

Audit Manual

Chapter 1

General Information

Business Tax and Fee Division
California Department of
Tax and Fee Administration

This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda. Please contact any California Department of Tax and Fee Administration office if there are concerns regarding any section of this publication.

AUDIT MANUAL

TABLE OF CONTENTS

GENERAL INFORMATION	0100.00
INTRODUCTION	0101.00
Mission and Philosophy	0101.03
Purpose of Audit Manual	0101.05
Audit Manual Revisions	0101.10
Tax Audit Policies	0101.20
Standard of Proof	0101.22
Standards of Competency for an Experienced Auditor	0101.25
Knowledge of the Law	0101.30
Regulations and Publications of CDTFA	0101.35
Business Taxes Law Guide	0101.45
Use of Annotations	0101.47
Industry Guides	0101.49
Terminology	0101.50
Auditors Not to Sign Taxpayers Documents	0101.55
Acceptance of Payments by Auditors Prohibited	0101.57
Taxpayers' Bill of Rights	0101.60
Disclosure of Confidential Information to a Taxpayer	
Representative Without Written Authorization	0101.65
Reporting Breaches of Confidential Information	0101.66
Authorization for Electronic Transmission of Data	0101.67
Taxpayer Correspondence in General	0101.70
MISCELLANEOUS GUIDELINES AND PROCEDURES	0103.00
Reporting Suspected Counterfeit Goods	0103.05
Procedures	0103.07
Destruction of Evidence Purchased with State Funds	0103.10
Digital Signatures	0103.15
State Issued Cellular Telephones	0103.20
Lead Source Revenue & Recoveries Report	0103.25
REQUEST FOR RELIEF FROM INTEREST – UNREASONABLE ERROR OR DELAY	0104.00
GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE ON CDTFA WRITTEN TAX OR FEE ADVICE	0105.00
General	0105.02
Qualified Written Advice	0105.04
Reasonable Reliance on Written Advice	0105.06
Rescission of Erroneous Advice	0105.08
Request for Relief	0105.10
MARKETPLACE FACILITATORS	0106.00
Tax or Fee Relief for Marketplace Facilitator	0106.05
Background	0106.10
Guidelines for Tax or Fee Relief for Marketplace Facilitators	0106.15
RTC Section 6406 Relief	0106.20
RTC Section 6047 Relief	0106.25
Request for Relief	0106.60

GENERAL INFORMATION

ADJUSTMENTS TO BILLED DIFFERENCES	0107.00
Sample Review Process by Section/Branches/Units/Offices	0107.02
GUIDELINES FOR PROCESSING REFUNDS, CREDITS, CANCELLATIONS, ADJUSTMENTS AND DENIALS	0108.00
Refunds	0108.05
Audit Determination and Refund Section/Appeals and Data Analysis Branch Responsibilities	0108.10
Field Office Responsibilities	0108.15
Field Auditor Responsibilities.....	0108.20
Field Audit Supervisor Responsibilities	0108.25
Field Audit Reviewer Responsibilities.....	0108.30
Other Procedures Relevant to the Field Offices, ADRS, and ADAB.....	0108.35
Reference Guide for FOD Team Members.....	0108.40
Credit Interest.....	0108.45
TRACKING OF AUDITS, FIELD BILLING ORDERS, REAUDITS AND REVISED FIELD BILLING ORDERS	0109.00
EDUCATIONAL CONSULTATIONS	0110.00
Background	0110.02
Pre-Consultation Activities.....	0110.04
Consultations for Taxpayers in Business for More Than 12 Months	0110.05
Consultation Activities.....	0110.06
Post-Consultation Activities	0110.10
OBTAINING AND SAFEGUARDING FEDERAL TAX INFORMATION (FTI).....	0115.02
Franchise Tax Board.....	0115.04
DESTRUCTION OF FILE MATERIAL	0117.00
Audit Workpaper Retention Policy.....	0117.02
REWARD PROGRAM	0122.00
General.....	0122.02
INFORMANT CONTACT PROCEDURES	0124.00
General.....	0124.02
Guidelines.....	0124.04
IDENTITY THEFT PROGRAM	0126.00
General.....	0126.02
Procedures	0126.04
Evidence.....	0126.08

GENERAL INFORMATION

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INTRODUCTION

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The California Department of Tax and Fee Administration (CDTFA) was created by the Taxpayer Transparency and Fairness Act of 2017, which restructured the State Board of Equalization (BOE) into three separate entities: the BOE, CDTFA, and the Office of Tax Appeals (OTA). Before the establishment of CDTFA, the BOE was the agency responsible for administering the tax and fee programs now administered by CDTFA.

For all sections of this manual, the term “taxpayer” includes a taxpayer or a feepayer, as applicable.

CDTFA is housed within the Government Operations Agency. BOE is responsible for property, alcoholic beverage, and insurance taxes, but CDTFA administers the alcoholic beverage and insurance tax programs on behalf of BOE, through an interagency agreement. CDTFA is responsible for the remaining taxes and fees previously collected by BOE. OTA conducts appeals hearings between taxpayers and CDTFA or the Franchise Tax Board (FTB).

MISSION AND PHILOSOPHY

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The mission of CDTFA: To make life better for Californians by fairly and efficiently collecting the revenue that supports our essential public services.

CDTFA is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax and fee laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. CDTFA’s audit program is one of many ways in which we provide assistance and information to the public while, at the same time, providing a fair program that ensures that taxes and fees are reported properly.

PURPOSE OF AUDIT MANUAL

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The Audit Manual (AM) is a guide to conducting the CDTFA audits. It incorporates procedures and techniques that have evolved over a period of years and have proved to be sound and practical. Auditors should carefully study this manual to conduct audits and prepare reports in a uniform manner consistent with approved auditing practices.

This manual, however, is not a substitute for experience, training in accounting and auditing, good judgment, and active supervision. The procedures outlined in this manual are not inflexible. However, auditors should discuss any situation with their supervisor for any deviations from these guidelines and instructions.

AUDIT MANUAL REVISIONS

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Procedures have been developed to ensure that taxpayers, their representatives and other interested parties are notified of changes in CDTFA’s policies and procedures that may affect taxpayers. AM revisions are generally made to incorporate existing guidance to team members from management, to enhance clarity, or to correct errors. All revisions undergo a clearance process.

Clearance Process

Drafts of suggested revisions to AM chapters will complete a two-step clearance process, consisting of a preliminary review by all affected CDTFA divisions and a final review by Business Tax and Fee Division (BTFD) and Field Operations Division (FOD) management.

Business Taxes Committee (BTC) Process

If the proposed AM revisions involve policy or procedure modifications that significantly impact the public, the matter may be handled through the BTC process to ensure participation by interested parties in discussing the change. This process will include the customary discussion papers and interested parties meetings.

Approval Process

AM revisions that do not involve policy or procedure modifications which are handled through the BTC process are posted on CDTFA's website located at <http://www.cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm>. Pending revisions are listed under the specific manual chapter to which they pertain. A cover letter attached to the proposed revisions explains the origin and need for the revisions and invites public comment on these revisions only. Team members will acknowledge and address all comments, and once the final revisions are approved by management, the approved revisions are incorporated into the AM.

TAX AUDIT POLICIES**0101.20**

Field auditing is of great importance in the efficient administration of self-assessed taxes, such as those provided by the California business tax laws. It assists in ensuring uniform enforcement and detects and aids in the timely correction of reporting errors. CDTFA's audit program has resulted in the correction of tax underpayments and overpayments of several millions of dollars each year. In addition, there are educational benefits to taxpayers which cannot be readily measured in terms of dollars, but which undoubtedly are responsible for a large portion of the self-assessed tax, that would not otherwise be paid. On November 17, 1954, BOE, by resolution, adopted the original version of the following statement of tax audit policies. It should be noted that this resolution still accurately reflects the current intent and direction of the Department.

Purpose of Tax Auditing

Because most of the taxes administered by CDTFA are self-assessed by taxpayers, an audit program is essential in providing for the following objectives:

- To assure all citizens of the state the tax is being enforced uniformly;
- To deter tax evasion and carelessness in self-assessments; and
- To promote accuracy in self-assessments, through aid extended to taxpayers, with respect to the interpretation of the law, rules, and regulations adopted thereunder.

Relationship of Taxpayer and Auditor

Consistent with the purpose of auditing, as outlined above, there is no occasion for auditors to harass taxpayers or to give the impression that the object of the audit is to find errors in the taxpayers' self-assessments. Taxpayers should be assured that the auditor's function is to determine whether the correct amount of tax was reported. Auditors should aid taxpayers in gaining a correct understanding of the law as it pertains to their specific business and demonstrate that we are as willing to recommend a refund of an overpayment as we are to propose a deficiency determination. Care should be taken to inform taxpayers regarding taxpayers' rights and privileges in connection with such determinations. Auditors should constantly keep in mind that it is our policy to administer the law fairly and uniformly, with minimum annoyance and interference in taxpayers' business affairs, as well as at the lowest cost, consistent with good tax administration.

Professional Status of Auditors

Auditors are engaged in professional assignments. They are called upon to exercise their highest skills and best judgment throughout the performance of their official duties. All audits should be performed in accordance with approved auditing and accounting principles. Sound professional judgment must be exercised in making tests that are representative in scope and character to ensure that the results are representative of the actual business operations during the audit period.

Auditors are expected to observe the rules of conduct of their profession and CDTFA's guidelines set forth in the *Ethics for State Employees* bi-annual training. Auditors are also expected to perform their duties with dignity and courtesy regardless of the industry being audited, the size of the business, the sophistication of the records, or any other consideration. CDTFA can maintain the public's confidence only to the extent that all of our official activities and contacts with the public reflect the highest ethical and moral standards. Auditors must perform their duties with integrity and propriety and do all in their power to ensure their words and actions cannot be interpreted otherwise.

Evaluation of an Auditor's Skills

In determining the skills of an auditor, the quantity and quality of the work will be evaluated in relation to these questions:

- Is the auditor accurate and efficient in the analysis of the taxpayer's records to determine whether tax liability has been reported correctly?
- Does the auditor explain to taxpayers, in clear terms, the amount of overpayment or underpayment identified by the audit and provide a complete set of audit working papers so taxpayers are afforded a good understanding of what constitutes correct tax reporting?
- Does the auditor use sound professional judgment and exercise alertness to determine the most appropriate type of audit methodology for a specific assignment?

An auditor's skill is not measured by the additional understatements and overstatements disclosed in their audits. Under no circumstances will an auditor's performance be rated upon the basis of recovery, which is prohibited by law. Additionally, aged audits and other audit program-level performance measurements established by CDTFA management to evaluate field offices are not designed, nor should they be used, for evaluating an auditor's performance. This does not mean that an auditor may waste time on assignments by using ineffective audit techniques and performing nonessential tasks and still receive a satisfactory rating. It does mean that if the auditor works diligently, uses the kind of verification methods best fitted to the assignment, and performs a professional job with a reasonable expenditure of time, the work performance will be considered satisfactory.

Implementation of Auditing Policy

The Chief, Tax Policy Bureau; Deputy Director, Field Operations Division; the Chief, Audit and Carrier Bureau; Deputy Director, Business Tax and Fee Department; and Administrators have the responsibility to effectively carry out the policy set forth in this statement. They will issue such instructions as is deemed necessary to implement this policy.

STANDARD OF PROOF**0101.22**

Pursuant to Revenue and Taxation Code (RTC) section 6091, it is presumed that all gross receipts are subject to tax until the contrary is established. The effect of this rebuttable presumption is to impose upon the taxpayer the burden of proving and supporting that its gross receipts are not subject to tax. Similarly, with respect to transactions subject to use tax, the taxpayer bears the burden of proving that tax does not apply. (See RTC section 6241, 6248.) In cases where civil tax fraud is not involved, CDTFA applies the preponderance of evidence standard of proof. This is the burden of proof as specified by Evidence Code (EC) section 115 and applied by the courts in sales and use tax matters not involving civil tax fraud. (See *Maganini v. Quinn* (1950) 99 Cal. App. 2d 1, 7-8, and *Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal. App. 3d 739, 748-749.)

The “preponderance of evidence” standard is usually defined in terms of probability of truth, meaning, “evidence that has more convincing force than that opposed to it” or, more succinctly, “more likely to be true than not true.” (1 Witkin, Cal. Evidence (5th ed. 2021) Burden, § 36; CACI 200.) The preponderance of evidence standard does not require that the existence or nonexistence of a fact be proven by clear or convincing evidence or beyond a reasonable doubt; rather, it simply requires proof that the existence or nonexistence of a fact is more probable than not.

“Evidence” means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact (EC section 140). A “presumption” is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence (EC section 600).

Pursuant to RTC sections 7053 and 7054, it is the responsibility of the taxpayer to maintain, and make available for examination, all records and other pertinent documents necessary to determine the correct tax liability or credit. In performing an audit or other examination, team members should communicate with taxpayers and/or their authorized representative to the fullest extent possible to establish facts that are relevant for sales and use tax audit purposes. When applying the preponderance of evidence standard, it is important that team members view all evidence in an objective manner, focusing on the quality of the evidence (for example, original source documentation) and its probable truth or accuracy, and not only on the quantity of evidence produced. There should be no preference assigned to evidence supporting the application of tax over similar evidence which weighs against the application of tax, unless the auditor has a reasonable basis for considering it to be more persuasive.

For transactions determined to be taxable by the auditor, they must make detailed comments in the audit working papers describing the evidence and supporting documentation reviewed and their conclusions. If the auditor has a reasonable basis to believe that certain evidence is not credible, they must also make detailed comments in the audit working papers in support of their conclusion in that respect. The failure to include such comments does not deem the evidence credible and has no evidentiary impact. However, the auditor may later be required to support their conclusions.

Ability to apply the following basic knowledge to practical situations:

- Thorough knowledge of accounting principles and systems.
- Thorough knowledge of auditing procedures and techniques.
- A general knowledge of business law, practices and procedures.

Ability to apply the following special knowledge to practical situations:

- Knowledge of the California RTC as it pertains to business taxes and fees.
- Thorough knowledge of the authorized rules and regulations of CDTFA.
- Knowledge of established administrative policies.
- Knowledge of special techniques peculiar to tax auditing and business taxes and fees administration.
- Effective use of tools, manuals, annotations, memorandum opinions, and directives.

Ability to prepare professional audit reports with particular reference to:

- Use of computers.
- Completeness of reports.
- Clear and concise, well-organized comments, with headings and captions.
- A working paper technique which is readily understood by others.
- Use of auditing procedures consistent with acceptable standards.
- Accuracy in comments, facts, and calculations.
- Ability to make decisions commensurate with duties and responsibilities.
- Ability to clearly explain and support, verbally and in writing, audit procedures and findings. Such explanations must be readily understood by supervisors, reviewers, Appeals Bureau attorneys, taxpayers, and taxpayers' representatives (such as, accountants, attorneys, etc.).

Judicious use of time such as:

- Proper use of audit short-cut techniques.
- Good organization and planning of work.
- Recognition of the "Concept of Materiality" in making audit decisions. (Both the amount [quantity] and nature [quality] of misstatements are relevant to deciding what is material.)

General work habits:

- Good general and business-like appearance.
- Promptness in keeping appointments.
- Promptness in completing and submitting assignments.

Attitude:

- Enthusiasm in work.
- Willingness to learn.
- Open-minded approach to assignments.
- Ability to accept responsibility.
- Ability and willingness to accept direction.

GENERAL INFORMATION

STANDARDS OF COMPETENCY FOR AN EXPERIENCED TAX AUDITOR

(CONT.) 0101.25

Use of initiative, inquisitiveness, and ingenuity:

- Ability to adapt working habits and audit practices to differing environments.
- Alertness to recognize situations involving possible tax liability even though not directly concerned with a specific assignment.
- Willingness and ability to do research work on complex audit problems.
- Willingness and ability to develop alternative approaches to particular problems.

Relationships with people:

- Ability to get along and work well with fellow employees, supervisors, and team members from other offices and units.
- Ability to get along and work well with taxpayers and taxpayers' employees, accountants, attorneys and other representatives.
- Ability to instill confidence.
- Ability to maintain an atmosphere of dignity and professionalism consistent with the auditing profession.
- Ability to discuss with the public such things as:
 - The structure, history, mission, philosophy, and functions of CDTFA.
 - A general overview of the various tax programs.
 - Taxpayer benefits from tax revenues.
 - Some background knowledge of legislative intent in enacting law changes, exclusions, and exemptions.

KNOWLEDGE OF THE LAW

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Auditors must be familiar with the provisions and requirements of the laws they are assisting to administer, which are:

- Division 2, Part 1, of the RTC, known as the Sales and Use Tax Law.
- Division 2, Part 1.5, of the RTC, known as the Bradley-Burns Uniform Local Sales and Use Tax Law.
- Division 2, Part 1.6, of the RTC, known as the Transactions and Use Tax Law.
- Division 2, Part 1.7, of the RTC, known as the Additional Local Taxes Law.
- Division 2, and its additional Parts of the RTC pertaining to other tax and fee programs administered by CDTFA.
- As applicable, other California Codes pertaining to special tax and fee programs administered jointly by CDTFA and other state agencies.

REGULATIONS AND PUBLICATIONS OF CDTFA

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Regulations promulgated by CDTFA interpret the laws CDTFA administers and have the force and effect of law. CDTFA also publishes a number of publications designed to assist taxpayers with tax questions. Publications are available at <https://www.cdtfa.ca.gov/formspubs/pubs.htm>.

BUSINESS TAXES LAW GUIDE

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The Business Taxes Law Guide (BTLG) contains, the laws, regulations, court decisions, and summaries of the conclusions reached in selected legal rulings of counsel (annotations). The BTLG is available at <https://cdtfa.ca.gov/lawguides/#BTLG>.

USE OF ANNOTATIONS

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When using an annotation to clarify CDTFA's position regarding a statute or regulation, a review of the annotated legal opinion is often helpful. In addition to the online BTLG, a complete list of annotated opinions is available by subject area on the Laws Regulations and Annotations web page, found here at <https://cdtfa.ca.gov/lawguides/#BTLG>.

This page also provides a link to the redacted copy of the annotated opinion, if available. If the electronic annotated opinion is not posted, the online request form may be used to receive a copy of the legal opinion. Suggestions and comments regarding published annotations may be submitted using the same online request form, located at <https://www.cdtfa.ca.gov/taxes-and-fees/cldmail.aspx>.

Annotations do not have the force or effect of law, but are intended to provide guidance regarding the interpretation of the sales and use tax law, with respect to specific factual situations. Annotations may be revised or deleted. Opinions supporting deleted annotations should not be retained in section or field office libraries, reference files, or files maintained by CDTFA team members.

INDUSTRY GUIDES

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CDTFA Industry & Tax and Fee Guides cover the most common industry issues and include links to relevant resources. Each Tax and Fee Guide provides information regarding certain tax or fee topics. These guides are a source of basic information that complement CDTFA's many online publications and are not a substitute for any applicable laws and regulations. Industry Guides are located at: <https://www.cdtfa.ca.gov/industry/>.

TERMINOLOGY

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The term "taxpayer" includes "seller" or "retailer" as defined in the sales and use tax law, as well as the person upon whom use tax is imposed, and any person upon whom the special taxes and fees administered by CDTFA are imposed.

AUDITORS NOT TO SIGN TAXPAYERS DOCUMENTS

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Auditors will not sign stipulations, agreements, or other documents offered by taxpayers or taxpayers' representatives. CDTFA printed forms or facsimiles thereof will be used.

ACCEPTANCE OF PAYMENTS BY AUDITORS PROHIBITED

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Auditors must not accept payments in the office or the field. If a taxpayer in the office wishes to make a payment, they must be taken to the office cashier for processing of the funds or assisted in making a payment using Online Services. In instances where a taxpayer in the field insists on making an immediate payment of an audit liability, auditors should call the field office and request that a tax representative contact the taxpayer and arrange for payment of the liability or assist the taxpayer in making a payment using Online Services.

TAXPAYERS' BILL OF RIGHTS**0101.60**

In 1988, the Harris-Katz California Taxpayers' Bill of Rights was placed into law, effective January 1989, to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts 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 CDTFA. Auditors should be familiar with the provisions of the law.

Publication 70, (<https://www.cdtfa.ca.gov/formspubs/pub70.pdf>), *Understanding Your Rights as a California Taxpayer*, which explains procedures, remedies, rights, and obligations of taxpayers and CDTFA, must be provided to taxpayers via instructions on how to locate the publication on CDTFA's website, as explained in the Audit Engagement Letter or by hardcopy at the beginning of every audit. A hardcopy of the publication should be provided to the taxpayer, upon request.

DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION**0101.65**

The Information Practices Act (IPA) (Civil Code section 1798 et seq.), Government Code section 15619, Government code section 15570.84, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibit CDTFA team members from disclosing confidential taxpayer information to any unauthorized persons regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. (This includes information contained in form CDTFA-1164, *Audit Memorandum of Possible Tax Liability*, see AM section 0401.02.) In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests with CDTFA. (See Compliance Policy and Procedures Manual [CPPM] sections 120.022 and 120.023 for detailed information on the IPA.)

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

Under the sales and use tax program, all but the following information is confidential: account number, business name, names of general partners, business addresses, ownership designation, start and close-out dates, and status of permit (for example, active/inactive). This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides, in part, that CDTFA may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the RTC.) Team members should be aware that nonconfidential information in special tax and fee programs may differ from that in the sales and use tax program.

GENERAL INFORMATION

DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION

(CONT.1) 0101.65

The procedures for handling public requests for information, including requests for *Statement of Economic Interests* (SEI) — Form 700, are addressed in Publication CDTFA-20, *What You Need to Know About Requests for Information*. Requests by a taxpayer's representative for information and records under the IPA and the California Public Records Act (PRA) will be guided by the following policy:

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

Conditions for Disclosure of Information

Generally, a written authorization, such as a valid power of attorney (see section 0403.15), is required to provide information about a taxpayer's account or to discuss a taxpayer's account with an authorized taxpayer representative. However, there are some situations where exceptions to this general rule are permitted.

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in CDTFA's system, in CRM Notes. Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

Verbal Authorization by the Taxpayer

Verbal authorization by a taxpayer to discuss their case with an authorized representative may be accepted by CDTFA team members over the telephone or in person. In either situation, proper identification must be furnished by the taxpayer to CDTFA.

If the authorization is by telephone, team members must first verify the identity of the taxpayer by use of a driver's license or social security number, in the system, before accepting the verbal authorization. If the authorization is in person, team members must ask for identification such as driver's license, Department of Motor Vehicles identification card, or any other document which establishes their identify.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information must be documented in CRM Notes in the system:

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

***NOTE:** Team members should inform the taxpayer that the verbal authorization will be limited to 30 calendar days, unless the taxpayer requests a shorter period. Team members should also advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization to extend beyond 30 calendar days.

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

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER
REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION**

(CONT.2) 0101.65

Before providing confidential taxpayer information to an authorized representative over the telephone, team members should verify the identity of the caller by requesting the name, address, and telephone number and matching it with the information provided by the taxpayer and the shared information must be documented in the system. When the authorized taxpayer representative appears in person at a CDTFA office, their identity must be verified by examining their driver's license, Department of Motor Vehicles identification card, or other such identification document and compared to the information noted in the system.

Authorization by Possession of Agency Forms, Documents, or Correspondence

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

However, before releasing confidential taxpayer information, team members should attempt to verify the person in possession of the forms, documents or correspondence is the taxpayer's authorized representative. This verification can be done through a review of CDTFA records (for example, in the system) or by telephoning the taxpayer. If a team member is unable to contact the taxpayer and is unsure whether a person is in fact an authorized representative, including the spouse of a taxpayer, team members should request that the person provide written authorization from the taxpayer. If there is any doubt, confidential taxpayer information should not be provided. The following three scenarios are provided as examples:

1. A person visits a CDTFA office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by CDTFA in the taxpayer's name. The person states that certain payments made by the taxpayer were not credited to the taxpayer's account and requests a record of all payments made during the last three months on the taxpayer's account. If, there is no record in the system indicating the person is an authorized representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, team members shall **not** provide the information.
2. The same situation as above, except the CDTFA team member is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has knowledge of the account and the documentation is sufficient to indicate the person is the authorized representative of the taxpayer (sole proprietor).
3. A taxpayer calls CDTFA to obtain information on their account. Team members must first verify the caller is the taxpayer who may receive the information by doing the following:

For individuals, married co-ownerships or partnerships, the inquiring taxpayer must provide their:

- Full social security number, or
- Driver's license number

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER
REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION**

(CONT.3) 0101.65

For corporations or other organizations, the corporate officer or member inquiring (who is listed on the account as an active officer or member) must provide one of the following to be verified:

- Driver's license number, or
- Full social security number if the number is available in the system (corporate officers are not required to provide their social security number during registration, see CPPM section 275.060)

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

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

Information Requiring Written Authorization

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

1. A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing the information, however, team members should check the system to ensure the representative was not terminated by the taxpayer.
2. Taxpayer directed – Written authorization is not required when supplying copies of audit working papers to the taxpayer's bookkeeper or accountant when the taxpayer directed CDTFA to contact the taxpayer's bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER
REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION**

(CONT.4) 0101.65

3. Oral inquiries — Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by CDTFA to represent the taxpayer. Most oral requests are for an informal review of audit working papers before the audit is posted and billed — generally when the representative has been working with field CDTFA team members. Team members should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer’s business name or account number, but have not been asked by the taxpayer to represent them. Team members should check the taxpayer’s file and the appropriate system Springboards to verify the person has represented the taxpayer in the past. (System Springboards have fields for the name of the taxpayer’s accountant or representative; Audit springboards can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)
 - Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney’s or CPA’s relationship with the taxpayer. If the only information available in the system involves a prior audit, or the representative has recently been added, the Springboards in the system should be carefully reviewed to determine what event created the authorization. If team members are still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, team members **must** contact the taxpayer by telephone to confirm the authorization. Alternatively, team members should ask the person to put the request in writing and state specifically that they represent the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.
 - Requests for copies of field office documents, appeals, and central files must be obtained in writing.

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

REPORTING BREACHES OF CONFIDENTIAL INFORMATION

0101.66

In accordance with the Information Practices Act (Civil Code section 1798 et seq.) and CDTFA policy, any loss, compromise, or theft of taxpayer information must be immediately reported by team members to their supervisor or manager.

The format in which information is maintained is immaterial to this reporting requirement, but common examples of how taxpayer information may be stored include, but are not limited to:

- Hard copy (for example, audit working papers in the system, printouts, taxpayer forms)
- Computer hard drive
- USB or other data storage device

In addition, any detection or suspected breach of confidential computerized data or hard copies by any unauthorized person(s) must be reported immediately to supervisors or managers.

In each instance, management will report the loss, compromise, theft, or breach to the Information Security Office in the Technology Services Division. When necessary, the Information Security Office will notify the Disclosure Office, and a determination as to the appropriate action will be made after review of all pertinent facts.

Following are applicable references that may also contain additional reporting requirements:

- California Department of Tax and Fee Administration Manual of Administrative Policy (CMAP) section 2205 – Lost, Stolen or Destroyed Property, and section 8025 – Loss, Theft, Damage, Misuse, or Improper Dissemination of an Information Asset
- Audit Manual section 0101.65 – Confidential Information
- State Administrative Manual (SAM) section 5300 – Information Security
- CMAP, Part VI, 8670 Encryption of Electronic Storage and Computing Devices
- State Information Management Manual (SIMM) sections 5340-A – Incident Reporting and Response Instructions
- State Information Management Manual (SIMM) sections 5340-C – Requirements to Respond to Incidents Involving a Breach of Personal Information
- Civil Code section 1798.29
- Procedures for Reporting an Information Security Incident located on the ISO's myCDTFA webpage

AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA

0101.67

CDTFA collects and stores confidential taxpayer information and has a responsibility to protect this information from unauthorized access, use, and disclosure. CDTFA employees with a business need to transmit confidential or personal information electronically outside CDTFA may not do so without protection of that information (for example, encrypted email or BOX). However, the taxpayer may consent to the electronic transmission of confidential or personal information without encryption by signing a completed form CDTFA-82, *Authorization for Electronic Transmission of Data*. The CDTFA-82 may be obtained only by CDTFA employees with a business need to transmit unencrypted confidential or personal taxpayer information outside CDTFA. The form must be completed and signed by the taxpayer, or an authorized representative who holds a power of attorney, before any confidential information is transmitted.

The completed CDTFA-82 must be maintained in the taxpayer's file. For audit cases, the receipt of the CDTFA-82 must be documented in the system under CRM Notes, and a scanned copy attached under CRM Attachments. The authorization will remain in effect, until rescinded in writing, for the current assignment only and not future or prior assignments.

In addition, the following statement **must** be included at the top of each electronic transmission of confidential information:

Confidential information of the California Department of Tax and Fee Administration (CDTFA) – unauthorized use or disclosure is strictly prohibited by law. If you receive this e-mail in error, please immediately notify CDTFA by return e-mail and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

Confidential information includes, but is not limited to, the Audit Engagement letter, and any other form that may indicate a taxpayer is under audit. Confidential data also includes email correspondence during an audit. For example: Form CDTFA-122, *Waiver of Limitations*, references audit, but does not specifically say the taxpayer is under audit. Although not specifically referenced, this form is used almost exclusively for audit purposes and should be considered confidential.

If a CDTFA-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer. For instructions on encrypting email, search myCDTFA for "Sending and Viewing CDTFA Encrypted Email." However, CDTFA team members must not encrypt files before transmitting via e-mail if the taxpayer's internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, CDTFA employees must either obtain the CDTFA-82 or provide the data to the taxpayer in hard copy.

Additionally, CDTFA team members, taxpayers and/or their representatives can transfer large amounts of data (for example, audit data, statistical sample data, sales data, payables data, etc.) using a secure file transfer application. A secure file transfer application, such as BOX is a way to share documents with someone inside or outside CDTFA without using email to send it. It is encrypted and secure. By using a secure file transfer application, such as BOX, two users, with two separate logins, can access the same secured folder and can securely upload and download files.

Audit team members, and others who regularly send confidential information, may request a BOX account by emailing their request to Boxsupport@cdtfa.ca.gov.

TAXPAYER CORRESPONDENCE IN GENERAL

0101.70

Generally, all correspondence to taxpayers, organizations, and the general public, will be on CDTFA's letterhead. All such correspondence will contain the name, working title and appropriate telephone number of the authorized sender.

Taxpayer correspondence must serve as a complete source of the questions asked, the facts presented, and the answers given. The facts and the taxpayer's question(s) should be restated or briefly summarized. Any additional facts obtained from the taxpayer after receipt of the original letter should be included in the response and should be identified as to the source. Appropriate modification or rescission letters should be sent to the taxpayer when it is determined that the tax advice, as applied to the facts given by CDTFA, was incomplete or incorrect. Administrators and headquarters' supervisors will review all letters involving tax questions written by their team members to ensure the information is correct and in the proper format.

Taxpayers who verbally request tax information are to be advised that, although information is being provided, the taxpayers may also wish to put such a request in writing to receive a written response from CDTFA that may serve as the basis for relief, based on reliance on written advice.

MISCELLANEOUS GUIDELINES AND PROCEDURES**0103.00****REPORTING SUSPECTED COUNTERFEIT GOODS****0103.05****GENERAL**

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

PROCEDURES**0103.07****REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**

When a team member encounters a person or a business who appears to be selling counterfeit goods, they must report the suspected activity to the Tax Recovery in the Underground Economy (TRUE) task force by completing the *Report A Crime* electronic form available at this link <https://oag.ca.gov/bi/true>. Team members must select the Report a Crime button on the website and complete all four pages of the form. On the fourth page, at the bottom, select “*Other. Please describe your relationship or association to the suspect*” box and identify themselves as a CDTFA employee. TRUE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

NOTE: No confidential or investigative information should be submitted on the electronic *Report a Crime* form on the TRUE website. This includes any information obtained through our own investigation or on CDTFA’s systems. Any requests for information from outside of the Department must be referred to the Disclosure Office for a response.

REPORTING CONVICTED TRAFFICKERS OF COUNTERFEIT GOODS

When CDTFA receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media) they must send a referral directly to the Investigations Section. A Referral to Investigations case should be created in the system. In a New Manager, select Search, Case Search and Add, then filter for Referral to Investigations. This can be done whether there is a Customer in the system or not. In addition, team members should address an email referencing the referral case to the Investigations Section Administrator, with the email subject as “Counterfeit Use Tax Billing Per Conviction under PC 350(a)(2)” and include, at a minimum:

1. Team member’s name and contact information,
2. Any available pertinent information about the convicted trafficker (such as taxpayer’s name, business DBA, permit information), and
3. The source of the information.

GENERAL

During audits or investigations of bars, liquor stores, mini-marts, or other retail establishments, undercover purchases may be necessary to substantiate a taxpayer's selling prices. Generally, the purchase(s) consists of soda, alcohol, cigarettes, over-the-counter medication, etc. If State funds are used to make the evidence purchase or a team member's out-of-pocket expenses are reimbursed, the evidence must be destroyed using the following procedures.

PROCEDURES

In most cases, the receipt is used as evidence in the audit or investigation and not the item itself. However, before destruction, a photograph should be taken of the items purchased and retained with the purchase receipt, if warranted. The receipt and photograph (if applicable) should be scanned and included in the digital audit report.

Once the items of evidence are no longer needed, a CDTFA team member will destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. For example, alcohol or soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle. The supervisor or manager should document the destruction of the evidence in the system in CRM Notes for the respective audit.

DIGITAL SIGNATURES**0103.15**

This section clarifies the policy for accepting digital signatures on documents received by CDTFA team members. The California Government Code allows the use of digital signatures provided they meet certain requirements. If the requirements below are met, CDTFA team members may accept digital signatures on documents, including but not limited to: waivers of limitation, claims for refund, and powers of attorney.

California Government Code Requirements

A "digital signature" is an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. California Government Code section 16.5 explains that a digital signature has the same force and effect as a manual signature if it has the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State (SOS).

The SOS regulations explain that for a digital signature to be valid, it must be created by an acceptable technology that ties the message to the signer. The regulations list the acceptable technologies, which currently include Public Key Cryptography and "Signature Dynamics." (See California Code of Regulations, Title 2, Sections 22000-22005.) CDTFA is currently using *Adobe Sign* software, a cloud-based electronic signature service that allows team members to send, sign, track, and manage electronic signatures. This software complies with requirements outlined in the SOS regulations.

DIGITAL SIGNATURES**(CONT.) 0103.15****Accepting Digital Signatures**

Team members should be aware of who is authorized to sign a document.

For example:

A team member uses Adobe Sign to send a taxpayer form CDTFA-82, *Authorization for Electronic Transmission of Data*. The taxpayer signs the document using Adobe Sign. The file, once digitally signed by the taxpayer, cannot be changed. The team member verifies the signer is authorized to sign the form and the email address is valid and documents this verification in CRM Notes on the appropriate springboard. Once verified and documented, the team member may accept the form with a valid digital signature.

STATE ISSUED CELLULAR TELEPHONES**0103.20**

This section provides guidelines for the use of state-issued cellular telephones (cell phones) which includes CDTFA-issued smartphones. BTFD's policy is that the use of cell phones for text messages is prohibited. However, exceptions may be made for emergency text messaging as warranted.

CDTFA team members with state-issued cell phones must follow CDTFA Manual of Administrative Policies (CMAP) section 1014, *Telework Program Policy*, and section 8023, *Acceptable Use of Electronic Equipment*, section 8025, *Loss, Theft, Damage, Misuse, or Improper Dissemination of an Information Asset*, and section 8620, *Wireless Technology*.

Additionally, the following guidelines should be observed:

- Music should not be downloaded to the device from any source, this includes ring tones.
- Any pictures and videos taken with a state-issued cell phone should only be for business purposes. The pictures or videos should only be transferred via e-mail or a direct download to the team member's computer and then attached in the system. Pictures of taxpayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. If a situation arises where taxpayer records must be taken from the premises, team members must issue a properly completed CDTFA-945, *Receipt for Books and Records of Account*.
- The state-issued cell phone is to be used for CDTFA e-mail only. Personal e-mail accounts must not be placed on the device.
- Instant messaging (Facebook Messenger, Snapchat, or Skype) between CDTFA team members is not allowed because these messages are not securely maintained.

Do not connect to Wi-Fi using the state-issued cell phone as it is not a secure connection. All connections to the state-issued cell phone must be through secure means.

LEAD SOURCE REVENUE & RECOVERIES REPORT

0103.25

The Lead Source Revenue & Recoveries report, found in the Report manager, in the system, tracks the results of special programs and pilot projects undertaken by CDTFA, such as Statewide Compliance and Outreach Program (SCOP), U.S. Customs group, In-State Service Program, and many others.

The Lead Source Revenue & Recoveries report is comprised of an Indicator Level, a Lead Source level and a Lead Source Sub-types level.

- The Indicator Level shows items such as Account, Amended Only, Audit, and Period.
 - The Account category shows the Recovery Tracking Indicators (RTI) added, and the revenue generated and recovered, at the Account level.
 - The Amended Only category shows the RTIs added, and the revenue generated and recovered, to the Amended Only portion of amended returns.
 - The Audit category shows the RTIs added, and the revenue generated and recovered, at the Audit level.
 - The Period category shows the RTIs added, and the revenue generated and recovered, for a specific period only.
- The **Lead Source** shows the source for the revenue, such as SCOP, ISS Program, etc.
- The **Lead Source Sub-types** category shows the details for each specific office.

The report is generated based upon a date range and the selected recovery source.

The RTI should be assigned to accounts or liabilities established from the results of efforts of a special program or project team, for example, SCOP, U.S. Customs group, In-State Service Program, or Special Taxes project teams. The RTI is automatically assigned to accounts when a Memorandum of Potential Tax Liability (Potential Tax) case is used to create an audit from within the case. All audits created by the Audit Principal (or their designee) **must** be created within the Potential Tax case, rather than creating them outside of the case. This ensures that all revenue recovered through the programs and projects is included in the Lead Source Revenue & Recoveries report and it also completes and closes out the Potential Tax case.

The Recovery Tracking indicator **should** be assigned:

- To an account when a new permit is issued that will result in previously **unreported** revenue being reported to CDTFA. For example, when a field auditor is assigned an audit from a lead generated by SCOP, Audit Principals will use the Add Audit function within the Potential Tax case, which automatically assigns the RTI.
- To an account, an amended return, a period, an audit or field billing order, generated as a result of the development of the lead by one of the above-referenced groups, and used to determine a liability or offset a payment.

The Recovery Tracking indicator **should not** be assigned:

- To a new permit issued to correct an ownership or other situation for a business, in which revenue was **routinely** being reported.
- To an account, period, audit, or amended return selected and assigned for audit through the annual audit selection process.

GENERAL INFORMATION

**REQUEST FOR RELIEF FROM INTEREST –
UNREASONABLE ERROR OR DELAY**

0104.00

Revenue and Taxation Code (RTC) section 6593.5 and similar provisions for special tax and fee programs (see following table) provide CDTFA authority to grant relief of all or part of the interest imposed, provided the reason for the failure to pay is due, in whole or in part, to an unreasonable error or delay by an employee of CDTFA acting in their official capacity. Additionally, if the failure to pay use tax on a vehicle or vessel registered with the DMV was the direct result of an error by the DMV in calculating the use tax, interest may be relieved. No significant aspect of the error or delay can be attributable to an act of, or failure to act by, the taxpayer.

Tax or Fee Program	Revenue and Taxation Code
Sales and Use Tax	6593.5
Motor Vehicle Fuel Tax	7658.1
Use Fuel Tax	8878.5
Private Railroad Car Tax	11409
Cigarette and Tobacco Products Tax	30283.5
Alcoholic Beverage Tax	32256.5
Timber Yield Tax	38455
Energy Resources Surcharge	40103.5
Emergency Telephone Users Surcharge	41095.5 and 41097.5
Hazardous Substances Tax	43158.5
Integrated Waste Maintenance Fee	45156.5
Oil Spill Response, Prevention, and Administration Fees	46157.5
Underground Storage Tank Maintenance Fee	50112.4
Fee Collection Procedures (see Note below)	55046
Diesel Fuel Tax	60212

Note: The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Electronic Cigarette Excise Tax, California Tire Fee, Cannabis Taxes, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Fire Prevention Fee, Lead-Acid Battery Recycling Fees, Natural Gas Surcharge, Local Charges required to be collected by sellers other than direct sellers pursuant to the Local Prepaid Mobile Telephony Services Collection Act, Water Rights Fee, and Lumber Products Assessment.

Taxpayers seeking relief under these statutes should submit their request online or in writing setting forth the facts on which the claim for relief is based. Online requests include a “Declaration of Intent to Submit a Relief Request,” which states that the taxpayer’s statement is made under “penalty of perjury.” If a written request is received, it must also include the statement that it is signed under “penalty of perjury” (CDTFA-735, *Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest*, contains the penalty of perjury statement).

For detailed information on guidelines for consideration of interest relief for unreasonable error or delay, including circumstances that may be considered as causing an unreasonable delay and how to process interest relief requests, see *Compliance Policy and Procedures Manual*, sections 535.070 through 535.090.

GENERAL INFORMATION

GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE ON CDTFA WRITTEN TAX OR FEE ADVICE

0105.00

GENERAL

0105.02

Revenue and Taxation Code (RTC) sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, or 60210 (hereafter collectively referred to as authorizing statutes) provide authority for CDTFA to relieve taxpayers of any tax/fee, interest, and penalty where CDTFA finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from CDTFA. The authorizing statutes only apply when the taxpayer reasonably relied on the written advice. Reliance on written advice requires that the taxpayer incur a tax/fee liability resulting from a failure to make a timely return or payment for the activity or transaction covered by the written advice. Therefore, a claim for relief under the authorizing statutes cannot be based on written advice received **after** the return has been filed or payment has been made.

Further, relief is inapplicable if the taxpayer collected the tax, tax reimbursement, or fee at issue from its customers, or paid use tax to CDTFA for the transaction, even if the taxpayer received written advice stating that the tax is inapplicable to the transactions at issue. The Business Tax and Fee Division (BTFD) Deputy Director or their designee, may relieve taxpayers of any tax or fee, including any interest and penalty added thereto, pursuant to the authorizing statutes.

The guidelines in this manual apply only in cases where relief per the authorizing statutes falls within the authority of the BTFD Deputy Director. When the BTFD Deputy Director does not approve relief, the taxpayer's request for relief shall follow the normal appeals process (see publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes and Fees*, available at <https://www.cdtfa.ca.gov>.)

General Correspondence

CDTFA receives and responds to numerous taxpayer inquiries received via letter and email. Responses prepared by CDTFA team members to e-mail inquiries, whether sent by email or by letter, may qualify as written tax/fee advice, as discussed in more detail below. Written responses to taxpayer inquiries via email or letter that qualify as written tax/fee advice should contain the appropriate disclaimer language regarding the authorizing statutes or regulations.

QUALIFIED WRITTEN ADVICE

0105.04

The written advice must have been provided either in response to the taxpayer's written inquiry or in a prior audit, and must meet the criteria for qualified "written advice" set forth in Regulation 1705, Relief from Liability (for sales and use taxes) or 4902, *Relief from Liability* (for special taxes and fees).

Team members should emphasize that taxpayers should obtain written advice with respect to the questions they may have regarding the application of taxes/fees to a particular type of transaction. The taxpayer should be given a copy of CDTFA-8, *Get It in Writing*, or a reference to CDTFA-8 *Get It In Writing* link <https://www.cdtfa.ca.gov/formspubs/cdtfa8.pdf> on the CDTFA website.

Tax or Fee Advice Provided in a Written Communication

Written advice by CDTFA to a taxpayer in response to a taxpayer's specific written inquiry or from the taxpayer's representative seeking a written opinion will constitute written advice that can be relied upon for relief in accordance with the authorizing statutes. To be considered a specific written inquiry, the taxpayer or the taxpayer's representative must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice is requested.

If the taxpayer does not identify itself, then any advice provided by CDTFA team members cannot be relied upon for purposes of obtaining relief under the authorizing statutes. When responding to accountants, attorneys, or other taxpayer's representatives where the name of the taxpayer is not provided, CDTFA team members should ask that the representative provide the name and account number of the taxpayer for CDTFA to provide a response that may be relied upon. This will also enable CDTFA to maintain appropriate records with respect to the information provided. The taxpayer's name and account number will be referenced in CDTFA's response.

Tax and fee advice provided to trade/industry associations that do not identify their members, franchisors that do not identify their franchisees, taxpayer's representatives failing to identify their clients, and/or taxpayers whose written inquiries are vague or general in nature **must** include the following statement:

The answer given is intended to provide general information regarding the application of the tax/fee and will not serve as a basis for relief of liability under Revenue and Taxation Code section [insert appropriate RTC section].

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. The taxpayer's suppliers, customers, or other business associates are not protected under the authorizing statutes by the written advice to the taxpayer. Written advice prepared by CDTFA team members, including email responses, **must** include the following statement if the written tax/fee advice indicates any part of the transaction is not subject to a tax/fee:

Revenue and Taxation Code (RTC) section [insert appropriate RTC section] sets forth the circumstances under which a taxpayer may be relieved of liability for taxes/fees when relying on a written response to a written request for advice from CDTFA. Provided the facts and circumstances of the activity(ies) or transaction(s) discussed below are complete, accurate, and verifiable by audit, [state taxpayer's name] may generally rely on this response for purposes of RTC section [insert appropriate RTC section]. If the taxpayer provides this letter to its customers, vendors, or other third parties, those persons may not rely on the contents of this letter for the purpose of relief under RTC section [insert appropriate RTC section]. It is the responsibility of a taxpayer seeking relief under RTC section [insert appropriate RTC section] to furnish a copy of the taxpayer's original written inquiry to CDTFA, or that of its legal or statutory predecessor, along with a copy of the written response received from CDTFA.

If a taxpayer cannot locate its own copy of the original written inquiry and/or CDTFA's written response and requests a copy from CDTFA records, team members will make a reasonable effort to locate and provide copies of the documents to the taxpayer.

QUALIFIED WRITTEN ADVICE

(CONT.2) 0105.04

If individual taxpayers are identified, but background information is incomplete, team members should make reasonable efforts to obtain additional facts. Any additional facts obtained must be in writing from the taxpayer or set forth in writing in the response. If clarification is later provided verbally, then as part of the written response, team members should state information provided, date provided, and name and title of the party who provided the information. If team members are unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by team members are consistent with the facts of the transaction(s) in question, the written advice may be relied upon for relief under the authorizing statutes. Written advice to taxpayers that include team member’s assumptions **must** also include the following statement:

Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section [insert appropriate RTC section]. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, [state taxpayer’s name] may rely on this response for purposes of RTC section [insert appropriate RTC section].

Written tax/fee advice indicating the transaction is subject to a tax/fee, rather than not subject to a tax/fee, need not include any of the above statements regarding relief under the authorizing statutes.

Review – Tax or Fee Advice Provided in a Written Communication

Sales and Use Tax Program

FOD Administrators and Bureau/Section Supervisors will review all letters involving tax questions to ensure the information is correct and in the proper format before the letters are mailed. FOD Administrators and Bureau/Section Supervisors must report the number of written inquiries received, and responded to, electronically on SharePoint. Written inquiries received and responded to must be reported by the 7th of the month following the quarter end. For example, written inquiries received and responded to in 4th quarter 2020 must be reported by January 7, 2021.

Copies of all BTFD (sales and use tax) and FOD written responses confirming transactions that are not subject to a tax, modification/rescission letters, and the taxpayer’s original written inquiry will be forwarded to the Audit and Information Section (MIC 44) for final review of the accuracy of the written response. Any written response requiring adjustment will be returned to the originating party for modification or to rescind the written tax advice. Correspondence that advises a transaction is taxable should not be forwarded to the Audit and Information Section. All written responses, regardless of whether or not the written tax advice provides that the transactions are not subject to tax or are subject to tax, should be filed in accordance with existing policy.

Special Tax and Fee Programs

Special tax and fee programs team members will forward all responses, to requests for written advice regarding specific application of special tax or fee laws, to their supervisor and section administrator for review. Final approval will come from the Chief, Audit and Carrier Bureau, before mailing. Bureau Chiefs are responsible for ensuring all written responses are accurate.

Copies of all BTFD (special taxes and fees) written responses confirming transactions are not subject to a tax or fee, along with the taxpayer's original written inquiry, as well as all modification/rescission letters, should be forwarded to the Program Administration Branch (PAB)(MIC 31) for inclusion in the special tax and fee programs advice files. Correspondence that advises that a transaction is taxable should not be forwarded to PAB. All written responses, regardless of whether or not the written tax or fee advice provides that the transactions are or are not subject to a tax or fee, should be filed in accordance with existing policy.

Written Tax or Fee Advice Provided in a Prior Audit

Presentation of a taxpayer's books and records to an auditor for examination is considered a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence that demonstrates the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Department." The facts and conditions in the current situation at hand must be the same as those during the prior audit. Audit comments, schedules, and other writings prepared by CDTFA that become part of the AWP, which reflect that the activity or transaction in question was properly reported and no amount was due, are sufficient for a finding of relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

Team members should ensure comments reflect period tested and method of testing and should not state reviewed on actual basis unless **all** items were reviewed. For example, if a team member only skimmed the items or did a cursory review of the audit period or selected period, then comments should state "cursory examination for audit period (or test period)" to prevent reliance on the prior audit when related items were not examined.

A person will be considered to have shared accounting and common ownership and may rely on the advice given in the audit if the person:

1. Is engaged in the same line of business as the audited person;
2. Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person; and
3. Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax/fee return preparation,
 - Shared accounting staff or an outside firm who maintains books and records and prepares tax/fee returns, and
 - Shared accounting policies and procedures.

QUALIFIED WRITTEN ADVICE

(CONT.4) 0105.04

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The following are examples of qualified written advice provided in a prior audit:

1. A prior audit's examination of sales invoices, whether on an actual or a sample basis, qualifies as written advice with respect to the charges on the invoices examined.
2. Prior audit comments or schedules that state a specific item or charge is not subject to a tax/fee or was properly reported constitute written advice with respect to that item or charge.

In general, due to the limited scope of a No Opinion Warranted (NOW) review, if a routine audit results in a NOW and the auditor does not prepare any workpapers, schedules, or other written information, a taxpayer is not considered to have received any "written advice from CDTFA" for them to rely upon for purposes of relief from liability.

However, there may be instances in which a NOW includes a more thorough review of a taxpayer's transactions and the comments, schedules, and/or AWP prepared during that review indicate that the taxpayer is reporting taxes or fees on those transactions correctly. As a result of that type of situation, a NOW therefore may contain written advice from CDTFA. However, whether or not a NOW qualifies as written advice from CDTFA will be determined on a case-by-case basis only.

The following do **not** qualify as written advice:

1. Written comments, other than audit comments, that indicate CDTFA team members provided erroneous advice during a conversation with the taxpayer, either over the telephone or in person. Such advice is not in response to a written inquiry from the taxpayer and is verbal, with or without documentation of such conversation.
2. A tax or fee return accepted by CDTFA that contains an erroneous deduction is not written advice, whether or not the taxpayer was asked to explain the deduction or provide supporting documentation. To qualify as written advice, CDTFA team members must have responded in writing to specific facts and circumstances of the deduction in question, as described in a written request for advice by the taxpayer.
3. An Office Waiver of an audit may not constitute written advice per the authorizing statutes.
4. Acceptance by CDTFA team members, during an audit, of the percentage used by the taxpayer in reporting taxable or exempt transactions is not misinformation when a different percentage is deemed more appropriate in the succeeding audit. When the taxpayer reports on an estimated basis, the accuracy of that estimate will be tested as part of every audit.
5. The use of, or failure to use, a percentage of error from a prior audit (section 0405.33) does not create a basis for a claim for relief under the authorizing statutes in relation to a subsequent audit.

GENERAL INFORMATION

REASONABLE RELIANCE ON WRITTEN ADVICE

0105.06

To qualify for relief under the authorizing statutes, the taxpayer must have reasonably relied upon written advice. For sales and use tax purposes, such reliance must have caused either of the following:

1. The taxpayer did not charge or collect sales tax reimbursement or use tax for the transaction in question.
2. The taxpayer did not pay use tax on the storage, use, or other consumption in this state of tangible personal property.

RESCISSION OF ERRONEOUS ADVICE

0105.08

When an office determines that erroneous written advice was provided in the prior audit and agrees the taxpayer is entitled to relief under the authorizing statutes, the office shall notify the taxpayer of the proper application of the tax/fee by one of the means described below.

1. Notification by means of a separate letter to the taxpayer specifically stating the correct application of the tax/fee to the transactions. The letter may notify the taxpayer of the provisions of the authorizing statutes and the procedures for requesting relief. This separate letter to the taxpayer is the preferred method of notification, provided the auditor is certain of the correct application of the tax/fee and it will be more than one month before the memorandum requesting relief under the authorizing statute will be sent to the BTFD Deputy Director.
2. Notification by means of a copy to the taxpayer of the Administrator's (for sales and use tax program) or the Bureau Chief's (for special tax and fee programs) request for relief memorandum that is sent to the BTFD Deputy Director, provided this memorandum clearly explains the correct application of tax/fee to the transactions.

The date of the written notification establishes the last day that relief applies. However, for enforcement purposes, a reasonable period should be allowed for the taxpayer to adjust to reporting the tax/fee correctly. The period will vary depending on the size and complexity of the taxpayer's operations.

The office shall send a copy of the written notification to the Taxpayer Records Unit (MIC 36) for the sales and use tax program or to the Return Processing Branch (MIC 88) or Motor Carrier Office (MIC 65), as appropriate, for special tax and fee programs. In addition, a copy of the letter shall be attached in the system on the Account springboard. If the office is not certain of the application of the tax/fee to the transactions in question, the office shall seek guidance from the Chief, Tax Policy Bureau, for the sales and use tax program and the Chief, Audit and Carrier Bureau, for special tax and fee programs, prior to notifying the taxpayer by one of the above means.

Written advice may also be invalidated by a change in statute or constitutional law, a change in the sales and use tax regulations, special tax and fee regulations, or a final decision of a court, whether or not notice of such action is provided to the taxpayer, rendering CDTFA's earlier written advice invalid.

REQUEST FOR RELIEF**0105.10**

When the request for relief falls within the authority of the BTFD Deputy Director as described in section 0105.02, the respective Administrator (for the sales and use tax program) and the respective Bureau Chief (for special tax and fee programs) must submit a memorandum directly to the BTFD Deputy Director at BTFD.Section6596ReliefRequests@cdtfa.ca.gov. The memorandum shall include, but not be limited to, the following information:

1. Opening paragraph: Taxpayer's name, current audit period, general description of the transaction in question, and the basis of relief.
2. Background: Type of business in which the taxpayer is engaged, detailed description of the transaction(s) in question, and comment on the consistency of the taxpayer's business operations with applicable laws and regulations. If there were changes in the laws and regulations affecting the taxpayer's business, explain how such changes affect the application of tax/fee to the transaction in question.
3. Current Audit: Findings in relation to the subject of the request for relief, and the measure of tax/fee subject to relief, if available. Attach sample documents and schedules from the current audit.
4. Prior Audit: Evidence of misinformation, including, but not limited to, pertinent prior audit comments, sales invoices, paid bills, and key transactions examined in the prior audit, and any other documents that support misinformation by CDTFA. Include audit and test periods. Attach copies of sample documents and pertinent comments and schedules from the prior audit.
5. Application of Tax/Fee: Discussion of application of the tax/fee. Cite references, for example, section of the law, regulation, annotation, etc.
6. Recommendation: The recommendation for relief under the authorizing statute and the date the taxpayer was notified, in writing, of the proper application of the tax/fee. Confirm that a copy of the notification letter has been sent to the taxpayer's file in the Taxpayer Records Unit (MIC 36) for the sales and use tax program or to the Return Processing Branch (MIC 88) or Motor Carrier Office (MIC 65), as appropriate, for special tax and fee programs, and that the authorizing statute issue will be discussed in the next team member meeting of the section that provided the advice.

The following two pages provide a sample of a request for relief memorandum under RTC section 6596 using the format above.

SAMPLE OF REQUEST FOR RELIEF MEMO

State of California Department of Tax and Fee Administration

Memorandum

Date:

To: [Insert Deputy Director's Name] Business Tax and Fee Division (MIC: 43)

From: [Insert Administrator's Name]

[Insert Field Office Name] Administrator [Insert (Field Office Code)]

Subject: Recommendation for Section 6596 Relief [Seller's Permit Number] [Insert taxpayer's name]

[Opening paragraph-include current audit period, the subject of request for relief, and the basis of misinformation]. For example:

The taxpayer, [taxpayer's name] requests relief from the payment of tax, interest and penalty related to the current audit period, January 1, 2018 through March 31, 2021. The current audit is assessing tax on merchandise withdrawn from resale inventory for distribution without charge to dealers and end users. The taxpayer claims the understatement of tax is based on misinformation provided in a prior audit and seeks relief under section 6596 of the Revenue and Taxation Code.

Background

[Describe taxpayer's business, billing method, etc., in relation to the subject of the request for relief and include any law changes that are relevant.] For example:

The taxpayer is a distributor of audio equipment, language laboratories and teaching software to dealers and educational institutions. The taxpayer withdraws items from resale inventory for distribution without charge to dealers, end users, either directly or through the taxpayer's employees, for use in product evaluation or as samples. These items are not returned to the taxpayer. During the periods covered by both the prior and current audits, inventory withdrawals were posted to the general ledger samples expense accounts and were not reported by the taxpayer as subject to use tax.

Current Audit

[Describe current audit in relation to the subject and the amount of tax/measure of the request for relief. Attach sample documents.] For example:

During the current audit, the auditor examined the general ledger samples expense accounts on an actual basis. The auditor explained that items given away to dealers and/or end users in state are subject to use tax at cost. The auditor further explained that items delivered by the taxpayer's employees outside the state are not subject to use tax.

Sample of Request for Relief Memo

[Insert Deputy Director's Name]

[Date]

Prior Audit

[State prior audit period, documents examined and test period(s). Specify misinformation. Attach sample documents and copy of related prior audit working papers.] For example:

The taxpayer was previously audited for the period of January 1, 2012 to December 31, 2014. The taxpayer reported from the general ledger for sales and use tax purposes. The prior auditor reviewed the general ledger and reconciled it with the sales tax returns and sample expense noted on sales and use tax return worksheets noting no sale made. The auditor also examined purchases subject to use tax on an actual basis. Exceptions did not include unreported samples withdrawn from resale inventory. The verification comment states, "No withdrawals from inventory (of significance) for 'personal use' were applicable per discussion with the taxpayer." Auditor completed a statistical sample which included 'zero sales' invoices, where related items were samples and costed to the related sample expense account.

Application of Tax

[Discuss application of tax. Include references, i.e., Section of the Law, Regulation, Annotation, etc.] For example:

Use tax applies to inventory withdrawals of sample merchandise for distribution without charge to other persons in this state or to other persons outside the state when shipped by means of a common carrier. Use tax does not apply when samples are delivered outside this state by means of taxpayer's facilities (section 6009.1 exclusion) provided there is no use in this state prior to delivery and the taxpayer does not relinquish its control over the property in this state.

Annotation 570.0435, Withdrawals from Ex-Tax Inventory, states in pertinent part as follows:

...Storage or use includes...the withdrawal of property from resale or other ex-tax inventory (such as property purchased from outside California...) for functional use in this state by the purchaser and for the transfer of title in this state to other persons in transactions that do not constitute sales..."

Recommendation

[Recommendation to grant section 6596 relief. Include the date of either the separate notification letter or a comment that a copy of this letter to the taxpayer establishes the last day that relief applies.] Following is an example where a separate letter was sent to the taxpayer:

Based on misinformation provided in the prior audit, I recommend granting the taxpayer section 6596 relief from the payment of tax, interest and penalty added thereto, on sample merchandise withdrawn from resale or ex-tax inventory during the audit period. We further recommend that the relief apply through June 30, 2021, the date we notified the taxpayer, in writing, of the proper application of tax. We have sent a copy of this notification letter to the taxpayer's file in the Taxpayer Records Unit (MIC: 36). The agenda for our next staff meeting will include a discussion of this case and the importance of the completeness of the field audit examination and the accuracy of audit comments.

Attachments: Sample documents from the current and prior audits
Prior audit working papers

GENERAL INFORMATION

REQUEST FOR RELIEF

(CONT.3) 0105.10

The BTFD Deputy Director will have the request for relief and supporting documentation evaluated for consistency with these guidelines, the criteria provided in the authorizing statute, and Regulation 1705 or Regulation 4902, as applicable. Upon completion of the evaluation, the BTFD Deputy Director will issue a memorandum to the Administrator for the sales and use tax program, or the Bureau Chief, for special tax and fee programs, providing approval or denial of the request for relief. If the BTFD Deputy Director does **not** approve the request for relief and the taxpayer remains in disagreement with the current audit, the taxpayer should be advised to follow the normal appeals process.

The current Audit springboard, as Attachments in the system, shall include a copy of the following:

1. Memorandum to the BTFD Deputy Director requesting relief under the authorizing statute.
2. BTFD Deputy Director's reply.
3. Letter notifying the taxpayer of the proper application of the tax/fee.

The issue for which relief is being requested shall be discussed in the next office team member meeting of the section that provided the advice, with emphasis on the importance of the completeness of the audit examination and the accuracy of audit comments.

MARKETPLACE FACILITATORS**0106.00**

For detailed information on marketplace facilitators, please see the Industry Guide located here: <https://www.cdtfa.ca.gov/industry/MPFAct.htm>.

TAX OR FEE RELIEF FOR MARKETPLACE FACILITATOR**0106.05****OVERVIEW**

Marketplace facilitators may receive relief from their sales and use tax or special tax and fee liabilities under two separate law sections in the Marketplace Facilitator Act (Act) in Revenue and Taxation Code (RTC) sections 6046 and 6047.

BACKGROUND**0106.10**

The Act, operative October 1, 2019, provides that a marketplace facilitator that is registered, or required to be registered, as a seller or retailer with the California Department of Tax and Fee Administration (CDTFA) is the retailer responsible for reporting and paying sales tax or collecting, reporting, and paying the use tax on retail sales of tangible personal property facilitated through their marketplace on behalf of marketplace sellers for delivery in California (RTC section 6043). The terms “marketplace facilitator,” “marketplace seller,” and “marketplace,” are defined in RTC section 6041.

Beginning January 1, 2022, a marketplace facilitator that is registered, or required to be registered, with CDTFA, under any law that imposes a fee administered pursuant to Part 30 of the Fee Collection Procedures Law (commencing with section 55001), is required to collect, report, and remit the following CDTFA-administered fees:

- Covered electronic waste recycling (eWaste) fee
- California battery fee
- Lumber products assessment
- California tire fee

GUIDELINES FOR TAX OR FEE RELIEF FOR MARKETPLACE FACILITATORS**0106.15**

Beginning January 1, 2022, marketplace facilitators that failed to remit the correct amount of tax or fee, or failed to collect sales and use tax, or any other fee administered pursuant to Part 30, may be relieved of their tax or fee liabilities, under certain conditions, as provided in sections 6046 and 6047, respectively. When a team member’s examination of a marketplace facilitator’s records indicate that tax or fee relief may be warranted under one of these sections, the team member is responsible for reviewing and documenting the results of the recommended tax or fee relief in the Audit/Field Billing Order (FBO) working papers. The Office or Branch Administrator will prepare a memorandum to the Deputy Director, Field Operations Division (FOD) for sales and use tax, or the Deputy Director, Business Tax and Fee Division (BTFD) for special taxes and fees, and/or their designee, for approval when recommending tax or fee relief under one of these two provisions (see section 0106.60).

RTC SECTION 6406 RELIEF

0106.20

RTC section 6046 provides that CDTFA shall relieve a marketplace facilitator from their tax or fee liability for a retail sale facilitated through their marketplace for an unrelated marketplace seller if:

- The marketplace facilitator demonstrates, to the satisfaction of CDTFA, that they made a reasonable effort to obtain accurate and complete information from the unrelated marketplace seller regarding the retail sale; and
- The failure to remit the correct amount of taxes or fees on the sale is due to incorrect or incomplete information provided to the marketplace facilitator by the unrelated marketplace seller.

NOTE: For purposes of the Act, a person is related to another person if both persons are related to each other pursuant to section 267(b) of the Internal Revenue Code and related regulations (RTC section 6041.2).

Guidelines for Consideration of Tax or Fee Relief under RTC Section 6046

Whether relief is warranted under RTC section 6046 is based on the applicable facts and circumstances and should be determined on a case-by-case basis. The following guidelines are to assist team members in determining whether tax or fee relief is warranted.

Team members should perform a comprehensive analysis to determine why the marketplace facilitator did not remit the correct amount of tax or fee on their facilitated sale(s). Documentation, such as emails, letters, agreements, contracts, etc., between the marketplace facilitator and the unrelated marketplace seller should be examined to determine if the marketplace facilitator made a reasonable effort to obtain accurate and complete information from the marketplace seller, regarding its retail sales(s), and if the marketplace seller provided incorrect or incomplete information to the marketplace facilitator regarding the sales(s), such as the marketplace seller misrepresented the item(s) sold. For example, if emails disclose that a marketplace facilitator requested information about an item and the marketplace seller described the item in a way that would make the sale of the item exempt or nontaxable or not subject to a fee, the emails would provide support for relief under RTC section 6046. If the documentation supports tax or fee relief under RTC section 6046, the relief should be allowed and documentation retained to support the relieved tax or fee.

Unrelated Marketplace Seller may be Responsible for Tax or Fee

When a marketplace facilitator is relieved from liability for the tax or fee on a retail sale under RTC section 6046, the unrelated marketplace seller for whom the sale was facilitated is the retailer of that sale. If the marketplace seller is registered or required to be registered with CDTFA for a seller's permit, *Certificate of Registration – Use Tax*, or any other tax or fee program, the marketplace seller is the party responsible for the tax or fee on the sale. If the marketplace seller is registered with CDTFA, team members should follow standard audit lead procedures by completing a *Memorandum of Potential Tax Liability* case in the system and forwarding it, along with the supporting documentation to the office of control and advise them of the marketplace seller's tax or fee liability. If the marketplace seller is not registered and located in California, team members shall send the information to the office of control by completing a *Memorandum of Potential Tax Liability* case in the system. If the marketplace seller is not registered and is located outside of California, team members shall send the information to the Out-of-State office by completing a *California Nexus* case in the system.

RTC SECTION 6047 RELIEF**0106.25**

RTC section 6047 provides that CDTFA shall relieve a marketplace facilitator from the tax or fee on retail sales facilitated through its marketplace if they can demonstrate, to the satisfaction of CDTFA that:

- The retail sales were facilitated for a marketplace seller prior to January 1 2023, through a marketplace of the marketplace facilitator;
- They are not the marketplace seller and the marketplace seller is unrelated; and
- The failure to collect sales and/or use tax, sales tax reimbursement, or any other fee administered pursuant to Part 30 (commencing with Section 55001) was due to a good faith error, other than an error in sourcing the sales for district tax purposes or any other law that imposes a fee administered pursuant to Part 30.

Guidelines for Consideration of Tax or Fee Relief Under RTC Section 6047

Whether relief is warranted under RTC section 6047 is based on the applicable facts and circumstances and should be determined on a case-by-case basis. The following guidelines are to assist team members in determining if tax or fee relief is warranted.

Although the term “good faith” is not defined in the statute, a person generally makes a “good faith” error when the person acts in a reasonable manner under the circumstances, but makes an error due to an honest belief, without any intent to defraud, act maliciously, or take unfair advantage. For example, we generally conclude that a taxpayer was not negligent in completing their returns and exercised due care if they acted in good faith and made a reasonably diligent effort to determine the correct amount of tax or fee (see section 0508.20). With respect to accepting resale or exemption certificates, we generally presume that the certificates were taken in good faith, unless there is evidence to the contrary.

Therefore, if a team member finds that a marketplace facilitator made a reasonable effort (for example, exercised due care) to comply with its tax or fee obligations, but failed to collect the tax, tax reimbursement, or a fee on a sale facilitated for an unrelated marketplace seller due to an error, and there is no evidence to indicate the error was not in good faith, team members may conclude that the marketplace facilitator’s failure to collect the tax, tax reimbursement, or fee, was due to a good faith error. As such, tax or fee relief should be recommended under RTC section 6047.

Limitation to Allowable Relief

For the following periods, the allowable tax or fee relief provided under RTC section 6047 shall not exceed the following percentages of the total sales and use tax or fee due on sales facilitated by the marketplace facilitator for unrelated marketplace sellers:

- For sales facilitated during the 4Q2019, or the 2020 calendar year, 7 percent;
- For sales facilitated during the 2021 calendar year, 5 percent;
- For sales facilitated during the 2022 calendar year, 3 percent.

GENERAL INFORMATION

RTC SECTION 6047 RELIEF

(CONT.1) 0106.25

To compute the allowable tax or fee relief for each period, team members should do the following:

- Determine the total (audited) amount of California sales and use tax or fee due on sales facilitated through the marketplace facilitator’s marketplace for unrelated marketplace sellers for each reporting period. Multiply the amount for each reporting period by the applicable percentage as specified above.
- Establish the actual amount of the tax or fee that is due for each period because the marketplace facilitator failed to collect the tax, tax reimbursement, or fee on retail sales facilitated for unrelated marketplace sellers, due to good faith errors, other than errors in sourcing the sales for district tax purposes, or any other law that imposes a fee administered pursuant to Part 30.

NOTE: This amount must not include retail sales for which the marketplace facilitator collected the tax, tax reimbursement, or fee but failed to remit it.

- Compare the two amounts calculated for each period and allow relief up to the lesser of the two amounts.

Example 1:

A team member performs an audit of a marketplace facilitator and finds that the 4Q2019 total sales and use tax due on retail sales facilitated through their marketplace on behalf of unrelated marketplace sellers is \$1,000,000. The limit on the allowable relief pursuant to section 6047 for this period is \$70,000 ($\$1,000,000 \times 7\%$). If the team member finds that the marketplace facilitator failed to collect and remit \$52,000 of the \$1,000,000 tax due as a result of good faith errors, the marketplace facilitator may be relieved of liability for the entire \$52,000 in tax. However, if the team member finds that the marketplace facilitator failed to collect \$85,000 of the \$1,000,000 of tax due to good faith errors, the marketplace facilitator may only be relieved of liability for **up to** \$70,000 in tax under RTC section 6047.

Example 2:

A team member performs an audit of a marketplace facilitator and finds that the marketplace facilitator failed to collect e-waste fees on all applicable sales for the 1Q2022 as a result of a good faith error which amounted to \$25,000. The marketplace facilitator began collecting and remitting the correct amount of e-waste fees for the rest of the year beginning April 1, 2022. The marketplace facilitator also collected and remitted the correct amount of sales and use tax for the entire calendar year 2022. The relief provisions of RTC section 6047, subdivision (c), are calculated for the entire calendar year 2022, regardless of when the sale or error(s) occur(s). The allowable relief is computed as follows:

Calendar Year 2022

Total sales and use tax due on marketplace sales:	\$1,200,000
Total e-waste fees due on marketplace sales:	\$ 100,000
Total base which to apply the relief percentage	\$1,300,000
Relief percentage for 2022	3%
Relief allowable for 2022	\$ 39,000

In this example, the marketplace facilitator may be relieved of liability for the entire \$25,000. However, if the team member finds that the marketplace facilitator failed to collect \$55,000 of the \$1,300,000 of tax and fees due to good faith errors, the marketplace facilitator may only be relieved of liability for **up to** \$39,000 in tax and fees pursuant to RTC section 6047.

Unrelated Marketplace Seller Not Responsible for Tax or Fee

To the extent a marketplace facilitator is relieved of liability for the collection of a tax or fee on a sale pursuant to RTC section 6047, the marketplace seller, on whose behalf the sale was facilitated, is also relieved of the liability, unless the marketplace seller is the retailer for the sales under RTC section 6046 discussed above. Therefore, no additional action to establish liability against the marketplace seller should be made when relief is granted pursuant to RTC section 6047, but not RTC section 6046.

REQUEST FOR RELIEF

0106.60

The Deputy Director, FOD for sales and use tax or the Deputy Director, BTFD for special taxes or fees, or their designee, is responsible for approving RTC sections 6046 and 6047 tax or fee relief requests. The office or branch Administrator may use the CDTFA-5234, *Approval Memo, Recommendation for Tax or Fee Relief* per Sections 6046 or 6047, to provide the memo to the Deputy Director, FOD or BTFD. The memo can be found on myCDTFA.

ADJUSTMENTS TO BILLED DIFFERENCES

0107.00

Cancellations and modifications of \$5,000 or more to previously billed differences require the approval of a supervisor or designee. Team members authorized to approve difference adjustments cannot create and approve the same adjustment.

Cancellations and modifications of less than \$5,000 to previously billed differences do not require the approval of a supervisor or designee. However, all sections/branches/units/offices involved in adjusting differences previously billed must routinely sample these adjustments to help ensure their validity.

SAMPLE REVIEW PROCESS BY SECTION/BRANCHES/UNITS/OFFICES 0107.02

Petitions Section

Every two weeks, a day is selected for one team member's work to be reviewed. On the day selected for review, a team member's name is randomly selected. The section supervisor or designee will review the team member's activities in the system to determine if the team member had any transactions posted for the date selected for review.

The section supervisor or designee will review all the completed work for the team member selected from the previous day. The reviewer also performs a quality assurance review, such as appropriate comments on cases, proper payment application, and extensions granted.

The Petitions Section maintains a log of the reviews performed. Log entries include the name of the reviewer, the date of review, the account number of each transaction reviewed, the name of the team member initiating the adjustment and a comment regarding action taken on any discrepancies noted. The log is retained for two years.

Return Analysis Unit

Every two weeks, a day is selected for one team member's work to be reviewed. On the day selected for review, a team member's name is randomly selected. The section supervisor or designee will review the production reports in the system, assigned tasks in the system, and any other available resource to determine if the team member had any transactions posted for the date selected for review.

The supervisor of the team member selected is notified that their team member's work is up for review and is required to submit the team member's system inventory, including notes, to the reviewer. The reviewer also performs a quality assurance review, such as proper completion of return edits, appropriate notes entered in CRM Notes in the system, proper payment application, and appropriate processing of extensions and relief requests.

The section supervisor maintains a log of the review findings. The log contains the team member's name, the date of review, and the reviewer's name and initials, signifying completion of the review of the team member's work for that day. The log is retained for two years.

Consumer Use Tax Section

Ten percent of an entire day's transactions not requiring supervisor's approval are reviewed once every two weeks. Review days are randomly selected so that transactions performed by all section team members have a chance to be reviewed. Transactions requiring review are identified by using daily work summaries in the system.

The daily work summary record reviews the performance and identifies the date and the total number of transactions reviewed. The account number of any transaction with discrepancies is noted in the comment portion of the daily work summary. The supervisor maintains the summaries. The log summaries will be retained for three years.

Return Processing Branch

Every two weeks, a day is selected for one team member's work to be reviewed. On the day selected for review, a team member's name is randomly selected. The section supervisor or designee will review production reports and letters in the system, browse daily work summaries, and any other available resource to determine if the team member had any transactions posted for the date selected for review.

The team member selected is notified that their work is up for review and they are required to submit all completed work from the previous day to the reviewer. The reviewer also performs a quality assurance review, such as proper notations on documents, proper payment application and extensions granted.

The section supervisor maintains a log of the review findings. The log contains the team member name, the date of review, and the reviewer's name and initials signifying the completion of the review of the team member's work for that day. The log is to be retained for three years.

Timber Tax Section

For Timber Tax Section, no sample review is performed as all cancellations and adjustments to previously billed differences require the approval of a supervisor or designee. Team members authorized to approve difference adjustments cannot create and approve the same adjustment.

Appeals and Data Analysis Branch

Every two weeks, a day is selected for one team member's work to be reviewed. On the day selected for review, a team member's name is randomly selected. The section supervisor or designee will review the team member's activities in the system to determine if the team member had any transactions posted for the date selected for review.

The team member selected is notified that their work is up for review and they are required to submit a list of all completed work, that includes the account and case numbers, from the previous day, to the reviewer. The reviewer also performs a quality assurance review, such as appropriate comments on cases, proper payment application and extensions granted.

The section supervisor maintains a log of the review findings. The log contains the team member's name, the date of review, and the reviewer's name and initials, signifying the completion of the review of the team member's work for that day. The log is to be retained for two years.

Motor Carrier Office

Every two weeks, a day is selected for one team member's work to be reviewed. On the day selected for review, a team member's name is randomly selected. The section supervisor or designee will review production reports and letters in the system, browse daily work summaries, and any other available resource to determine if the team member had any transactions posted for the date selected for review.

The team member selected is notified that their work is up for review and they are required to submit all completed work from the previous day to the reviewer. The reviewer also performs a quality assurance review, such as proper notations on documents, proper payment application, and extensions granted.

The section supervisor maintains a log of the review findings. The log contains the team member's name, the date of review, and the reviewer's name and initials, signifying the completion of the review of the team member's work for that day. The log is to be retained for two years.

GENERAL INFORMATION

GUIDELINES FOR PROCESSING REFUNDS, CREDITS, CANCELLATIONS, ADJUSTMENTS AND DENIALS

0108.00

REFUNDS

0108.05

The following policies apply to all sections or offices involved with processing or approving refunds. Audit Determination and Refund Section (ADRS) handles claims for refund (CFR) over \$50,000 and any claims for refund involving a petition for sales and use tax programs. The Appeals and Data Analysis Branch (ADAB) handles claims for refund over \$50,000 and any claims for refund involving a petition for special tax and fee programs. Field Operations Division (FOD) field offices and Business Tax and Fee Division (BTFD) bureaus handle claims for refund for \$50,000 and under. For details on ADRS and ADAB responsibilities, see section 0108.10 below.

- All refunds of \$15,000 to \$50,000 require approval of the section or office supervisor or designee.
- All refunds where the payee name or address was changed require the approval of the section or office supervisor or designee.
- Refunds cannot be created and approved by the same team member.
- The respective FOD or BTFD office/section/branch supervisor or designee verifies the validity of at least ten percent of all refunds processed by their section or branch for one day every two weeks that did not require supervisory approval (that is, refunds of less than \$15,000). The system selects a sample and drops the sample in the supervisor's My Work queue. After the supervisor reviews the claim, they select the review box and check Complete.
- Team members should check the system for an existing or prior CFR to avoid generating a duplicate case. If a duplicate refund claim exists and a CFR case is open in the system, team members should use the existing CFR case and not create a new case.
- When a paper form CDTFA-101, *Claim for Refund or Credit*, is received by the appropriate refund section (ADRS/ADAB) or field office, refund team members or auditors should create a case in the system, if one does not already exist.

Refunds, Credits, Cancellations, and Adjustments Over \$50,000

If the program area determines that a refund, credit, cancellation, or adjustment (hereafter, collectively, "refunds") in excess of \$50,000 should be granted, the recommendation for the proposed refund must be submitted to ADRS/ADAB for processing. The ADRS/ADAB's multi-level review process for refunds in excess of \$50,000 remains the same (first line Supervisor, Section Supervisor/Branch Administrator, Chief with final approval by the BTFD Deputy Director. Audits with refund amounts over \$50,000 must be sent to ADRS or ADAB, for public record summary and placed into the public record process.

Public Records Requirement

Revenue and Taxation Code (RTC) sections 6901 and 6981, and the comparable sections of the law for the special tax and fee programs, generally require determinations in excess of \$50,000 be available as a matter of public record for at least ten days prior to the effective date of that determination. Each BTFD bureau shall prepare their submissions for the public record requirement, upload them into the system, and then route them to the BTFD Deputy Director to begin the ten-day public record period.

**AUDIT DETERMINATION AND REFUND SECTION/APPEALS
AND DATA ANALYSIS BRANCH RESPONSIBILITIES**

0108.10

ADRS/ADAB must:**Route Claim for Refund Cases to the Field Offices**

When ADRS or ADAB team members determine the refund claim requires review by the field offices (due to an audit in progress or complex transactions involved), they must:

- Send form CDTFA-1817, *Claim for Refund Received-Referral to Office*, to the taxpayer, advising the taxpayer their refund claim requires further review by a field office, whose team members will be contacting them. The letter will also provide contact information for the field office that will be handling the refund claim.
- Change the owner of the CFR case in the system to the applicable field office Audit Principal or their designee.
- Add detailed comments in the system within the CFR case, CRM Notes, regarding why the CFR case is being referred to a field office.

NOTE: ADRS previously created a “Refunds Task” within the CFR case in the system as a method of routing a CFR case to the field offices and to track the lifecycle of a CFR case.

Create Refund Requests over \$50,000

The field offices will route CFR cases to ADRS or ADAB that involve a refund request greater than \$50,000 (see Reference Guide for Field Team Members on Handling Refunds and Credits on myCDTFA for more detailed information). Therefore, ADRS and ADAB are responsible for creating refund requests and completing CFR cases requiring submissions for public record (refunds or adjustments in excess of \$50,000).

Create Refund Requests for Refund Claims When a Petition is Involved

ADRS and ADAB are responsible for creating a refund request when a petition is involved. This is to minimize the back-and-forth activity between the field offices, ADRS, ADAB and the Petitions Section. For sales and use tax audits, the Petitions Section will work with ADRS to ensure the refund request is completed.

Create Refund Requests for Refund Claims Pursuant to an Appeals Bureau/ Office of Tax Appeals (OTA)/Board of Equalization (BOE) Decision

ADRS and ADAB are responsible for creating a refund request pursuant to a Decision issued by the Appeals Bureau, OTA, or BOE. For sales and use tax audits, the Petitions Section will work with ADRS to ensure the refund request is completed. If the Decision warrants a reaudit, the reaudit will be handled by the field but will be reviewed by ADAB/Petitions Section before final posting and billing of the reaudit.

Create Refund Requests for Refund Claims Not Related to an Ongoing Audit

ADRS and ADAB are responsible for processing and creating a refund request for refund claims filed that are not related to an ongoing audit.

Manually Adjust Interest and Penalty

ADRS and ADAB are responsible for adding manual adjustments to reduce interest and certain penalties assessed on previously-filed returns. Interest and penalty adjustments may be necessary when the audit results in a credit for a reporting period in which interest and penalty were assessed.

GENERAL INFORMATION

AUDIT DETERMINATION AND REFUND SECTION/APEALS AND DATA ANALYSIS BRANCH RESPONSIBILITIES

(CONT.) 0108.10

Additionally, whenever there is a credit on the account that cannot be applied to the audit as an audit payment, a manual interest adjustment may be needed after the audit has been posted and billed.

Example: If the taxpayer filed credit returns which are posted to their account, and the audit had debits, a manual interest adjustment may be needed to ensure the taxpayer is not overcharged interest.

The threshold for requiring an adjustment is \$10 or more in interest/penalty for a period. The audit reviewer should email ADRS at ADRS-AuditRefunds@cdtfa.ca.gov (sales and use tax), or ADAB at BTfD-ADAB.IncomingAppeals@cdtfa.ca.gov (special taxes and fees) with a detailed explanation of their manual adjustment request.

FIELD OFFICE RESPONSIBILITIES

0108.15

Once a CFR case is received by the field office, the CFR case is the field office's responsibility, and they will:

- Take ownership and responsibility of the CFR case until it is either completed or transferred back to ADRS/ADAB or the Petitions Section for further processing (CFR cases will be routed to ADRS/ADAB or the Petitions Section when the refund is over \$50,000, disagreed, or involves a petitioned audit/Field Billing Order [FBO]).
- Assign the CFR as they deem appropriate by changing the owner of the CFR case to the field auditor in the system.
- Contact the taxpayer immediately to determine when the records to support the refund claim can be made available for review.

FIELD AUDITOR RESPONSIBILITIES

0108.20

Processing Refund Claims within an Audit

Generally, if a taxpayer files a refund claim prior to the completion of the audit and they provide adequate supporting documentation, auditors should process the refund claim as part of the audit. If the taxpayer requests additional time to compile supporting documentation, which will delay the audit more than 30 days, auditors must use their best judgment to determine if the refund claim should be handled separately as a FBO. Auditors should hold or process the audit after considering issues such as the volume of sales on the account, number of claims involved, or whether there is a significant interest offset as a result of credits offsetting debits, etc.

Obtaining a Refund Claim

The field auditor must:

- Obtain the CDTFA-101, *Claim for Refund or Credit* (refund claim), via Online Services Portal (online) submission or paper form, when a credit item and/or credit period exists in the audit period.
- Encourage the taxpayer to file their refund claim online.
- Explain to the taxpayer, if they refuse to file a refund claim, that without a refund claim, the credit will only offset against the audit deficiency and a refund cannot be issued beyond the offset deficiency.
- Document all efforts taken to obtain the refund claim in the system, under CRM Notes on the Audit Springboard.

FIELD AUDITOR RESPONSIBILITIES**(CONT.) 0108.20****Creating a CFR Case in the system**

When a paper refund claim is received in the field office because the taxpayer is unable to, or prefers to submit their refund claim online, the field auditor must:

- Create a CFR case in the system and attach a copy of the refund claim to the CFR case. Taxpayers who have submitted a refund claim online will automatically have a CFR case generated in the system.
- Locate the CFR case in the system and reassign the CFR case to themselves.
- Stage the case to Submission Review. A letter acknowledging receipt of the form CDTFA-101 will be automatically generated and mailed.
- Add a cross-reference between the CFR case and the related audit or FBO in the system.

Credit Balance on Accounts

Auditors must address a credit balance on an account (including credits originating outside the audit period) in one of the following manners:

- Contact the Return Analysis Unit (RAU) or the Return Processing Branch (RPB) to request assistance with investigating and handling a credit balance in a single period for \$1,000 or more. Contact:
 - RAU at BTFD.RAUElectronicMaintenanceRequests@cdtfa.ca.gov sales and use tax accounts)
 - RPB at RPBActionRequest@cdtfa.ca.gov (special tax and fee accounts)
- Contact compliance team members to assist with investigating and handling credit balances less than \$1,000. If the impact of credit interest on the balance is \$10 or less, make detailed CRM Notes in the system indicating the credit balance will offset after the audit posts. Field auditors will need to work with compliance team members to discuss the adjustment request in detail to ensure both audit team members and compliance team members understand what needs to be adjusted.

Verifying Credit Returns or Amended Returns are Posted

When the taxpayer files a credit return(s) or amended return(s) resulting in a credit prior to the start of the audit, the field auditor will:

- Verify whether the return is posted in the system. If the return is not posted, the field auditor must:
 - Work with the appropriate CDTFA section/branch to resolve any pending Work Items so the return can be posted. Generally, the field auditor will contact a team member in RAU or Local Revenue Branch (LRB) for sales and use tax audits and RPB for special tax and fee audits. There may be rare instances where the credit returns or amended returns will need to be adjusted to zero and the field auditor audits to zero-dollar returns; however, this will only be performed on a case-by-case basis and usually when there are conversion issues.
- Verify the correct return figures are reflected on the transcript of returns.
- Audit the reported amounts.

FIELD AUDIT SUPERVISOR RESPONSIBILITIES**0108.25**

Field audit supervisors must:

- Provide a secondary review of the refund claim in the system's Submission Review stage to ensure the refund claim is valid.
- Create and send a rejection letter in the Submission Review stage and close the CFR case, when a refund claim is not valid and is rejected.
- Stage the CFR case to Staff Review in the system when the case is accepted.
- Discard the Case Recommendation Paper after verifying the refund claim. (ADRS will complete the Case Recommendation Paper after the CFR case is routed to them.)

Note: Special tax and fee auditors will prepare the Case Recommendation Paper for cases forwarded to ADAB. If the case is not forwarded to ADAB, there is no need for the Staff Recommendation case paper.

- Enter comments on the CFR case in the system every month to provide a status update.
- Verify the auditor has sent a CDTFA-2047 (mL0383), *More Information Required 30-Day Letter* (30-day letter) prior to denying any portion of the refund claim due to lack of supporting documentation.
- Create and send a CDTFA-5048, *Notice of Denial*, and close the CFR case in the system when audit review is not involved in the review of a refund claim.

NOTE: An example of when audit review is not involved in the review is when an audit is processed as a "No Opinion Warranted." Instead of going through audit review, the supervisor approves the processing.

- Verify the auditor cross-referenced the CFR case to the audit case in the system.
- Verify the auditor has addressed any credit balance on an account.
- Complete a first-level review and approval on name and/or address changes made on a Refund Request.
- Provide assistance and training to auditors regarding the new refunds process.
- Verify the auditor made complete comments in the system regarding the refund claim.

FIELD AUDIT REVIEWER RESPONSIBILITIES**0108.30**

Field audit reviewers must:

- Verify the auditor addressed any credit balance on the taxpayer's account.
- Create a Refund Request for a refund of \$50,000 or less.

NOTE: Refund Requests greater than \$50,000 and the related Public Record case are handled by ADRS or ADAB by following their existing procedure.

- Create and send the Notice of Denial seven days after the due date of the 30-day letter for refund claims that are partially or fully denied.
- Close the CFR case in the system for those cases not routed to ADRS or ADAB.
- Work with compliance team members to redirect credits when the taxpayer wants to offset to another liability.
- Contact ADRS or ADAB via email to adjust previously paid interest and penalty assessed on a taxpayer's return filed within the audit period when the audit discloses a credit in the period. Email ADRS or ADAB at the following email inboxes:

Sales and use tax: ADRS-AuditRefunds@cdtfa.ca.gov

Special taxes and fees: BTFD-ADAB.IncomingAppeals@cdtfa.ca.gov

**OTHER PROCEDURES RELEVANT TO THE FIELD OFFICES,
ADRS, AND ADAB****0108.35**

The field offices, ADRS, and ADAB must:

Validate a Refund Claim

The program area (field, ADRS or ADAB) that received the incoming claim is responsible for validating the refund claim and staging it to Accept or Reject in the system.

NOTE: ADRS or ADAB must validate and stage the CFR case to Accept prior to routing to the field offices.

When the CFR case is added and staged to Submission Review (automatically for online and manually for paper), the system will automatically batch print an acknowledgment of receipt letter (CDTFA-2108, *Claim Refund-Acknowledgement*). The audit supervisor (for incoming refund claims received in the field offices) or designee (for incoming refund claims received in ADRS or ADAB) will send a letter to the taxpayer when their refund claim is rejected. Letters are available in the system with the specific reason for rejecting a refund claim.

BTFD auditors must prepare a Submission Review Checklist in the CFR case under the Submission Review stage. However, FOD auditors may use the checklist at their discretion.

Auditors must work with the taxpayer to obtain a properly completed refund claim. When the refund claim has no specific grounds/reasons, or is not timely, auditors will discuss rejecting the refund claim with their supervisor. If it is determined the refund claim should be rejected, BTFD auditors (or section/branch designee) should send a rejection letter and close the CFR case, while FOD audit supervisors will send a rejection letter to the taxpayer and close the CFR case.

Send a 30-Day Letter when a Refund Claim is Partially or Fully Denied

When any portion of a refund claim is denied, auditors must provide the taxpayer with their appeals rights by sending a CDTFA- 2047, *More Information Required-30 Day Letter* (30-day letter), immediately after it is discovered a refund claim is partially or fully denied.

NOTE: When a taxpayer files a protective refund claim for “\$1 or more,” but provides documentation for another specified amount, auditors must discuss revising the refund claim with the taxpayer. The taxpayer may revise the refund claim amount when the basis for the refund remains the same. Revising the refund claim will allow the taxpayer the opportunity to appeal the refund amount if they disagree with the established refund amount in accordance with our findings.

Providing the 30-day letter to the taxpayer is required per the Rules for Tax Appeals section 35042 (c), *Action on a Claim for Refund*. Auditors will initiate the printing of the 30-day letter at the same time they provide any relevant AWP.

Auditors may make minor changes to a 30-day letter outside of the system to tailor it for a specific circumstance. For example, industry specific refunds involving numerous CFR cases by a single taxpayer may be combined into one letter if the CFR case detail is included (claim date, CFR case ID, Period, Refund Amount, and recommended denial amount or denied amount). Any letters generated outside of the system must be approved by a supervisor and attached to the CFR case.

GENERAL INFORMATION

OTHER PROCEDURES RELEVANT TO THE FIELD OFFICES, ADRS, AND ADAB

(CONT.1) 0108.35

Send a CDTFA-2047, More Information Required-30-Day Letter when Documentation is not Provided, or Taxpayer cannot be Reached

The CDTFA-2047, 30-day letter, has various language options and will also be used when the taxpayer does not provide documentation or cannot be reached. When auditors are unable to reach the taxpayer, or the taxpayer does not provide documentation, they must send the 30-day letter to request the taxpayer to submit documentation (seven (7) additional days will be allowed to account for mailing delays). If the taxpayer does not respond, the refund claim will be denied. Auditors must document the reason for all decisions made by adding detailed notes in the system within the CFR case. A third-party reader, such as the Appeals Bureau team members, must be able to understand the situation and why the refund claim was denied based on the detailed notes entered in the CFR case. The field auditor will request their supervisor send a Denial Letter to the taxpayer while the ADRS/ADAB auditor (or section/branch designee) will send the Denial Letter to the taxpayer.

Send a CDTFA-1899 Letter when the Taxpayer Requests Additional Time After CDTFA-2047 (30-Day Letter) is Sent

If a CDTFA-2047, 30-day letter was sent because the taxpayer did not provide documentation or cannot be reached, and the taxpayer responds by requesting additional time to provide the requested documentation, auditors must work with the taxpayer to evaluate and respond to the request. Auditors **must** also send a CDTFA- 1899, *Response to Extension Request*, to the taxpayer indicating either: 1) the taxpayer is granted another extension to provide the documentation within 15 days, or 2) the taxpayer's request for an additional extension is denied (the field auditor must discuss this option with their supervisor prior to requesting their supervisor to send a Notice of Denial while ADRS/ADAB auditors will continue to send the Denial Letter). If an extension beyond the 15 days is requested, then a discussion between the auditor and their supervisor must occur to determine if the delay is reasonable because of situations beyond the taxpayer's control. If an extension is granted, the auditor will send a CDTFA-1899 to the taxpayer to clearly document the date by which the supporting documentation must be submitted. If after the extension, documentation is not received, auditors must deny the refund claim, add complete notes in the CFR case, and notify their supervisor to send a Notice of Denial.

If there is any reason to believe the taxpayer merely filed a protective claim and continues to request an extension without sufficient reason, auditors must discuss the matter with their supervisor and determine whether to grant the extension or deny the claim.

Send a CDTFA-1899 Letter when Subsequent Documentation Provided is Insufficient

If the taxpayer responds to the CDTFA-2047, 30-day letter, and the documentation is insufficient, auditors must contact the taxpayer and explain the specific documentation requested to support their refund claim. If the taxpayer states they can provide the additional documentation supporting the refund claim, auditors must allow the taxpayer 15 days to provide the additional documentation. Auditors must send a CDTFA-1899, *15-Day Letter for Refund*, to the taxpayer which clearly documents the date by which the supporting documentation must be submitted.

If the taxpayer again provides documentation that is insufficient to support the refund claim, and the taxpayer requests another extension, auditors must discuss the situation with their supervisor to determine whether to grant an additional extension or to deny the refund claim.

Obtain a Waiver of Credit Interest

The taxpayer should be allowed enough time to provide documents to support a refund claim. If an extension request exceeds three months, a signed CDTFA-146, *Waiver of Credit Interest*, must be obtained from the taxpayer. A signed copy of the CDTFA-146 must be received prior to granting an extension and sending the taxpayer the CDTFA-1899.

Any delay by the taxpayer that is beyond three months will not be allowed without the approval of the BTFD Deputy Director, FOD Deputy Director, or the appropriate designee. An extension exceeding six months from the date the taxpayer was first notified in writing to provide documentation to support the refund claim should not be allowed even if the taxpayer has signed a CDTFA-146.

To request an extension beyond three months, but not exceeding six months, from the due date on the 30-day letter, a memo must be sent to the appropriate Deputy Director or their designee. The memo must state the reasons an extension is being requested, whether a CDTFA-146 has been received from the taxpayer, and when the refund claim is expected to be completed. To route the memo, a Refunds Task will be created with the Deputy Director or their designee assigned as the owner (this ensures the Refund Task appears in their "My Work" list in the system). All memos related to the refund claim must be attached in the system within the CFR case, Item tab, Attachments sub-tab. Exceptions to this policy must be approved by the BTFD Deputy Director, FOD Deputy Director, or the appropriate designee.

If the taxpayer does not provide the supporting documentation within the extension date approved by the Deputy Director, the refund claim should be denied.

Collaborate when an Appeals Conference is Requested

Both the CDTFA-2047, 30-day letter and the CDTFA-1899, *15-Day Letter for Refund*, letter include information about the taxpayer's appeals rights. If a taxpayer requests an appeals conference, ADRS/ADAB should review the history of the CFR case, communicate with the taxpayer, when applicable, and determine whether the CFR case should be forwarded to Case Management for scheduling of an appeals conference. If an appeals conference is not warranted, ADRS/ADAB must send the Notice of Denial and close the CFR case.

To ensure ADRS/ADAB has all the information needed to process an appeals conference request, auditors must make the following comments in the CFR section of the Verification Comments:

1. Basis for refund.
2. Amount claimed by the taxpayer.
3. Amount recommended by the auditor, including reasons for partial or full denial recommendation. References to the pertinent schedules should be included to assist the Audit Reviewer or reader to verify the amounts.
4. If any portion of the claim is recommended to be denied and the taxpayer disagreed, the CDTFA-836-A, *Report of Discussion of Audit Findings*, must indicate if an appeals conference is requested.
5. Whether credit interest is recommended or denied (credit interest is not allowed for periods where a negligence or fraud penalty is asserted, see section 0218.05).

GENERAL INFORMATION

OTHER PROCEDURES RELEVANT TO THE FIELD OFFICES, ADRS, AND ADAB

(CONT.3) 0108.35

After an audit or FBO is posted and billed by an audit reviewer and the refund claim is disagreed, the audit reviewer must notify ADRS or ADAB via email, and include the following information:

Email Subject: Disagreed Audit with Refund Acct #

Body: Claim for Refund case # and Audit or FBO case #

When the taxpayer requests an appeals conference and there is no related audit or FBO associated with the CFR case because documents were not provided or the audit case results in a “No Opinion Warranted,” the auditor must include the following in the email:

Email Subject: Appeals Conference Requested by Taxpayer_Acct #

Body: Include Claim for Refund case# and explain the situation clearly.

Example: CFR case ID XXXXX. This claim for refund case was routed to the field for review. Several attempts were made to obtain documentation; however, supporting documents were not received for review. A 30-day letter was sent on [insert date]. After the taxpayer received the letter, the taxpayer requested an appeals conference regarding the refund. The taxpayer has still not provided documentation.

Send a CDTFA-5048, Notice of Denial

A CDTFA-5048, *Notice of Denial*, is required if any portion of the claim for refund is not granted. A Notice of Denial will not be sent unless the CDTFA-2047, 30-day letter was sent and the time the taxpayer had to provide additional documentation or request an appeals conference has elapsed. A Notice of Denial is required only when the amount refunded is less than the amount the taxpayer claimed.

ADRS/ADAB auditors (or section/branch designee) should send the Notice of Denial. FOD audit reviewers should send the Notice of Denial when the refund claim is reviewed concurrently with an audit or FBO and the CFR case is not routed to ADRS or ADAB for further handling. The FOD audit supervisor will send the Notice of Denial when audit reviewers are not involved in the review of the audit working papers, such as when the audit or FBO results in a “No Opinion Warranted.”

Close the Claim for Refund Case

When a refund claim is granted in full, the CFR case may generally be closed in the system once the audit is posted and billed and/or a refund request is added (posting and billing is not applicable when an audit or FBO isn't involved). CFR cases involving a denied refund claim or partially granted/denied refund claim in which a CDTFA-2047, Denial Letter is required to be sent should be closed after mailing of the CDTFA-2047, *Notice of Denial*.

A refund claim filed for full payment of tax on a related administrative protest case must be kept open for 90 days from the date the CDTFA-2047, *Notice of Denial*, is sent, or until the litigation is concluded, if the taxpayer files a suit for refund. The Refund Claim indicator in the system remains on the account until the CFR case is closed. This will stop certain collection activity and the automatic refund process. The Refund Claim indicator is removed automatically by the system once the CFR case is closed. The team member responsible for sending the CDTFA-2047, *Notice of Denial*, should also close the CFR case 90 days from the date the letter is sent.

REFERENCE GUIDE FOR FOD TEAM MEMBERS

0108.40

FOD team members may refer to the Reference Guide for Field Team Members on Handling Refunds and Credits, located in the Resources for Auditors webpage on myCDTFA, for additional detailed instructions and information regarding the refund process.

CREDIT INTEREST

0108.45

An updated policy memo is currently in process which will revise the text in this section.

TRACKING OF AUDITS, FIELD BILLING ORDERS, REAUDITS AND REVISED FIELD BILLING ORDERS 0109.00

This section contains policies and procedures related to the tracking of unbilled audits, field billing orders (FBOs), reaudits, and revised FBOs.

Tracking Requirements and Responsibilities

Each Office Making the Audit (OMA) is responsible for ensuring that audits and FBOs are properly processed for sales and use tax programs. Petitions Section is responsible for ensuring reaudits and revised FBOs are properly processed for sales and use tax programs.

The Audit Examination Branch (AEB) and Motor Carrier Office (MCO) are responsible for processing audits and FBOs for special tax and fee programs. Additionally, AEB and MCO handle reaudits and revised FBOs that require corrections and do not involve an appeal. The Appeals and Data Analysis Branch (ADAB) is responsible for reviewing and posting reaudits and revised FBOs for special tax and fee accounts pending appeal.

Three review areas for OMAs and Petitions Section:

Verification of Billing:

The Audit Principal in the field office, and AEB and MCO Administrators, or their designee(s), are responsible for generating the report “Bill Items by Posted and Billed Date” **weekly for the last two weeks of each month**, to verify a Notice of Determination was mailed to the taxpayer for all audits that created a bill item in the system. This ensures that out-of-statute audits or other errors are identified and processed properly.

Verification of Letters:

The Audit Principal in the field office, and AEB and MCO Administrators, or their designee(s), are responsible for ensuring all audit letters, that require manual processing, are processed and mailed timely. This includes letters that were not sent because of a stop mail indicator or other issues that prevent the letters from being batch printed. The report is available in the system by going to the Report manager and using the filter bar for the report “Unprinted Letters That Require Attention.” The report can then be filtered by office.

Verification in Review:

OMA, AEB, and MCO reviewers search for all audits in review **weekly**, for unassigned or improperly assigned audits. The report, “Unassigned Audits” is available in the system by using the Report manager and filtering for the report “Unassigned Audits.” The report is then filtered by office. The reviewer then assigns those items to the correct reviewer/office. This ensures any audits in Review stage that are unassigned or assigned to the wrong office/reviewer are assigned to the correct office/reviewer. This prevents these items from being overlooked and removes them from the auditor’s My Work list, once the audit is staged to Posted & Billed.

EDUCATIONAL CONSULTATIONS**0110.00****BACKGROUND****0110.02**

The Educational Consultation Program (Program) is designed to provide sales and use tax information to new taxpayers during the taxpayers' first year of business to help them meet the sales and use tax reporting requirements.

The consultation should be performed by an experienced auditor who reviews the taxpayer's business operations, record keeping and tax preparation system. This personal assistance is an educational opportunity for taxpayers to obtain answers to sales and use tax questions, as well as any general questions regarding CDTFA. The Program is provided at no charge and is available upon taxpayer request. Consultation appointments typically last no more than one day.

PRE-CONSULTATION ACTIVITIES**0110.04**

Once a taxpayer contacts a field office requesting a consultation, the field office should verify that the requesting taxpayer is eligible for the Program. To be eligible, the taxpayer must have:

1. Started a new business within the last twelve (12) months.
2. Filed at least two sales and use tax returns.

CONSULTATIONS FOR TAXPAYERS IN BUSINESS FOR MORE THAN 12 MONTHS**0110.05**

At the discretion of the field offices, consultations are available for taxpayers who have been in business for more than 12 months. Such taxpayers may request a consultation and amend returns (CPPM section 505.120) within the appropriate statute of limitations. However, taxpayers **must** be advised that since the taxpayer does not meet the criteria for an educational consultation, the consultation the taxpayer receives may result in CDTFA conducting a full audit, based upon its findings.

CONSULTATION ACTIVITIES**0110.06****Consultation Appointments and Taxpayer Contact**

The auditor contacts the taxpayer and schedules an appointment to conduct the consultation at the place of business of either the taxpayer or the taxpayer's representative, or the auditor makes arrangements to have the taxpayer furnish enough records and tax returns so an in-office consultation can be performed. The auditor then mails (or sends via encrypted e-mail) Form CDTFA-1297 (qL0014 in the system, on the Account springboard), *Taxpayer Education Consultation Program Appointment Confirmation Letter*, to the taxpayer confirming the appointment. The letter includes the appointment date and time, and it describes the extent of the auditor's anticipated brief examination of the taxpayer's records.

Contact information throughout the consultation process must be documented in CRM Notes in the system.

CONSULTATION ACTIVITIES**(CONT.) 0110.06****Examination of Records**

At the taxpayer's place of business, auditors will perform the following:

1. Discuss the taxpayer's business and type of operation
2. Examine the business and its facilities
3. Examine the taxpayer's books and records
4. Examine the taxpayer's sales and use tax returns and review with the taxpayer how the returns are prepared
5. Provide the taxpayer with applicable publications and/or regulations
6. Answer any questions the taxpayer may have with regard to the taxpayer's sales and use tax account or any other CDTFA services

If an examination of the taxpayer's place of business was not performed (for example, the consultation was conducted at the taxpayer's representative's place of business), a note to that effect will be disclosed in the "Other Comments" section of Form CDTFA-1300 (on myCDTFA), *Taxpayer Educational Consultation Report*.

POST-CONSULTATION ACTIVITIES**0110.10**

When the consultation is complete, the auditor will discuss the consultation findings or concerns (if any) with the taxpayer and give recommendations to remedy or correct the identified issues. Auditors should also address areas that are being handled correctly to reinforce those areas.

1. Debit Amount Discovered
If the auditor finds a material debit discrepancy, the auditor will advise the taxpayer to amend its return(s) and pay the appropriate tax and interest.
2. Credit Amount Discovered
If the auditor finds a material credit discrepancy, the auditor will provide the taxpayer with the information to file the CFR online or, if the taxpayer prefers, will furnish the taxpayer with Form CDTFA-101, *Claim for Refund or Credit*, and instruct the taxpayer how to properly file the claim. Auditors should advise the taxpayer to amend its return(s).
3. Educational Consultation Report
After completion of the consultation, the auditor will complete Form CDTFA-1300, *Taxpayer Educational Consultation Report* (found on myCDTFA), and Form CDTFA-5027 *Taxpayer Educational Consultation Program Letter*, in the system, depending on the outcome of the consultation. The CDTFA-5027 letter, in the system, contains check boxes for "No Reporting Errors Disclosed" and "Some Reporting Errors Disclosed," one of which must be selected for completion of the letter.

The Report form requires the following information:

- Taxpayer's name
- Account number
- Contact person
- Date of consultation
- Accountant (if applicable)
- Periods of returns previously filed
- Auditor's name
- Supervisor's name
- Reviewer's name
- Date of review
- Type of business
- Hours spent
- Type of cover letter sent
- Books and records information
- Types of sales
- Deductions and purchases

POST-CONSULTATION ACTIVITIES

(CONT. 1) 0110.10

The Report, CDTFA-1300, *Taxpayer Educational Consultation Report*, (on myCDTFA), the letter, CDTFA-5027, *Taxpayer Educational Consultation Program Letter*, (in the system), and CDTFA-1301, *Taxpayer Educational Consultation Survey* (on myCDTFA) are **required** to be sent to the taxpayer, at the conclusion of the consultation.

While each consultation varies from taxpayer to taxpayer, field office auditors shall make efficient use of their time spent on consultations (for example, 8 hours per consultation is recommended). Auditors submit the Report to their supervisor by attaching the report to the Customer or Account springboard in the system and using email or a bookmark to notify their supervisor. The field office reviewer reviews the Report for accuracy and related comments, and enters the date in the section “Date of Review” and signs in the section “Reviewed By” on the Report. The Report (from myCDTFA), the cover letter (from the system), and the survey (CDTFA-1301 from myCDTFA) **must** be mailed to the taxpayer. Field office team members should attach this report in CRM Attachments in the system. In addition, team members should forward a copy of the Report to the Taxpayer Records Unit (MIC 36).

In the “Other Comments” section of the Report, auditors should record any publications or regulations provided to the taxpayer, along with any errors discovered and the appropriate action taken or discussed to correct them (for example, amended returns). The cover letter to the taxpayer should explain the purpose of the consultation and that it was not an audit of the books and records. The letter should also instruct the taxpayer to amend its returns, if applicable.

Presentation of a taxpayer’s books and records to CDTFA team members, for examination, is considered a written request for an audit report. If a prior audit report of a person requesting RTC section 6596 relief contains written evidence that demonstrates the issue in question was examined, such evidence will be considered “written advice from CDTFA.” (see section 0105.04.)

The same holds true for a consultation wherein auditors examine the taxpayer’s books and records and completes the Report form. **Auditors should be careful to accurately describe the types of transactions and records examined because only those types of transactions and/or records will qualify as written advice from CDTFA under RTC section 6596.** A taxpayer cannot file a valid RTC section 6596 claim for relief regarding transactions and records not examined by an auditor, should the taxpayer dispute an audit finding at a later date. Therefore, auditors should describe in the Report the transactions the taxpayer engages in, but were **not** examined during the consultation. For example, “Claimed exempt shipping charges were not verified against actual shipping documents.”

Auditors should also be aware of transactions the taxpayer may be entering into in the future. Any discussions about future types of transactions should also be described in the “Other Comments” section of the Report form. For example, if the taxpayer does not have sales for resale, the auditor should describe and note that they explained to the taxpayer the proper elements of a resale certificate and any other types of records used to support claimed nontaxable or exempt sales, etc. The application of tax and correct record keeping explained to the taxpayer for any (future) transactions should be documented on the Audit springboard, in CRM Notes in the system.

POST-CONSULTATION ACTIVITIES

(CONT. 2) 0110.10

In the discussion, auditors should explain that advice regarding future transactions constitutes oral advice and does **not** serve as a basis for RTC section 6596 relief. Auditors should also explain the application of RTC section 6596 and Regulation 1705 and stress the importance of obtaining written advice. See section 0105.00 for RTC section 6596 relief guidelines.

4. Follow-up Actions

Auditors should enter appropriate comments in CRM Notes in the system to document that a consultation was requested and completed, rejected, refund recommended, etc.

Either the auditor or the auditor's supervisor should track accounts for which the taxpayer was instructed to amend their returns. If the taxpayer has not submitted amended returns after six (6) months from the notification date, or earlier if the statute of limitations is approaching, auditors should inform their supervisor, who will then flag the account for follow up.

5. Consultation Results

Auditors should mail or send, via encrypted email, form CDTFA-1301, *Taxpayer Educational Consultation Survey* (on myCDTFA) to the taxpayer, regardless of whether there were errors found or not.

OBTAINING AND SAFEGUARDING FEDERAL TAX INFORMATION (FTI)

0115.02

The California Revenue and Taxation Code (RTC) and the Internal Revenue Code (IRC) contain reciprocal provisions permitting an exchange of information. The California Department of Tax and Fee Administration (CDTFA) receives federal tax information (FTI) from the Internal Revenue Service (IRS). In addition, IRC section 6103(p)(4) requires CDTFA to establish and maintain safeguards to prevent unauthorized use or disclosure of FTI.

Unauthorized access, inspection, use or disclosure of FTI can result in civil and/or criminal penalties. See the CDTFA Manual of Administrative Policy section 7205 and IRC sections 7213, 7213A, and 7431 for specific penalty provisions.

To help prevent unauthorized access, the system hides FTI from team members without authority to access FTI. Team members without access to FTI are not able to see that FTI exists in the system even if they can view other taxpayer information. For example, team members with system view-only access will not be able to add a new FTI Note, read an FTI Note, or even see that an FTI Note exists.

Definition of FTI

FTI is a term used to describe all federal tax returns and return information (and any information derived from it) that is in the CDTFA's possession or control which is covered by the confidentiality protections of the IRC and subject to IRC section 6103(p)(4) safeguarding requirements, including IRS oversight.

FTI is categorized as "sensitive but unclassified" information and may contain personally identifiable information such as a taxpayer's full name, social security number, etc. FTI includes a return or return information received directly from the IRS (for example, information requested using the CDTFA-33-B, *Request for Federal Tax Information*), and information obtained through an authorized secondary source, such as the Alcohol and Tobacco Tax and Trade Bureau, Social Security Administration, or other entity acting pursuant to an IRC section 6103(p)(2)(B) agreement (for example, information accessed in the Data Warehouse or information received from a Franchise Tax Board (FTB) External Access Tracking (EAT) request). However, IRS returns that are attached to FTB returns received in response to a CDTFA-1144, *Official Request for Return Information*, request are not considered FTI.

FTI also includes any information created by CDTFA team members that is derived from federal returns or return information received from the IRS or obtained through a secondary source. For example, if FTI is incorporated into an exhibit in a dual determination memo, the entire memo must be handled and protected as FTI. Similarly, if FTI is transcribed into an audit schedule, the entire audit must be handled and protected as FTI. FTI may not be masked to change the character of the information to circumvent IRC section 6103 confidentiality requirements.

Conversely, copies of tax returns or return information provided to the CDTFA directly by the taxpayer or taxpayer's representative (e.g., 1040, W-2) or obtained from public information files (e.g., federal tax lien on file with a county clerk, Offers in Compromise available for public inspection, court records, etc.) is not considered FTI and is not subject to the safeguarding requirements of IRC section 6103(p)(4).

Authorized Use

Any team member who receives FTI for an authorized use may not use the information for any purpose other than that specific authorized use. An unauthorized secondary use of FTI is specifically prohibited and may result in the discontinuation of FTI disclosures to the CDTFA and imposition of civil or criminal penalties on the responsible team member. For example, audit team members may only use FTI to perform their official duties as auditors and must not disclose the FTI to any other person who does not have a “need to know” or statutory authority to access FTI under the IRC. Browsing FTI or other tax information in any information system for personal gain or interest, or any other improper purpose is strictly prohibited. For more information, please read the “Federal Tax Information (FTI)” link on the Disclosure Office’s page on CDTFA’s intranet site.

Authorized users consist of team members and contractors who have successfully completed the CDTFA *Disclosure Training and Mandatory Information Security Training* within the last twelve months, and have a signed CDTFA-4, *Confidentiality Statement*, submitted to their supervisor within the last twelve months. These prerequisites must be completed before access to FTI can be provided. Supervisors are responsible for ensuring that each team member and contractor reporting to them annually completes the training and provides the signed CDTFA-4.

Team members must first inform or consult with their supervisor before requesting or using FTI on any assigned case (audit, Field Billing Order, or other investigation) to ensure compliance with CDTFA and IRS standards. If you encounter a situation where the use of FTI seems questionable, please discuss the matter with your supervisor or the Disclosure Office before proceeding.

Please refer to the section “SharePoint” below to ensure compliance with key procedures, dealing primarily with how to provide copies of audit working papers (AWP) containing FTI to taxpayers and how to accommodate related audits and dual determinations that cannot be attached in the system.

Internal audits are routinely conducted to ensure that the authorized use of FTI complies with CDTFA and IRS standards.

Verifying FTI

If team members independently verify FTI provided by the IRS or a secondary source with the taxpayer or public information files, then the verified information loses its FTI characteristic and is no longer subject to FTI safeguarding guidelines, provided the IRS source information is replaced or overwritten with the newly verified information.

For example, if a levy containing FTI is mailed to a bank, and the bank’s response contains the same FTI rewritten in the bank’s own writing, then the original FTI information is considered third-party verified. Team members can now overwrite the original IRS sourced information with the third-party verified information, thereby removing the information’s FTI characteristic and safeguarding requirements.

Another example is if the taxpayer’s address received from IRS sourced information is subsequently verified by a third-party source such as CLEAR, the original FTI information can be overwritten with the third-party verified information.

The FTI Tracking Log

The FTI Tracking Log is used to track FTI (see exceptions under subheading *FTI in the CDTFA's Internal System* and subheading *SharePoint*). An entry must be made in the FTI Tracking Log whenever FTI is requested, received, handled, copied, or transcribed. For example, when team members print letters containing FTI (e.g., levies) or when an EAT resource person prints FTB information containing FTI, an entry must be made in the FTI Tracking Log.

The FTI Tracking Log is available on the CDTFA intranet site under the On the Job drop-down menu. Step-by-step instructions regarding how to use the FTI Tracking Log are located in the User Guide located on the FTI Tracking Log's homepage and in two separate CDTFA Take 5 videos titled, *How to Submit a Request Using the FTI Tracking Log*, and, *How to Track a Request Using the FTI Tracking Log*.

Safeguarding FTI

Safeguarding FTI is critically important to ensure taxpayer confidentiality is maintained, as required by IRC section 6103. Team members in possession of FTI are personally responsible for safeguarding it and must protect the information from unauthorized disclosure. Team members must keep detailed notes in CDTFA systems to record the receipt, use, and transfer of FTI information. In all instances, FTI must be safeguarded in the following manner:

Electronic Files on Portable Media (e.g., compact disk (CD), flash drive, portable hard drive, SD card)

- Files containing FTI must contain "FTI" in the file name.
- CDTFA-85, *Inspection or Disclosure Limitations (Federal)*, must be affixed to all portable media.
- Portable media must always be stored in a locked cabinet when not in use.
- Receipt and transfer of FTI saved on portable media must be recorded in the FTI Tracking Log.

Hard Copy Documents

- CDTFA-85, *Inspection or Disclosure Limitations (Federal)*, must be affixed to all hard copy documents.
- Hard copy documents containing FTI must always be stored in a locked cabinet when not in use.
- Receipt and transfer of hard copy documents containing FTI must be recorded in the FTI Tracking Log.

Retaining FTI

FTI should not be retained once it is no longer needed. However, the retention of FTI in AWP and active collection cases should follow normal retention policies. The current procedure for retaining AWP that is described in Audit Manual section 0117.02 also applies to collection case files.

Transcribing FTI

When FTI is transcribed (e.g., copied, recreated, reproduced) in any way, the transcription is also considered FTI and is subject to the same protection and restrictions as the original FTI. Transcription can occur in many ways. For example, if FTI income figures are incorporated into digital AWP or a dual determination memo, the AWP or dual determination memo is now considered FTI. Also, if an EAT resource person accesses the FTB's systems and prints or transcribes IRS information, the printed or transcribed material is considered FTI (see additional information under subheading in this section *FTB Information Received Through EAT Request*).

Furthermore, merely writing notes that contain FTI information on a notepad is considered transcription. In all instances, team members must take precaution when FTI is transcribed and use the FTI Tracking Log to record each occurrence.

Email and Fax

To accurately comply with IRS safeguards, team members may not email or fax any document or information containing FTI.

Voice over Internet Protocol (VoIP)

Team members may discuss a taxpayer's FTI information over the VoIP phone system only after confirming the taxpayer's identity.

Telework

Team members cannot physically remove FTI from any CDTFA location and therefore must physically be present at a CDTFA location to receive, view, transfer, and destroy all tangible FTI, including FTI stored on removable media. While teleworking, team members may access and view FTI contained in the CDTFA systems, provided a business need exists, and only when connected through the CDTFA's Virtual Private Network (VPN) on a CDTFA-issued computer. However, all transcriptions must be recorded in the FTI Tracking Log. For example, electronically transcribing FTI sourced from the Data Warehouse into an audit or dual memo requires an entry in the FTI Tracking Log. Furthermore, team members who are teleworking will only print documents containing FTI on a printer connected to the CDTFA system and located on the premises of a CDTFA location.

Requesting FTI

All requests for direct access to FTI must be documented in the FTI Tracking Log. Requests for FTI shall only be made when the information is not available from any other source. A request for FTI is made using the CDTFA-33-B, *Request for Federal Tax Information*, which is subsequently approved by an authorized person listed on the CDTFA Exchange List who then creates the request and records it in the FTI Tracking Log.

The following summarizes the request process:

1. The requestor completes the CDTFA-33-B and sends it to the approver via email. The email subject line shall contain the account number and taxpayer name, unless the taxpayer's name is derived from FTI. If the CDTFA-33-B contains FTI, the requestor must hand-to-hand deliver it to the approver or send the request via interoffice mail (not email or fax) using the double envelope procedure described in this section under the subheading *Sending and Receiving FTI*, and must create a new entry in the FTI Tracking Log.

OBTAINING AND SAFEGUARDING FEDERAL TAX INFORMATION (FTI)

(CONT. 4) 0115.02

2. The approver will verify that the requestor is assigned to work the account listed in the request. After verifying, the approver will complete the approver sections on the form (including their signature), open a new request in the FTI Tracking Log, and attach a copy of the approved CDTFA-33-B to the request before sending it to the BTFD FTI Custodian. If the CDTFA-33-B contains FTI, it must be sent via interoffice mail using the double envelope procedure described in this section under the subheading Sending and Receiving FTI.
3. The BTFD FTI Custodian shall fulfill the request by either using the IRS' Transcript Delivery System (TDS) for transcripts, or if requesting photocopies, completing the IRS Form 8796-A, *Request for Return/Information (Federal/ State Tax Exchange Program – State and Local Government Only)*, and mailing it along with a cover letter to the IRS at:

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

The IRS provides two different forms of FTI: photocopies and transcripts. However, due to the length of time it takes the IRS to process photocopy requests, team members shall only request transcripts, unless transcripts are unavailable. Transcript requests are fulfilled online through the TDS and are typically available within two weeks from the date the BTFD FTI Custodian receives the request.

Information available through TDS:

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

Sending and Receiving FTI

All receipts of FTI must be documented in the FTI Tracking Log. Upon receipt of direct access to the FTI, the BTFD FTI Custodian will use the FTI Tracking Log to track the sending of the completed FTI request back to the approver by doing the steps listed below. (For FTI received via an FTB EAT request, see subheading FTB Information Received Through EAT Request in this section.)

FTB:

1. Attach the CDTF-85, *Inspection or Disclosure Limitations (Federal)*, to the FTI.
2. Place the FTI in an envelope marked as “Confidential – Only to be opened by designated team member” and list the approver.
3. Place the marked envelope into another envelope (the outer envelope shall **not** indicate there is FTI inside the contents of the envelope).
4. Send the hard copy FTI in the double sealed envelope marked “confidential” to the approver.
5. The approver will receive an automated email from the BTFD FTI Custodian with directions to visit the FTI Tracking Log and confirm the receipt of the FTI. The email contains the specific Request ID that must be confirmed.
6. The approver will go to the FTI Tracking Log and select the “Receive” button for the specific Request ID. When the hard copy FTI is received, the approver will send the completed request to the requestor by selecting the “Send” button in the FTI Tracking Log, then selecting the requestor’s name.
7. The approver will then hand-to-hand deliver the hard copy FTI to the requestor.
8. The requestor will confirm the receipt of the hard copy FTI in the FTI Tracking Log.

Destroying FTI

When FTI is no longer needed it must be documented in the FTI Tracking Log and sent to the BTFD FTI Custodian (MIC 40) for destruction in the following manner:

1. Attach a CDTFA-85, *Inspection or Disclosure Limitations (Federal)*, to the FTI.
2. Place the FTI in an envelope marked “Confidential – Only to be opened by designated team member” and list the BTFD FTI Custodian (MIC 40) or FTB EAT resource person (see number 6 below).
3. Place the marked envelope into another envelope (the outer envelope should not indicate there is FTI inside).
4. Send the hard copy FTI in the double sealed envelope marked “confidential” to the supervisor in Compliance and Technology Section (MIC 40).
5. The team member who sends the physical FTI for destruction must also send the request to the BTFD FTI Custodian in the FTI Tracking Log.
6. FTI received via FTB EAT request must be returned to the EAT resource person. If both team members are in the same office, the FTI will be hand-to-hand delivered to the EAT resource person and tracked in the FTI Tracking Log. If the EAT resource person is in a different office from the requestor, the FTI will be sent via interoffice mail to the EAT resource person following the instructions in numbers 1-3 above, with the outside envelope addressed to the EAT resource person. The EAT resource person will follow the office procedure regarding packaging and shipping of FTI material to the BTFD FTI Custodian.
7. The BTFD FTI Custodian shall destroy FTI, such as transcribed notes, printouts, levies, returns, and electronic media stored on removable media in the manner that complies with IRS publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*.

Destruction of electronic files must also go through the BTFD FTI Custodian. For example, when physical FTI does not exist, team members will first delete the FTI from all the drives on their computer (including the C Drive) and recycle bin. An entry must be made in the FTI Tracking Log to send a request for destruction to the BTFD FTI Custodian. After sending the request in the FTI Tracking Log, team members will send a separate email to the BTFD FTI Custodian inbox at BTFD.FTICustodian@cdtfa.ca.gov with the following information:

1. Request ID
2. Account number
3. Date the destruction was requested
4. Specific files for destruction
5. Certification statement, “I certify that all electronic FTI files were deleted from the drives on my computer and the recycle bin.”

The BTFD FTI Custodian must ensure their procedures comply with IRS publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*.

FTI in the CDTFA's Internal System

The system is built to control and monitor access to FTI that is received directly from other agencies (Data Warehouse) or added into the system by team members (e.g., operational data such as names and addresses, or FTI Notes). The system is generally considered FTI compliant because it tracks and records every access to FTI in an audit trail. Therefore, team members who have completed the requisite training including, but not limited to, the annual Disclosure Training and Mandatory Information Security Training can view and use FTI within the system without having to externally record each transaction in the FTI Tracking Log. For example, transcribing FTI from the Data Warehouse to an FTI Note, within the system, does not warrant an entry in the FTI Tracking Log. However, FTI transcribed out of the system requires an entry in the FTI Tracking Log. FTI in the Data Warehouse is clearly identified with the label, "FTI" (for example, "1099-MISC FTI"). Conversely, data that does not have the FTI label, FTI shield icon, or FTI Present indicator is not considered FTI and therefore is not subject to IRS safeguarding guidelines.

Notably, the system is not considered FTI compliant with respect to attachments. The system does not have the capacity to control and monitor FTI attachments containing the mandatory identification phrase "FTI" in the file name. Therefore, team members must not attach FTI files anywhere in the system. Instead, team members will add FTI in the operational data or an FTI Note, which are both considered FTI compliant. Team members must also remember to use the FTI Tracking Log to record all FTI transcriptions into the system (see subheading *The FTI Tracking Log*). After transcribing FTI into the system, the original FTI must be destroyed following the procedure described in this section.

Whenever FTI is transcribed out of the system, in any form, a new entry will be made in the FTI Tracking Log to record the transaction. For example, when an FTI levy is manually printed, or when FTI found in the Data Warehouse is incorporated into an audit or dual determination memo, the transcription of FTI out of the system requires an entry in the FTI Tracking Log.

Adding FTI into the System

The shield icon and FTI Present indicator are used to identify and communicate the presence of FTI. Whenever FTI is added into the system, team members will immediately add both identifiers to the FTI account. The most common FTI additions into the system are operational data (names, addresses, IDs) and notes.

When adding FTI names, addresses, and IDs, confirm that the shield icon is activated in the respective dialogue box by selecting the grey shield icon and checking the box under the heading, "Select Protected Data Source." When active, the shield icon will change from grey to gold. Once the FTI is saved, record the transaction in the FTI Tracking Log then immediately add the FTI Indicator and an FTI Note that explains the following:

1. Description of the FTI (Name, address, ID, etc.)
2. Where the FTI originates from (IRS, FTB, etc.)
3. What form the FTI is from (Return, W-2, etc.)
4. Where the FTI is located (For example, "The FTI is located on the Registration > IDs springboard")

OBTAINING AND SAFEGUARDING FEDERAL TAX INFORMATION (FTI)**(CONT. 8) 0115.02**

When adding FTI notes, use the “FTI Note” type. For example, a payment plan review summary that contains FTI sourced income figures must use the FTI Note type. FTI Notes may be added from the Customer, Collection, and Audit springboards. FTI Notes are easily identified with the same shield icon that is applied to FTI names, addresses and IDs. Similarly, whenever an FTI is added into the system in an FTI Note, team members will immediately record the transaction in the FTI Tracking Log, then add the FTI Present indicator in the system.

If FTI already exists in the system (e.g., Data Warehouse) and an FTI Note is added from that source, no entry is needed in the FTI Tracking Log.

FTI on Outgoing Correspondence - Automated and Non-Automated Collections

When an account is staged to “Automated Collection” status, the system may incorporate (transcribe) operational data containing FTI into outgoing correspondence. For example, FTI names, addresses, and IDs may be transcribed onto a levy that is then automatically batch printed. Because the automated collection process works in the background, team members may not immediately know that an FTI transcription occurred. However, a timely entry in the FTI Tracking Log must be made when knowledge of a transcription is established. For example, when a response to the FTI levy is received, the team member responsible for resolving the levy will create an entry in the FTI Tracking Log recording the initial batch printed transcription out of the system, the subsequent receipt of the response, and finally the destruction of the FTI. Similarly, while reviewing accounts in “Automated Collection” status, team members will determine whether FTI was automatically transcribed out of the system by reviewing the account’s history (for example, indicators, notes, etc.) for evidence of auto-generated letters containing FTI (for example, levies, wage garnishments, etc.). If found, team members shall create an entry in the FTI Tracking Log to record the transcription.

Occasionally, responses to FTI correspondence may contain third-party verification of the original FTI. Third-party verification occurs when the recipient of the original FTI correspondence independently reconstructs the original FTI on their response. For example, the recipient’s response includes a statement such as, “*FTIname* closed account on x/x/xx,” in the blank spaces on the Memorandum of Garnishee levy response page. When third party verification is received, team members will overwrite the original FTI in the system with the third-party verified data, then add an FTI Note identifying the third party that verified the original FTI and explain the form of the verification. For example, “*Bankname* independently wrote the *FTIname* on the Memorandum of Garnishee received on x/x/xx.” Once overwritten, the original FTI loses its FTI characteristic and is no longer subject to safeguarding requirements.

For accounts that are actively being worked or otherwise not in Automated Collection status, all printing of FTI correspondence must be done manually. FTI correspondence cannot be sent to batch print. For example, applying a system recommendation that creates an FTI correspondence (for instance, an EWO, levy, etc.) requires that team members manually print the document on a local printer, then immediately create an entry in the FTI Tracking Log to record the transcription.

SharePoint

Because files or documents containing FTI cannot be attached in the system, distinct FTI compliant SharePoint sites were created to accommodate audits and dual determinations that incorporate FTI into the working papers. Upon completion of an audit or investigation, auditors and dual writers must upload their investigation materials, including AWP and dual determination memos, into the respective SharePoint sites. Please consult with your supervisor for the specific procedures for using the SharePoint sites.

Every access to the SharePoint is tracked and recorded in an audit trail. Although files can be viewed and modified within the SharePoint site without the need for external tracking, the FTI Tracking Log must be used to record all transcriptions of FTI, including uploads to and downloads from, SharePoint sites. Once FTI files are uploaded into SharePoint, the remaining FTI must be destroyed using the procedures described above in this section. Audits and duals containing FTI must adhere to the following guidelines:

1. When FTI is saved on a hard drive, use the naming convention: *caseid_taxpayername_FTI*.
2. When the investigation is complete, upload all final documents to the SharePoint site.
 - a. Add an FTI Note to the case in the system explaining that the audit or dual contains FTI and is attached in the respective SharePoint site.
 - b. Once the audit or dual is uploaded to the SharePoint site, delete all remaining FTI on all computer drives (including the C Drive) and the recycle bin. Make entries in the FTI Tracking Log to record any transcriptions and the destruction of the FTI.
3. CRM Notes
 - a. Notes can be entered on the CRM Notes springboard to record that a request for FTI was made. However, FTI-derived information, such as fact of filing or non-filing, must not be mentioned in the notes.
4. Use the FTI Tracking Log to record:
 - a. The receipt of FTI.
 - b. Transcription of FTI to the auditor's or dual writer's computer, SharePoint sites, and to any other location.
 - c. When sending an audit or dual to a taxpayer, a physical copy must be printed and mailed, or hand-to-hand delivered to the taxpayer. Printing requires the creation of a new entry in the FTI Tracking Log.

FTB Information Received Through EAT Request

Although FTI received via an FTB EAT request is generally suppressed on the FTB system displays, the EAT resource person is responsible for determining whether data responsive to the request located in the FTB system contains FTI by following the instructions outlined in the Compliance Policy Management Guidelines (CPMG).

If FTI is found, the EAT resource person will create a new entry in the FTI Tracking Log and send it to the team member who requested the information by selecting the "Send" button. A notification email will automatically be forwarded to the recipient directing the recipient to go to the FTI Tracking Log and confirm receipt of the FTI. The EAT resource person will hand-to-hand deliver the FTI to the team member who made the request following the procedures outlined under the subheading in this section Safeguarding FTI. Upon receipt of the physical FTI, the team member will go to the FTI Tracking Log and confirm the receipt of FTI by selecting the "Receive" button.

OBTAINING AND SAFEGUARDING FEDERAL TAX INFORMATION (FTI)**(CONT. 10) 0115.02**

If FTI is found, the EAT resource person will create a new entry in the FTI Tracking Log and send it to the team member who requested the information by selecting the “Send” button. A notification email will automatically be forwarded to the recipient directing the recipient to go to the FTI Tracking Log and confirm receipt of the FTI. The EAT resource person will hand-to-hand deliver the FTI to the team member who made the request following the procedures outlined under the subheading in this section Safeguarding FTI. Upon receipt of the physical FTI, the team member will go to the FTI Tracking Log and confirm the receipt of FTI by selecting the “Receive” button.

If the EAT resource person and the requestor are not physically in the same office, the FTI must be sent to the recipient via interoffice mail following the double envelope procedures outlined in the subheading in this section *Sending and Receiving FTI*.

FTI for Joint Operations Center (JOC)

The JOC was established by the IRS to increase compliance with federal and state fuel tax programs. Audit and Carrier Bureau’s Audit Examination Branch (AEB) is a participant in the JOC program and uses JOC data primarily to identify under-reporting or evasion of excise taxes. Only AEB team members who are vetted and approved by the IRS may access the JOC data. AEB maintains a policy of never removing JOC FTI from the IRS-issued laptops.

In addition, AEB may request FTI data from the IRS for use in developing audit leads for fuel tax audits. All requests for JOC FTI shall be made using the procedures outlined in the Memorandum of Understanding dated September 5, 2007. For information on JOC FTI procedures, team members may contact the AEB Administrator.

Automated Process for Receipt of FTI Data Related to Federal Taxes on Fuel

The CDTFA and IRS entered into an exchange of information agreement whereby the IRS automatically mails hard copies of certain FTI to assist with fuel tax audit leads. Forms 5384 and 5385 – *Excise Taxes Examination Changes*, are received on a quarterly basis.

In addition, the following IRS forms are also received as part of the agreement; 890, 1273, 2504, 2504-WC, 3228, 4549, 4666, 4667, 4668, 5318, and 6180. The IRS sends the FTI forms to CDTFA’s Business Tax and Fee Division, Audit and Carrier Bureau, and Audit Examination Branch (AEB) directly. Upon receipt in the mail, it is delivered unopened to the AEB FTI Custodian directly. The AEB FTI Custodian logs the FTI information into the FTI Tracking Log when it is received and then secures the information in the appropriate secured IRS storage cabinet. The FTI custodian reviews the information and, if necessary, requests an AEB supervisor assign for field work investigation.

When a potential audit lead is identified, the AEB team member shall access the entity’s information in the system and add a Memorandum of Possible Tax Liability case on the account. The team member shall add a general statement detailing the potential error that was identified (excluding any FTI information) before staging the case to General Referral – Special Taxes. AEB receives the assignment and works the case to determine whether an audit, billing, or both are warranted.

After the FTI is reviewed, the AEB FTI Custodian arranges to properly destroy the FTI and logs the destruction into the FTI Tracking Log.

FRANCHISE TAX BOARD

0115.04

Requests for information from the FTB, must be made using the “External Access Tracking (EAT) System,” program. This location also contains the guidelines for requesting information. To access this program, the tax auditor must be authorized to do so by his or her supervisor. Requests for information are processed only by designated resource persons within the requestor’s field office.

Information processed through the EAT System does not include details but is usually sufficient for sales and use tax purposes. Income tax schedules or the complete return not provided through the EAT System must be requested on Form CDTFA-1144, *Official Request for Return Info*, available in the Supply Section (MIC WS). The completed form must be forwarded to Headquarters Special Procedures Section (MIC 55) for processing.

Information obtained from FTB is confidential information. Tax auditors must not request, access, examine, use or disclose information from FTB unless there is a CDTFA related, legitimate business purpose to do so. The EAT System keeps track of all requests for information which are periodically reviewed by supervisors for validity. Inappropriate requests for information may result in disciplinary, civil, and criminal actions.

DESTRUCTION OF FILE MATERIAL

0117.00

AUDIT WORKPAPER RETENTION POLICY

0117.02

Archived electronic audit working papers (AWP) for all accounts (active and closed out) shall be retained indefinitely. All paper AWP with no periods open to statute may be purged except as noted below.

Paper copies of the two most recent audits (current and immediately prior audits) must be retained for the following accounts even if archive CDs are available:

- Active accounts
- Closed-out accounts with legal successors, liabilities owing from an audit, pending appeals or litigation, claim for refund, pending request for RTC section 6596 relief, or other similar matter

Backup CDs must be stored in a secure location. If there is no secure area available for storage of the CDs, the CDs must be encrypted.

REWARD PROGRAM

0122.00

GENERAL

0122.02

RTC section 7060 authorizes rewards for information leading to the collection of unreported or under reported sales and use taxes. This program, however, is not currently funded.

Individuals occasionally indicate that they have information that would enable CDTFA to recover sales tax revenues. Auditors should advise these individuals there is currently no state funding that enables CDTFA to provide a reward. However, auditors may attempt to obtain such information by appealing to the person's sense of duty as a good citizen. Auditors should advise the person providing information that they may request their identity not be divulged during an investigation, but also advise them it may need to be divulged once the investigation is complete.

The person providing the information should also be made aware that taxpayer confidentiality laws prevent CDTFA from divulging to them the results of any subsequent investigation.

INFORMANT CONTACT PROCEDURES**0124.00****GENERAL****0124.02**

Under the Information Practices Act (IPA)(Civil Code section 1798 et seq.), all information provided by an informant, as well as the informant's name, may be withheld from an individual taxpayer (sole proprietors, married co-owner and domestic partner) during a civil investigation if disclosure of the information would compromise the investigation or a related investigation. Once the civil investigation is complete, information relating to the identity of the informant may continue to be withheld provided the informant was promised confidentiality. A promise of confidentiality should be documented in writing. For purposes of this paragraph, the investigation will be considered complete when a determination is issued, regardless of the fact that the taxpayer subsequently petitions for a redetermination. If the informant was not promised confidentiality, then the informant's identity may need to be divulged, upon request by the taxpayer. While the IPA is only applicable to individual taxpayers (sole proprietors, married co-owner and domestic partner), as a policy matter, CDTFA provides non-individual taxpayers with copies of their tax records. Please contact the Disclosure Office with any questions regarding this section.

Whether or not confidentiality is promised, the information provided by the informant must be divulged if a request is made by an individual taxpayer (sole proprietors, married co-owner and domestic partner), but only after the civil investigation is completed. Team members may provide either an exact copy of the information provided by the informant, with the informant's identity deleted, if confidentiality has been promised, or a comprehensive summary of the substance of the information. If the informant's identity can be readily determined from an exact copy of the information, then it would be preferable to provide a comprehensive summary. If a comprehensive summary is provided, team members should pay particular attention to not providing any personal information that could affect the taxpayer's reputation, rights, benefits, or privileges.

Even though an informant is promised confidentiality under the IPA, occasionally other statutes and case law may require disclosure of the informant's name. For example, circumstances involving discovery proceedings related to pending litigation or a defendant's right to confront his or her accuser when criminal charges have been filed, may require disclosure of the informant's name. Such matters shall be referred to CDTFA's Legal Division for decision and response.

The following guidelines should be followed to ensure the informants are aware of their rights:

- **INITIAL CONTACT.** Generally, team members should not encourage informants to request confidentiality. If an informant contacts CDTFA by phone or in person and asks to remain confidential, that request and the promise of confidentiality should be documented in writing. The informant should be advised, in writing, that under certain circumstances, such as a court proceeding, CDTFA may be unable to maintain the informant's confidentiality.
- Where the informant contacts CDTFA in writing, confidentiality should be maintained, if so requested.
- CDTFA may accept information that is provided anonymously.
- **DOCUMENTS.** In those cases where the informant provides their name, any documents containing the informant's allegations should clearly state whether or not their name was provided with the promise of confidentiality. If the information was provided with the promise of confidentiality, to ensure against the improper release of the informant's identity, it is imperative that team members clearly print "**INFORMANT — CONFIDENTIAL**" on the top of such documents. In addition, when the document is prepared by team members, the informant's name, as well as other information which should not be released to protect the identity of the informant (telephone number, address, etc.), should be attached in the system and should include "INFORMANT-CONFIDENTIAL-Internal" in the file name. The informant should thereafter be referred to in any documents as "the informant" and their name not used.
- **CIVIL OR CRIMINAL INVESTIGATION.** During a civil or criminal investigation, if a taxpayer or the taxpayer's authorized representative requests file material, team members must immediately forward the request to the Disclosure Office at Disclosure.Office@cdtfa.ca.gov for processing. If confidentiality was provided, a copy of the written promise should also be immediately forwarded to the Disclosure Office.
- **FOLLOWING THE INVESTIGATION.** Once the investigation is complete, CDTFA will withhold the identity of the informant if there was a promise of confidentiality; otherwise, we must disclose their identity. Whether or not confidentiality was promised to the informant, the taxpayer is entitled to either an exact copy of the information, with only such deletions as are necessary to protect the informant's promised confidentiality, or a comprehensive summary of the substance of the material.
- **COURT PROCEEDINGS.** All subpoenas received for informant information should be referred to CDTFA's Litigation Bureau for handling.

IDENTITY THEFT PROGRAM**0126.00****GENERAL****0126.02**

Identity theft occurs when a person makes an unauthorized use of another person's personal identifying information for any unlawful purpose, such as to evade tax. It is possible for the perpetrator to be a family member or acquaintance; however, it cannot be assumed that a person (the taxpayer) authorized such use of their personal information merely because of their relationship to the perpetrator. It is a felony in California to use the personal identifying information of another person without the authorization of that person for any unlawful purpose (Penal Code section 530.5 et. seq.). The guidelines provided in this manual should be followed to absolve the innocent party of tax/fee liabilities established as a result of identity theft.

The discovery of identity theft may arise from an audit or collection activity or from a taxpayer's own initiative. It may also be discovered after a person unlawfully uses another person's name and personal information when applying for a permit or license without their consent, thus making the other person appear to be responsible for any debts incurred. However, merely adding a person's name and personal information, including a signature or electronic signature, when applying for a permit or license does not always establish intent to evade tax. A person may have received authority and consent from the other person to act on their behalf in specific circumstances, including signature authority. For example, if a partner fills out a permit application and then signs for themselves, as well as another partner, the act of signing for the other partner may not have been done with intent to evade tax.

PROCEDURES**0126.04**

In the event a tax or fee liability is accrued on an account where a person alleges to have been fraudulently registered for that permit, the office making the audit (OMA) or headquarters section that discovers the alleged identity theft or forgery, is responsible for evaluating the evidence and having the account adjusted, if appropriate. If team members, other than the responsible collector or auditor, become aware of the possible identity theft, the information should be sent for review to the OMA or headquarters section responsible for the collection of the liability.

Team members are responsible for clearing an innocent party of any CDTFA liability resulting from identity theft or forgery. However, team members are not responsible for pursuing or identifying the perpetrator. In all cases, team members should send a memo to the Investigations Section Administrator, with all pertinent information and any documentation obtained as evidence to support that identity theft has occurred, so they may begin an investigation and take appropriate action. The Investigations Section is responsible for contacting law enforcement.

EVIDENCE**0126.08**

The innocent party is responsible for providing team members with documentary evidence supporting the claim of identity theft. Documentation may include, but is not limited to the following:

- Police and/or court reports;
- Documentation that shows a fraud alert has been placed on credit reports;
- A copy of the Identity Theft Affidavit filed with the Federal Trade Commission (FTC). (The FTC serves as the federal clearinghouse for complaints by victims of identity theft.);
- Written responses of results of investigations by creditors, banks, or companies that provided the perpetrator with unauthorized goods or services;
- Written responses of results of investigations by district attorney's offices or other investigators supporting the claim of identity theft;
- Copies of other applications and business records relating to transactions and accounts that show those transactions involved identity theft;
- Affidavits from landlords, vendors, accountants, or bookkeepers supporting a claim of identity theft;
- Deposition from a private handwriting expert certifying a forged signature; or
- A birth certificate indicating that the innocent party was a minor at the time the application was signed which may indicate identity theft occurred.

The list of documentation is not intended to be all inclusive and not all of the items listed are required to substantiate claims of identity theft.

The responsible program area will examine the evidence. The Compliance Principal or section supervisor should contact other potentially affected sections or bureaus (for example, Collection Support Bureau [CSB], Tax Investigations and Inspections Bureau [TIIB], Audit and Carrier Bureau (ACB), Program and Compliance Bureau (PCB), and field offices) when a related account is identified that may have additional pertinent information or may be impacted. Once the responsible program area is satisfied the documentation supports the identity theft, the Compliance Principal or section supervisor should review the case and, if in agreement, should approve a request for a legal adjustment to the account.

Once approved by the Compliance Principal or section supervisor, the responsible collector will create and send a letter to the customer informing them that a legal adjustment and release of liens (if warranted) is forthcoming. The responsible collector will create a request package and send it to CSB to perform the legal adjustment. The package must contain:

1. Memo addressed to CSB listing the documentation provided, and if liens were filed in the innocent party's name, the request to release lien(s) filed in error should be included in the letter and the recommendation for legal adjustment.
2. Documentation proving the identity theft claim (outlined in CPPM 799.100).
3. Copy of the letter of acknowledgement/action sent to the customer by the responsible office/collector.

CSB will process the legal adjustment in the system and add notes thoroughly explaining the identity theft adjustment.

Team members will send the lien release directly to the county recorder, unless otherwise instructed by the innocent party or an escrow company acting on behalf of the innocent party.

AUDIT MANUAL

TABLE OF EXHIBITS

Tax Code Table for Sales and Use Taxes..... Exhibit 1
Sample of Request for Relief Memo..... Exhibit 2
Forms and Schedules Available for TDS Transcript
by Entity Type Exhibit 3
FTI Actions and Database Activity Table Exhibit 4

GENERAL INFORMATION

TAX CODE TABLE FOR SALES AND USE TAXES

EXHIBIT 1

Taxable Activity - Sales Tax Accounts	TAT	TAT Ind.	Notes
Regular Sales Tax	SR		
Regular Sales Tax(Gasoline Retailer)	SR		See Acct char for additional gas attributes
Regular Sales Tax(multiple locations in one tax area code)	SR	X	
Regular Sales Tax(multiple locations)	SR	Y	
Regular Sales Tax with sch B	SR	S	
Regular Sales Tax with sch B (multiple locations)	SR	Z	
Sales Tax Gasoline Distributor	SG		
Sales Tax Exemption	SJ		
Certificate of Registration — Use Tax	SC		If voluntary will have Acct char code of 08
Consumer Use Tax	SU		
Consumer Use Tax w/spec rtn	SU	S	
Temporary	SR		
Arbitrary	SR		

Description	Acct. Char Code
Retailer who is temporary	01
Retailer who is part-time	02
Retailer who sells fuel	03
Retailer who sells fuel and is also a fuel broker	04
Retailer who sells fuel and is also a distributor	05
Retailer who sells at swap meets and temporary locations	06
Retailer who has warehouse locations	07
Retailer is voluntary filing (SC)	08
Retailer who is vehicle lessor	09
Retailer who has a manufacturer exemption	10
Government entity that has a permanent 30 day extension	11
Regulation 1802-Sales and Purchases \$500,000 and over	12
Use tax direct pay permit government	13
Use tax direct pay permit non-government	14
Arbitrary account	999

Account Analysis	Code	New Field
Sells Fuel	G	Acct char 03
Sells Fuel and is also a fuel broker	B	Acct char 04
Sells fuel and is also a fuel distributor	D	Acct char 05
Sells at swap meets	M	Acct char 06
Files a simplified return	S	Rtn-type-code 002
Warehouse locations	W	Acct char 07

SAMPLE OF REQUEST FOR RELIEF MEMO

State of California

California Department of
Tax and Fee Administration

M e m o r a n d u m

To: [Insert Deputy Director's Name]
Business Tax and Fee Division (MIC: 43)

Date:

From: [Insert Administrator's Name]
[Insert Field Office Name] Administrator [Insert (Field Office Code)]

Subject: Recommendation for Section 6596 Relief [Seller's Permit Number]
[Insert taxpayer's name]

[Opening paragraph - include current audit period, the subject of request for relief, and the basis of misinformation]. For example:

The taxpayer requests relief from the payment of tax, interest and penalty related to the current audit period, January 1, 2000 through March 31, 2002. The current audit is assessing tax on merchandise withdrawn from resale inventory for distribution without charge to dealers and end users. The taxpayer claims the understatement of tax is based on misinformation provided in a prior audit and seeks relief under section 6596 of the Revenue and Taxation Code.

Background

[Describe taxpayer's business, billing method, etc., in relation to the subject of the request for relief.] For example:

The taxpayer is a distributor of audio equipment, language laboratories and teaching software to dealers and educational institutions. The taxpayer withdraws items from resale inventory for distribution without charge to dealers, end users, either directly or through the taxpayer's employees, for use in product evaluation or as samples. These items are not returned to the taxpayer. During the periods covered by both the prior and current audits, inventory withdrawals were posted to the general ledger samples expense accounts and were not reported by the taxpayer as subject to use tax.

Current Audit

[Describe current audit in relation to the subject of the request for relief. Attach sample documents.] For example:

During the current audit, the auditor examined the general ledger samples expense accounts on an actual basis. The auditor explained that items given away to dealers and/or end users in state are subject to use tax at cost. The auditor further explained that items delivered by the taxpayer's employees outside the state are not subject to use tax.

GENERAL INFORMATION

SAMPLE OF REQUEST FOR RELIEF MEMO

EXHIBIT 2
PAGE 2 OF 2

[Insert Deputy Director's Name]

[Date]

Prior Audit

[State prior audit period, documents examined and test period (s). Specify misinformation. Attach sample documents and copy of related prior audit working papers.] For example:

The taxpayer was previously audited for the period of January 1, 1997 to December 31, 1999. The taxpayer reported from the general ledger for sales and use tax purposes. The prior auditor reviewed the general ledger and reconciled it with the sales tax returns. The auditor also examined purchases subject to use tax on actual basis. Exceptions did not include unreported samples withdrawn from resale inventory. The verification comment states, "No withdrawals from inventory (of significance) for "personal use" were applicable per discussion with the taxpayer."

Application of Tax

[Discuss application of tax. Include references, i.e., Section of the Law, Regulation, Annotation, etc.] For example:

Use tax applies to inventory withdrawals of sample merchandise for distribution without charge to other persons in this state or to other persons outside the state when shipped by means of a common carrier. Use tax does not apply when samples are delivered outside this state by means of taxpayer's facilities (section 6009.1 exclusion) provided there is no use in this state prior to delivery and the taxpayer does not relinquish its control over the property in this state.

Annotation 570.0435, Withdrawals from Ex-Tax Inventory, states in pertinent part as follows: ...Storage or use includes...the withdrawal of property from resale or other ex-tax inventory (such as property purchased from outside California...) for functional use in this state by the purchaser and for the transfer of title in this state to other persons in transactions that do not constitute sales..."

Recommendation

[Recommendation to grant section 6596 relief. Include the date of either the separate notification letter or a comment that a copy of this letter to the taxpayer establishes the last day that relief applies.] Following is an example where a separate letter was sent to the taxpayer:

Based on misinformation provided in the prior audit, I recommend granting the taxpayer section 6596 relief from the payment of tax, interest and penalty added thereto, on sample merchandise withdrawn from resale or extax inventory during the audit period. We further recommend that the relief apply through June 30, 2004, the date we notified the taxpayer, in writing, of the proper application of tax. We have sent a copy of this notification letter to the taxpayer's file in the Taxpayer Records Unit (MIC: 36). The agenda for our next staff meeting will include a discussion of this case and the importance of the completeness of the field audit examination and the accuracy of audit comments.

Attachments: Sample documents from the current and prior audits
 Prior audit working papers

AUDIT MANUAL

**FORMS AND SCHEDULES AVAILABLE FOR TDS TRANSCRIPT
BY ENTITY TYPE**

EXHIBIT 3

Account Transcript			Return Transcript	
Individual	Corporation	Corporation (cont.)	Individual	Corporation
1040	1141	2290	1040	1065
3250A	1141A	4720	1040A	1120
5329	1141QFT	5227	1040EZ	1120A
706	1042	706GS(D)	1040NR	1120H
706GS(D)	1065	706GS(T)	1040REZ	1120L
706NA	1065B	720	1040SS/PR	1120S
709	1066	730		
709A	1120	8288		
8288	1120A	8752		
Civil Penalty	1120C	8804		
Sep. Assessment	1120F	940		
	1120FSC	940EZ		
	1120H	941		
	1120L	943		
	1120ND	944		
	1120PC	945		
	1120POL	990		
	1120	990C		
	REIT	990EZ		
	1120RIC	990PF		
	1120S	990T		
	1120SF	CT-1		
	11C	Civil Penalty		

GENERAL INFORMATION

FORMS AND SCHEDULES AVAILABLE FOR TDS TRANSCRIPT BY ENTITY TYPE (CONT.) EXHIBIT 3

Record of Account		Wage and Income	
Individual	Corporation	Individual	Corporation
1040	1065	1042-S	N/A
1040A	1120	1098	
1040EZ	1120A	1098-C	
1040NR	1120H	1098-E	
1040REZ	1120L	1098-T	
1040SS/PR	1120S	1099-A	
		1099-B	
		1099-C	
		1099-CAP	
		1099-DIV	
		1099-G	
		1099-H	
		1099-INT	
		1099-LTC	
		1099-MISC	
		1099-MSA	
		1099-OID	
		1099-PATR	
		1099-Q	
		1099-R	
		1099-S	
		5498-ESA	
		5498-IRA	
		5498-MSA	
		8805	
		All Forms	
		K-1 1041	
		K-1 1065	
		K-1 1120S	
		SSA- 1099	
		Summary	
		W-2	
		W-2G	
		W-4	

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