challenges are not merely technological. Audit policy and procedures also need to keep pace with rapid changes in record-keeping methodologies and modern software such as point-of-sale (POS) systems.

Resolution. Last year, the TRA Office brought to the attention of BTFD management the concerns expressed by taxpayers undergoing audits of their electronic records. Subsequently, guidance has been issued to staff on auditing businesses that use POS systems to ensure current policy and procedures are adequate to assist audit staff in performing their duty of ensuring taxpayers are accurately reporting transactions, while avoiding the violation of taxpayers' rights.

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.

Policy should be changed regarding free releases of lien to be consistent with the law

Background. A lien is a legal right or interest that a creditor has in another's property, which typically lasts until the debt is paid. Once the taxpayer has paid the debt in full, the BOE will release the lien. The taxpayer will be responsible for any applicable fees to have the lien released. However, the lien, although released, may continue to affect a taxpayer's credit such as:

- **Employment** - It may affect a taxpayer's ability to gain and retain employment.
- **Credit** - It may prohibit a taxpayer's ability to purchase, sell, refinance, or transfer real property, along with securing loans for other assets or debts.

Under current law, the BOE may release a lien under specified circumstances such as:

- The liability is paid in full, including interest and other charges, or
- The billing (tax or fee determination) is adjusted to zero after the lien has been filed.

A free release of lien will only be issued when payment is received prior to the lien recording.

Issue. Free releases of liens should be issued to taxpayers when the lien was issued in error, including situations in which the original underlying liability was billed in error. However, the BOE's Special Operations Branch only issues free releases of liens when the actual filing of the lien is in error. In other words, if a lien was filed after the liability was paid in full or after a liability was adjusted to zero, then the taxpayer would be issued a free release of lien.

On the other hand, the TRA Office contends that anytime the underlying liability is found to be in error, a free release of lien should be issued, regardless of the fact that at the time the liability appeared to be legally due. Taxpayers, through no fault of their own, should not be

penalized because of an erroneous billing made by the BOE.

The actual statute that grants the BOE authority to issue a release of lien with a statement that the lien was filed in error is in the Harris-Katz California Taxpayers' Bill of Rights. The Harris-Katz California Taxpayers' Bill of Rights, section 7097 provides in part:

(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.

In addition, the TRA Office believes that the BOE should be consistent with the Franchise Tax Board (FTB). The FTB allows a **free release** of lien in situations where documentation is received from a taxpayer showing they had no filing requirement or in the case of an audit where the taxpayer provides documentation which supports that there was no additional tax due. Therefore, the BOE should issue a **free release** of lien when evidence shows that a taxpayer's liability was never due.

Work in Process. In situations where BOE staff has interpreted the policy inconsistently with the law, it is the responsibility of the Taxpayers' Rights Advocate to recommend new procedures or revisions to existing policy to ensure that the rights of taxpayers are upheld. The TRA Office has been working with the BTFD staff to revise BOE's policy regarding when to issue a free release of lien to be consistent with the law and FTB's policies.

Policy proposed to provide the Advocate the authority to modify terms of payment agreements and earnings withhold orders in case of hardship

Background. The Taxpayers' Rights Advocate has the

legal authority to intercede in collection processes in certain circumstances. For example, RTC section 7083, Taxpayers' Rights Advocate, provides in part:

7083(a). . . . 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. . . .

RTC section 7094, Release of Levy, provides in part:

7094(b). The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant 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 two thousand three hundred dollars (\$2,300) 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.

Procedures implementing RTC section 7094 are found in CPPM section 155.022, *section 7094, Release of Levy*, which provides that, when there is a continuing disagreement between a taxpayer and staff regarding a claimed hardship following a hardship hearing, a report by collection staff is prepared and a referral made to the Advocate for review and decision.

Issue. For the most part, when a taxpayer cannot resolve a disagreement over the terms of a payment plan or an earnings withhold order and turns to the TRA Office for assistance, the TRA Office is able to work with both parties and bring about a mutually agreeable resolution. However, on occasion, there is a difference of opinion between the TRA Office and collection staff regarding the need to adjust the terms of the agreement or the order to avoid subjecting the taxpayer to a hardship.

Work in process. In November 2015 the Advocate proposed to BTFD management, as a logical extension of the authorities granted to the Advocate by RTC sections 7083 and 7094, a revision to policy allowing the TRA Office to be the final arbiter of disputes about the terms of payment plans or earnings withhold orders when the taxpayer claims a hardship. After discussing the Advocate's proposed change with senior

management, it was agreed that the first attempt to resolve a dispute should rest with the Field Operations Division (FOD) Deputy Director. This Process will provide senior management with an opportunity to come up with a mutually agreeable resolution in order to address the Advocate and taxpayer's concerns. If an agreeable resolution cannot be reached with the FOD Deputy Director, the Advocate will elevate a formal recommendation to the CDTFA Director for a final decision. In addition, the Advocate plans to work with the BTFD and the FOD on the necessary policy to ensure this process is memorialized.

Notice of Proposed Determination letters should be issued for dual determinations other than RTC section 6829

Issue. In fiscal year 2010-11, the Sales and Use Tax Department (now BTFD) developed a standard report (letter) to be provided to individuals proposed to be held personally liable for a business' tax liability under RTC section 6829. The letter explains the basis of the proposed billing and how requirements for personal responsibility are deemed met. The 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 RTC 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.

This procedure is working well and is providing taxpayers an opportunity to resolve their liability at an early stage and, in some cases, eliminates the need to go through a lengthy petition process. The TRA Office believes all taxpayers being held personally liable for the debt of another entity should be afforded the same due process and, accordingly, proposed that the BTFD adopt the same process of issuing Notice of Proposed Determination letters to responsible persons under RTC section 6829 for all other types of dual determinations, such as successors, predecessors, questionable ownership, and corporate suspension.

Work in process. The TRA Office continues to work with the BTFD on proposals for additional notification letters on dual determinations, and drafted a proposed letter to successors for consideration. In addition, the

TRA Office has met with the Special Operations Branch in the Legal Department, regarding the impact of new letters and procedures on its review and billing operations for the dual determinations.

TAX APPEALS ASSISTANCE PROGRAM

ABOUT THE PROGRAM

The Board of Equalization (BOE) serves as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include a review of final actions of the Franchise Tax Board (FTB) involving the state's Franchise and Personal Income Tax Laws. The Taxpayers' Rights Advocate created the Tax Appeals Assistance Program (TAAP) in fiscal year 2005-06 to allow low-income and underrepresented taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. The law students are instructed by three tax counsels reporting to the Advocate, who oversees the program.

Seven law schools participate in the program: the Loyola Law School Los Angeles, the Chapman University School of Law, the Golden Gate University School of Law, the University of San Diego School of Law, the Lincoln Law School of Sacramento, the University of San Francisco School of Law, and Western State College of Law.

Franchise and Personal Income Tax Appeals

The program is offered to appellants who are appealing decisions of the FTB with less than \$30,000 in dispute, if the dispute relates to:

- Penalties;
- Head of household;
- Residency;
- Innocent spouse;
- Interest abatement;
- "California Method" (Revenue and Taxation Code (RTC) 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; or
- Corporate minimum tax.

Business Taxes Appeals

The TAAP is available to assist individual and businesses who have filed appeals under \$30,000 with the BOE in the following tax and fee programs:

- Consumer use tax billings;
- Cigarette and Tobacco Products Licensing Act violations;
- Dual determinations;
- Cigarette internet purchases;
- Underground storage tank maintenance fee;
- Environmental fee;
- Generator fee;
- Successor fee; or
- Use tax leads from U.S. Customs.

The TAAP has been well received by all seven law schools and the program's clients. The Advocate will continue to work with the Appeals Division and the Business Tax and Fee Department to develop guidelines and parameters for adding additional business taxes appeals to the program as needed.

CASE RESOLUTION

During fiscal year 2016-17, 682 individuals and businesses were informed about the program, 248 new cases were accepted, and 251 cases were resolved.

The TAAP 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;
- Enhance the preparation and quality of the appeals that come before the Board Members; and
- Provide taxpayer representation that promotes and achieves more efficient and cost effective resolution of taxpayer petitions.

Examples of Tax Appeals Assistance Program cases

The case listed below demonstrates the services provided by TAAP.

Head of Household (HOH) filing status can be confusing

Background. The Franchise Tax Board (FTB) reviews all returns of taxpayers filing head of household (HOH) because this filing status is often misunderstood. In cases where the taxpayer has filed HOH, a letter will be sent asking a series of questions to help identify if the taxpayer qualifies for HOH. If a taxpayer does not respond to the letter, a 25% penalty may be imposed. To qualify for HOH, a taxpayer must meet the following:

- Must be unmarried and not a registered domestic partner (RDP) or have met the requirements to be considered unmarried or a RDP as of the last day of the year, such as your spouse/RDP did not live in your home at any time during the last six months of the year.
- Paid more than one-half the costs of keeping up your home for the year.
- Lived with a qualifying person for more than half the year.
- Entitled to a Dependent Exemption Credit for your qualifying person.
- Was not a nonresident alien at any time during the year.

Issue. A taxpayer filed head of household on FTB income tax return. The FTB disallowed the filing status and sent her a Notice of Proposed Assessment.

Resolution. The TAAP law student interviewed the taxpayer. During the interview the law student discovered that although the taxpayer had been separated from her husband at the end of the year, she had been living with him during the last six months of the year. The law student discussed the provisions under which a person could qualify as HOH. Because the taxpayer lived with her spouse during the last six months of the year, the taxpayer was considered married and did not qualify for head of household filing status.

Summary – Services Provided. TAAP provides education and assistance to taxpayers who are confused by the law. In this case, the law student helped the taxpayer understand why she did not qualify for HOH. As a result, the taxpayer withdrew her appeal and quickly complied with FTB, saving her time and the potential costs of interest and penalty. Furthermore, because there was no need for a formal Board hearing, this action saved the State of California time and money.

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). A 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 final 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 a compromise shall not 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 or 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. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(m) A 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 a person did any of the following acts regarding the making of the offer:

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

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record or made a 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) A person who, in connection with an 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 pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

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

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a 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, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another 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, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, 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) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant 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 two thousand three hundred dollars (\$2,300) 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.

(B) The amount the Taxpayers' Rights Advocate may release or return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The board shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(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) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), 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, erroneous processing action, or erroneous collection action 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, erroneous processing action, or erroneous collection action. 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, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, 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 the bank and third-party charges were incurred by the taxpayer. 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

COUNTY OF ORIGIN AND TYPES OF PROPERTY TAX CASES

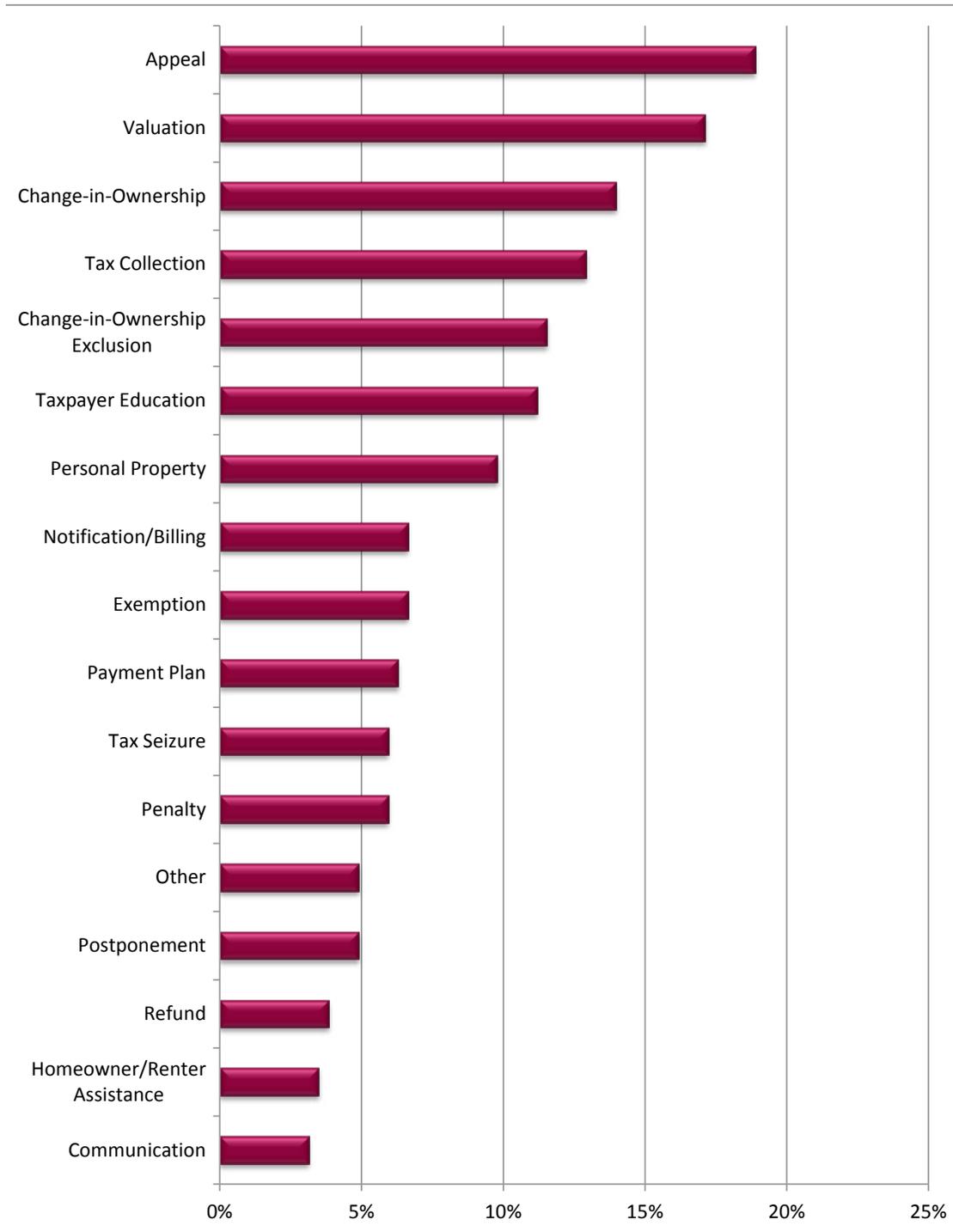
County of Origin	Cases by Type		Total Cases	County of Origin	Cases by Type		Total Cases
	Valuation	Administration			Valuation	Administration	
Alameda	5	3	8	Placer	3	0	3
Alpine	0	0	0	Plumas	0	0	0
Amador	1	0	1	Riverside	9	7	16
Butte	0	0	0	Sacramento	5	6	11
Calaveras	1	0	1	San Benito	0	0	0
Colusa	0	0	0	San Bernardino	11	2	13
Contra Costa	9	6	15	San Diego	11	8	19
Del Norte	0	0	0	San Francisco	9	6	15
El Dorado	1	1	2	San Joaquin	2	1	3
Fresno	0	0	0	San Luis Obispo	0	0	0
Glenn	0	0	0	San Mateo	2	2	4
Humboldt	0	1	1	Santa Barbara	2	2	4
Imperial	0	0	0	Santa Clara	9	5	14
Inyo	3	4	7	Santa Cruz	1	1	2
Kern	3	2	5	Shasta	1	0	1
Kings	0	1	1	Sierra	0	1	1
Lake	10	0	10	Siskiyou	0	0	0
Lassen	0	0	0	Solano	5	1	6
Los Angeles	43	20	63	Sonoma	4	2	6
Madera	1	0	1	Stanislaus	3	1	4
Marin	0	0	0	Sutter	1	0	1
Mariposa	0	0	0	Tehama	0	0	0
Mendocino	1	0	1	Trinity	0	0	0
Merced	0	1	1	Tulare	0	0	0
Modoc	0	1	1	Tuolumne	0	1	1
Mono	0	0	0	Ventura	2	2	4
Monterey	1	0	1	Yolo	0	0	0
Napa	1	0	1	Yuba	1	0	1
Nevada	1	0	1	County Not Specified	13	11	24
Orange	9	3	12	TOTAL	184	102	286

Note:

An explanation of the types of cases categorized as "Valuation" and "Administration" can be found in the Property Tax Issues chapter under "Types of cases."

APPENDIX 4

MOST COMMON ISSUES IN PROPERTY TAX CASES



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

APPENDIX 5

OUTCOME OF BUSINESS TAXES CASES

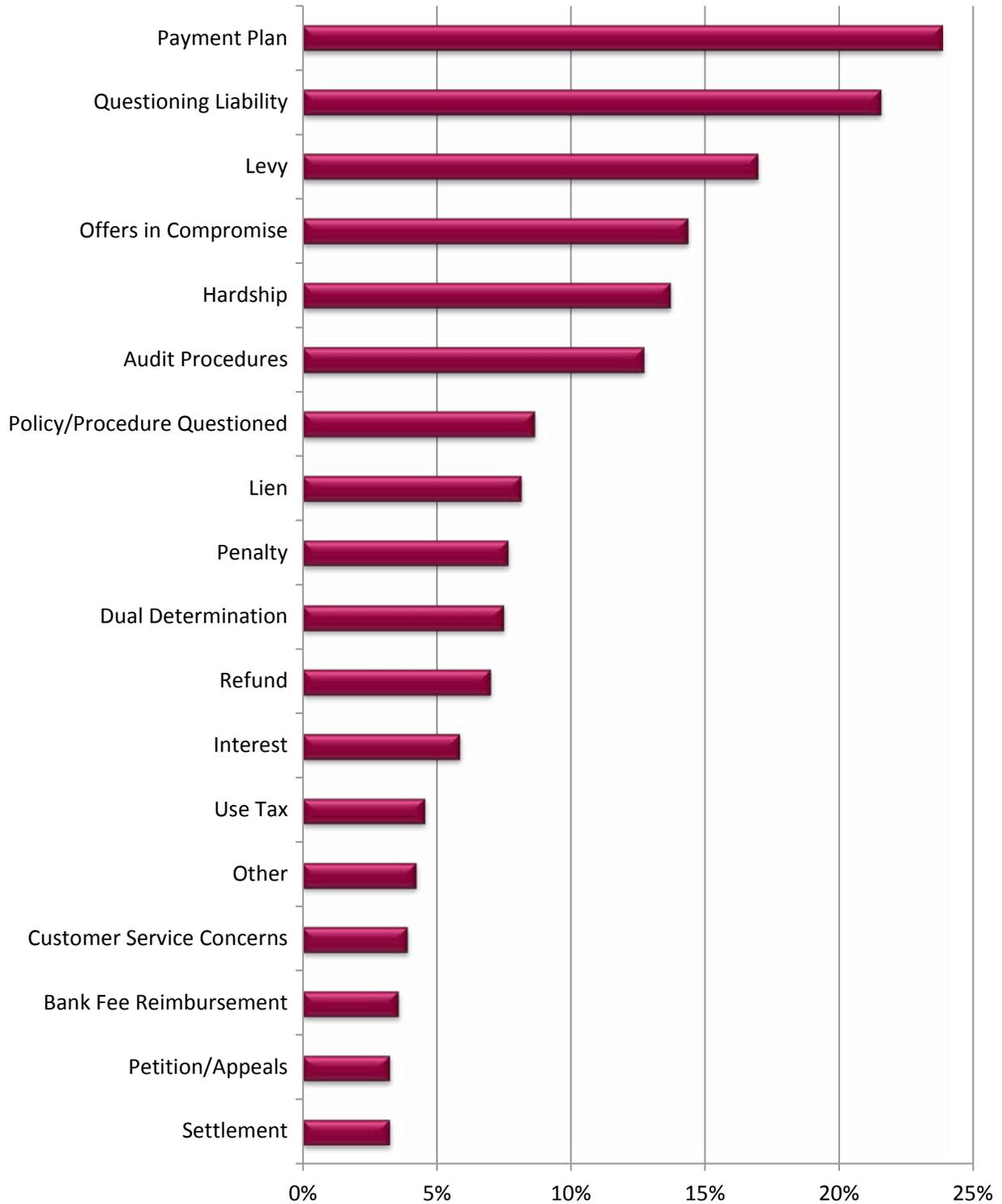
Location	Types of Cases			Total Cases	Customer Service Concerns	Disagreed with Case Handling (1)	Case Handling Changed (4)
	Audit	Compliance	Other				
Appeals Division	0	1	0	1	1	0	0
Audit Determination and Refund Section	0	4	0	4	0	0	1
Bakersfield Branch	4	2	0	6	0	0	2
Board Proceedings Division	1	1	0	2	0	0	0
Consumer Use Tax Section	0	21	0	21	1	0	11
Culver City Office	6	19	0	25	0	0	7
Customer Service Center	0	6	1	7	0	0	0
El Centro Branch	0	2	0	2	0	0	1
Fairfield Branch	0	8	0	8	1	0	3
Fresno Office	3	23	0	26	2	1	5
Glendale Office	4	16	0	20	1	0	8
Irvine Office	5	22	2	29	2	0	8
Norwalk Office	4	10	0	14	1	0	1
Oakland Office	1	13	0	14	0	0	4
Offer in Compromise Section	0	17	0	17	1	0	2
Other (2)	13	33	5	51	0	1	0
Other Government Agencies	0	31	10	41	1	0	0
Out-of-State Offices	5	5	1	11	0	0	2
Petitions Section	2	3	0	5	0	0	1
Rancho Cucamonga Office	3	17	0	20	1	1	5
Rancho Mirage Branch	3	6	0	9	0	0	3
Redding Branch	2	4	1	7	0	0	3
Return Analysis Unit	0	3	0	3	0	0	0
Riverside Office	1	18	0	19	0	1	9
Sacramento Office	8	31	1	40	0	3	15
Salinas Branch	1	6	0	7	0	0	1
San Diego Office	2	17	0	19	4	0	1
San Francisco Office	2	19	1	22	0	0	2
San Jose Office	5	17	1	23	3	0	6
Santa Clarita Office	2	6	1	9	1	0	2
Santa Rosa Office	1	6	0	7	0	0	0
Settlement Section	2	1	0	3	0	0	0
Special Operations Branch	0	5	0	5	0	0	2
Program and Compliance Division (3)	3	41	0	44	0	1	3
Statewide Compliance and Outreach Program	0	5	0	5	2	2	3
Tax Policy Division	0	1	1	2	0	0	0
Use Tax Administration Section	0	34	1	35	0	0	7
Ventura Office	1	14	0	15	0	0	6
West Covina Office	3	11	0	14	2	0	4
Total	87	499	26	612	24	10	128

Notes: A number of outcomes are tracked for business taxes cases, with the three most significant outcomes displayed here.

- (1) In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager detailing cases in which the TRA Office disagreed with how BOE staff handled the case. See the Business Taxes Issues Chapter for additional information on Disagreed with Case Handling.
- (2) The category of "Other" under "Location" includes cases that have no particular issue of origin—for example, contacts from the public asking questions about how tax applies or requesting general information; or cases where the office was not disclosed.
- (3) Program and Compliance Division, formerly Special Taxes and Fees.
- (4) Involvement by the TRA Office resulted in a change to the outcome of a case. See the Business Taxes Issues Chapter for additional information.

APPENDIX 6

MOST COMMON ISSUES IN BUSINESS TAXES CASES



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

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