

State Board of Equalization

OPERATIONS MEMO

For Public Release

No: 1191

Date: April 28, 2015

SUBJECT: Refusal to Issue/Revocation of Seller's Permit for Violating Sales and Use Tax Laws, Rules, or Regulations

I. PURPOSE

Pursuant to Revenue and Taxation Code (RTC) section 6070.5, *Authorization to refuse issuance of permit*, the Board of Equalization (BOE) may refuse to issue a seller's permit to any person submitting an application if the person has an outstanding final (i.e., "due and payable") sales and use tax liability. Also, the BOE may refuse to issue a seller's permit when the person applying for the permit is not a natural person (i.e., a corporation or Limited Liability Company (LLC)) and is controlled¹ by a person with an outstanding final liability. However, a seller's permit will be issued when the person with the outstanding final liability enters into a payment plan and is in full compliance with the terms of the plan, or has an accepted Offer in Compromise (OIC) and is in full compliance with the terms of the OIC agreement.

Currently, the BOE's online registration system automatically issues permits to ninety-seven percent of applicants without validating whether or not any person associated with the applicant has an outstanding final liability. There are no provisions in RTC section 6070.5 that allow the BOE to close or cancel a seller's permit after it has been issued. However, staff may revoke a permit under RTC section 6070, *Revocation of permit*, when they are able to show that a person with an active seller's permit has failed to comply with provisions of the Sales and Use Tax Law, rule, or regulation.

II. PROCEDURE

Accounts Routed Via Assignment Control:

For applications that are currently routed via Assignment Control in the Integrated Revenue Information System (IRIS) to the district offices for further analysis, staff should review each application to determine whether provisions of RTC section 6070.5 may be invoked. Future enhancements to the online registration system will automate the review process to determine whether a person associated with the applicant has an outstanding final liability with the BOE.

If after reviewing the prior history of an applicant, registration staff determines that the person applying for a seller's permit has an outstanding final liability greater than \$500, they should route the account in Assignment Control to their supervisor using the Business Action code *REVACCT. The supervisor should then forward the assignment

¹ Regulation 1699(g)(3)

to the responsible collector using the same Business Action code. Additionally, the supervisor should make the responsible collector aware of the assignment to ensure that it is addressed timely.

After reviewing the account to confirm that it meets the requirements under RTC section 6070.5, the responsible collector should discuss the account with their supervisor to determine if it is in the State's best interest to issue the permit. If it is determined that it is not in the best interest of the state then, the responsible collector will add their review notes in Assignment Control and then route the account to their supervisor who will enter their notes regarding the decision to deny the issuance of the permit and close the assignment. Afterwards, the responsible collector should contact the taxpayer and attempt to obtain payment in full or enter the taxpayer in an installment payment agreement (IPA). If the taxpayer is unwilling to pay in full or enter into an IPA, the responsible collector will send form BOE-1680, *Notice of Permit Denial at Registration*, available on e-BOE, to the address of record of the applicant and enter notes in the person's active or closed account in the Automated Compliance Management System (ACMS). This form provides an explanation to the applicant why their seller's permit application is denied and informs them of their payment options as well as their right to send a written request for reconsideration within 30 days from the date of denial listed on the notice.

If a timely request for reconsideration is received, a hearing by the District Principal Compliance Supervisor (DPCS) or their designee will be held in the district office of control within ten (10) days² of the date the request for reconsideration is received. Form BOE-420P, *Notice of Hearing (RTC 6070.5)*, which is also available in e-BOE, should be used to inform the taxpayer of the date and time of the hearing. Notes should also be entered in the person's active or closed account in ACMS to document information regarding the hearing. If a request for reconsideration is not filed within the 30-day period, the denial becomes final at the end of the 30-day period. If multiple accounts exist, then it will be at the discretion of the DPCS or their designee to determine which account the ACMS notes will be placed.

After a Seller's Permit Has Been Issued:

Effective January 1, 2014, the *Declaration of Intent (DI)* screen, which appears at the onset of the registration process, was modified to include the following declarations of true statements that the applicant must accept before they are issued a seller's permit:

- If I am registering for a sales and use tax permit;*
- *I declare that either I currently do not have an outstanding final liability for sales and use tax with the BOE under a different account, either open or closed; or, if I do have an outstanding liability, I am currently in a payment plan and in full compliance with the terms of the plan.*
 - *I further declare that, if the person applying for the permit is a partnership, corporation, LLP, or LLC, that none of the listed partners, officers, or members has an outstanding final liability for sales and use*

² Pursuant to RTC 6070.

tax with the BOE under a different account, either open or closed; or, if they do have an outstanding liability, they are currently in a payment plan and in full compliance with the terms of the plan.

An applicant who accepts the DI will continue through the registration process to obtain their seller's permit. However, an applicant who declines the DI will receive the following message:

You have chosen to not accept the Declaration of Intent to register for your selected taxable activities. If you have chosen not to accept due to an outstanding liability with the BOE, please contact your [local BOE office](#) to establish a payment plan. After a payment plan is established, you may return to complete this application.

A person who was issued a seller's permit on or after January 1, 2014 may be in violation of RTC section 6066, *Application for permit*, if the BOE determines that at the time of application, the person falsely accepted the DI as a true statement. If staff is able to establish that the person is in violation of RTC section 6066, staff may initiate the revocation process under RTC section 6070 to revoke the person's active seller's permit. This memorandum does not apply to a person issued a seller's permit before January 1, 2014.

If the permit that was issued in violation of RTC 6066 has been routed to ACMS for compliance issues, before initiating the revocation process, staff should review the other existing permit(s) to verify that the person does not have an active payment plan or OIC. If they do not, then contact the person with the outstanding final liability and attempt to negotiate a payment plan for the outstanding final sales or use tax liability. When a person has multiple accounts with outstanding final liabilities, it will be at the discretion of the DPCS or their designee to determine if a payment plan is required for each sales and use tax account.

When the person does not enter into a payment plan or is not accepted into an OIC, or fails to comply with the terms of the plan or OIC agreement once they have been contacted, and the payment plan has gone through the termination process pursuant to Compliance Policy and Procedure Manual (CPPM) 770.025, staff will initiate the revocation process as follows:

- 1) Initiate a "Cause" delinquency,
- 2) Add Account Characteristic Code (ACC) 42 to the account, and
- 3) Add a comment in IRIS.

Initiating a "Cause" Delinquency in IRIS

The revocation process is initiated for "Cause" delinquencies through IRIS by selecting "FTC" (Failure to Comply) as the Del Type Code in the Maintain/Inquire Delinquency (DEL DM) screen. The delinquency control cycle will follow the Calendar of Sales Tax Functions and generate a BOE-431-S1, *Immediate Action Required – Your Seller's Permit May Be Cancelled (Citation Notice)*, to the taxpayer and provides a time and date

for the hearing. When the taxpayer fails to contact the BOE during the “Cause” delinquency cycle, the system will automatically generate a BOE-433-S, *Notice of Permit Cancellation (Revocation Notice)*, to the taxpayer and revoke the permit.

To help differentiate accounts that have a “Cause” delinquency resulting from a violation of RTC section 6066 from other accounts with a different “Cause” delinquency, staff must also add the ACC 42, *Permit Refusal per AB 1307*. In addition, a comment must be added on the account(s) with the outstanding final liability for tracking purposes in IRIS. The comment must specify the seller’s permit(s) with the outstanding final liability, the seller’s permit with the “Cause” delinquency, and the reason for the delinquency. If the account goes into an active revocation status, all conditions for reinstatement must be met prior to reinstating the seller’s permit.

Utilizing the Accounts Receivable (AR) Warning Flag

IRIS displays an Accounts Receivable (AR) Warning Flag on the CTS CM (*Client Taxpayer System, Client Maintenance*) screen when the Taxpayer Identification Number (TIN) is linked to any BOE account with an outstanding final liability greater than \$2,000, and more than 180 days have elapsed from the finality date. The flag will not be displayed if the account(s) that the TIN is linked to is in bankruptcy status. Each quarter, IRIS will automatically add the flag to all TINs linked to accounts meeting the criteria. Annually, IRIS will automatically remove the flag from TINs when the accounts associated with the TINs do not meet the criteria. Additionally, staff with the ability to update the CTS CM screen can manually add or remove the flag by adding or deleting the Y in the AR FL field and then pressing PF5 to update. Staff should utilize the AR Warning Flag as a resource for identifying potential taxpayers who may have been issued a seller’s permit on or after January 1, 2014 that are subject to revocation under RTC section 6070.

IPAs and OICs

If the person enters into an IPA for the outstanding final liability, or is accepted into the OIC program, the seller’s permit will be issued. If the person enters into an IPA, staff must send the taxpayer form BOE-407-A, *Payment Proposal Letter*. The form has language to inform the person entering into an IPA that if the plan is terminated, the BOE may revoke their active seller’s permit.

Requests for OIC will be processed in accordance with existing policy. However, if the OIC is not accepted, the BOE may revoke the person’s active seller’s permit.

III. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into sections [203.000](#) and [751.000](#), of the CPPM.



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