



**CDTFA**  
CALIFORNIA DEPARTMENT OF  
TAX AND FEE ADMINISTRATION

TAXPAYERS' RIGHTS ADVOCATE'S

# 2017-18 ANNUAL REPORT



December 2018

Mr. Nicolas Maduros  
Director, CDTFA

Dear Mr. Maduros:

I am pleased to present the *Taxpayers' Rights Advocate's (TRA) 2017-18 Business Tax and Fee Annual Report*.

This year's report:

- Profiles some major accomplishments of the Taxpayers' Rights Advocate Office during the past year;
- Explains our involvement in important new projects to assist taxpayers;
- Spotlights current issues we are working to resolve; and
- Provides examples of cases illustrating the services our office provides.

As a taxing authority, the California Department of Tax and Fee Administration (CDTFA) prides itself on excellent customer service and is committed to making the lives of Californians better by fairly and efficiently collecting the revenue that supports our state's public services that Californians rely on every day. To accomplish our goals, the CDTFA's 2018-2020 Business Plan focuses on three core principles:

- Being SMART about how we achieve our mission.
- SERVING taxpayers so that they can comply with their responsibilities.
- SUPPORTING one another as we work together to meet our goals.

The TRA plays a pivotal role in CDTFA's new 2018-2020 Business Plan. Part of our role is to make sure the plan is consistent with the Taxpayers' Bill of Rights. To achieve this, TRA will continue to work closely with the department director and senior staff on systemic tax and fee payer issues.

The Taxpayers' Rights Advocate Office remains dedicated to serving taxpayers and fee payers of the great State of California.

Respectfully submitted,



Todd C. Gilman  
Taxpayers' Rights Advocate

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# TAXPAYERS' RIGHTS ADVOCATE OFFICE

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## VISION

To be a trusted voice of reason and fairness when resolving issues between taxpayers<sup>1</sup> and the government.

## MISSION

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

## GOALS

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

<sup>1</sup> The term "taxpayers" in this publication means payers of sales and use taxes and special taxes and fees.

## PROFILE

### Taxpayers' Bills of Rights Mandate a Taxpayers' Rights Advocate

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

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights' statutory authority to special tax and fee programs administered by the CDTFA, currently affecting approximately 238,000<sup>2</sup> taxpayers in more than 35 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees. In addition, each Taxpayers' Bill of Rights provides for a Taxpayers' Rights Advocate (Advocate).

### Legal Responsibilities of the Taxpayers' Rights Advocate

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

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by CDTFA employees;
- Monitors all tax and fee programs administered by the CDTFA for compliance with the Taxpayers' Bills of Rights and recommends new procedures or revisions to existing policies to ensure fair and equitable treatment of taxpayers;
- Works with CDTFA staff to ensure that taxpayer educational materials are clear and understandable; and
- Conducts Taxpayers' Bill of Rights meetings to give the public an opportunity to express their concerns, suggestions, and comments.

### How the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

#### *Facilitates resolution of taxpayer complaints or problems*

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

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

The TRA Office assists taxpayers and CDTFA staff by facilitating better communication between these parties, which helps eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

Occasionally a taxpayer contacts the TRA Office complaining about discrimination or harassment. The TRA Office works with appropriate CDTFA management to resolve these complaints. Alleged taxpayer discrimination or sexual harassment toward CDTFA staff is not tolerated and is appropriately addressed.

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

#### *Monitors programs and recommends policy or procedural changes*

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

<sup>2</sup> Effective July 1, 2017, Assembly Bill 398 suspended the Fire Prevention Fee. As a result, there are less taxpayers than in prior years.

The TRA Office routinely takes part in policy discussions, adding the perspective of taxpayers' rights, by participating in CDTFA committees' interested parties meetings and division chief's meetings; conducting focused discussions on policy issues with management; and taking part in working groups charged with policy change recommendations.

### ***Ensures information and guidance provided is easy to understand***

The TRA Office suggests new legislation, participates in task forces and committees responsible for procedure and regulation revisions, and routinely reviews proposed revisions to taxpayer educational materials to ensure they are easy to understand. The TRA Office provides information to the public through participation in public forums and business fairs.

### ***Conducts Taxpayers' Bill of Rights Meetings***

The TRA Office is responsible for conducting yearly business taxes meetings. These meetings give the public the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of department services, and other issues related to the CDTFA's administration of its tax and fee programs. After the meetings, the TRA Office works with appropriate areas of the CDTFA to address issues and concerns conveyed by taxpayers. The TRA Office also prepares responses to presenters outlining how their concerns were addressed and posts those responses on the CDTFA website at [www.cdtfa.ca.gov/tra/tbor-meetings.htm](http://www.cdtfa.ca.gov/tra/tbor-meetings.htm).

### **Cooperation with Advocates of Other Government Agencies**

The CDTFA's Advocate meets quarterly with the Taxpayer Advocates from the Franchise Tax Board (FTB), the Board of Equalization (BOE), the Employment Development Department (EDD), and the Internal Revenue Service (IRS), as well as the Small Business Advocate in the Governor's Office of Business and Economic Development (GO-Biz) to discuss common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, have allowed the tax agencies serving California taxpayers to have a better understanding of taxpayer issues. California taxpayers also benefit from the TRA

Office's ongoing relationships with the other Advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the Advocates.

### **Implementation of the Business Taxpayers' Bills of Rights**

The CDTFA is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Director and is independent of all CDTFA divisions. When complaints relating to the CDTFA's business tax programs are received in the TRA Office, the office has direct access to all CDTFA information and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and CDTFA staff in resolving problems. If the Advocate disagrees with actions taken by CDTFA staff and is unable to resolve the situation with program management, the issue may be brought to the Director for resolution. In addition, the Advocate has the authority under the Taxpayers' Bills of Rights to take certain actions to protect taxpayers from irreparable harm, such as issuing a stay of collection action, releasing levies, or ordering the return of levied funds. The Advocate may also make the decision to release or subordinate a lien when that action will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

Examples of how taxpayers' complaints are resolved are included in the Business Taxes Issues chapter.

## **PUBLIC OUTREACH**

The public becomes aware of the services offered by our office in a number of ways. For example, information is included about the TRA Office in many CDTFA publications, is accessible on internet sites, and is provided by TRA Office staff in presentations at public events.

### **Publications**

- Publication 70, *Understanding Your Rights as a California Taxpayer*, contains information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights, and is available in all CDTFA offices and on the CDTFA's website.

- Publication 468, *California Taxpayers' Bills of Rights Statutes*, contains all the Taxpayers' Bill of Rights statutes administered by the CDTFA. It is available on the CDTFA's website.
- [Publication 215](#), *Tax Appeals Assistance Program*, explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the Advocate (see the *Tax Appeals Assistance Program* chapter of this report).
- [Publication 145](#), *California Taxpayer Resources (CDTFA, BOE, EDD, FTB, IRS, OTA)*, Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov). Many CDTFA publications prepared for permit or license holders reference the TRA Office's toll-free telephone number at 1-888-324-2798.
- The TRA Office's toll-free telephone number is printed on all CDTFA-issued permits and licenses.
- Articles reminding taxpayers about their rights and referencing publication 70 are published each year in CDTFA newsletters.
- Contact information for key TRA Office staff can be found at the back of this Annual Report.
- The TRA Office's webpage, [www.cdtfa.ca.gov/tra](http://www.cdtfa.ca.gov/tra), can be accessed from any page of the CDTFA's website. The webpage provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free telephone number 1-888-324-2798 is available as an option on many field offices' telephone trees.
- The TRA Office's toll-free telephone number is now included in the AT&T white pages in major areas of California.

### Public Events

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

- CDTFA-sponsored events: The Advocate or designee attends Small Business Fairs and Seminars and Nonprofit Seminars throughout the state. At these events, the TRA Office interacts with business owners and charitable organization representatives, makes presentations, and provides written materials about the TRA Office.
- Non CDTFA-sponsored events: Direct contacts with the public and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the IRS Nationwide Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, and the California Small Business Day in Sacramento. The Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals.

### Internet and Telephone

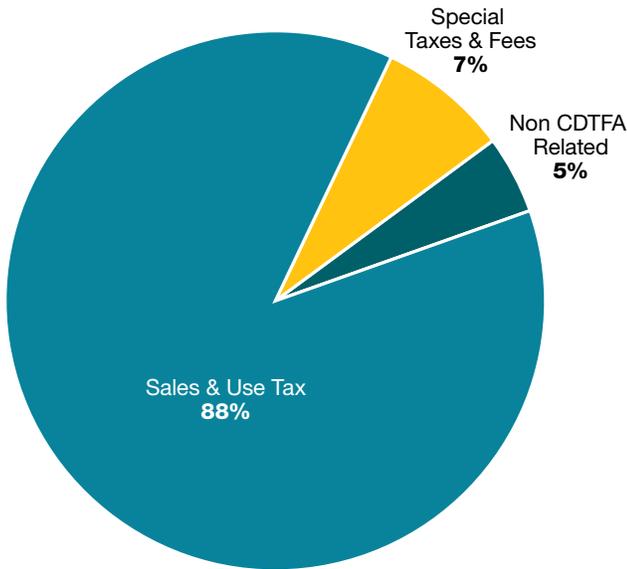
- The California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov), contains links to all California Taxpayer Advocates' webpages and the publication 145 brochure via the "Your Rights" option under the "Contact Us" tab.

## CONTACTS RECEIVED IN FISCAL YEAR 2017-18

### Cases

The TRA Office recorded 824 new business taxes cases in fiscal year 2017-18.<sup>3</sup> Of the 824, cases 88 percent were sales and use taxes issues while 7 percent were special tax and fee issues. The remaining 5 percent were not CDTFA related.

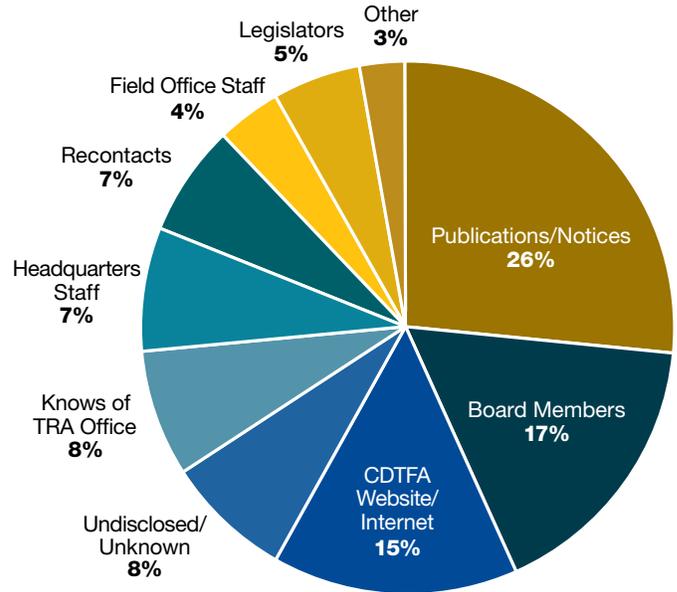
**Percentage of Cases by Tax/Fee Program**



### Referrals

In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. The CDTFA publications and the BOE Board Members accounted for the largest source of referrals.<sup>4</sup>

## How Taxpayers Were Referred to the TRA Office



### Telephone Calls

The TRA Office received an average of 436 calls per month in the fiscal year 2017-18. Eleven percent of all calls resulted in new cases. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the TRA Office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the CDTFA through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the Franchise Tax Board. TRA Office staff responds by directing the caller to the appropriate CDTFA section or individual, provides information on resources such as the CDTFA website, or redirects to the appropriate state agency, with an invitation to call again if the caller is unsuccessful in making contact with the office to which they were referred.

<sup>3</sup> In the 2016-17 Annual Report, new cases represented both business taxes and property tax.

<sup>4</sup> The "Other" category consists of various types of referrals, each comprising less than two percent of the total, including other agencies, customer service center, friends and colleagues, taxpayers' representatives, outreach events, and TRA Office information printed on permits.

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# BUSINESS TAXES ISSUES

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## CASE RESOLUTION

The Taxpayers' Rights Advocate (TRA) Office's cases consist of businesses and individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the California Department of Tax and Fee Administration (CDTFA). All of these tax and fee programs are collectively referred to in this publication as "business taxes." A primary goal of the TRA Office is to ensure that taxpayers contacting the office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. Because the Advocate and his staff have extensive knowledge of CDTFA programs, policies, and procedures, they are able to advise taxpayers of their rights and obligations, explain the tax law and CDTFA's policies, and seek out creative and appropriate solutions that are acceptable to taxpayers and CDTFA staff. The TRA Office's independent status allows it to focus on assisting taxpayers within the framework of the law with the cooperation of CDTFA management and staff.

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

### About the Business Taxes Case Statistics

During fiscal year 2017-18, the TRA Office recorded 824 new business taxes cases.

#### *Outcome of business taxes cases*

Appendix 2 provides important information about the business taxes cases, categorized by location. A specific CDTFA field or Headquarters office or Other Government Agency was designated as the location for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "Other" was normally designated as the location in cases where individuals wanted general information; or cases where the office was not disclosed. The TRA Office tracked broad case types (see below) and critical outcomes of the cases.

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

Customer service concerns are categorized as:

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

Four percent of all cases this year expressed concerns related to customer service. The customer service statistics were captured based solely on the taxpayers' statements of their impressions of their situations. Therefore, these statistics do not necessarily indicate verified problems, but reflect the taxpayer's perception. Please see Appendix 2 and Appendix 3 for more information.

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

Occasionally, the TRA Office disagrees with one or more aspects of how CDTFA staff handled a case. These instances typically comprise a small percentage of the business taxes cases – less than one percent in fiscal year 2017-18 (see [Appendix 2](#)). A case is recorded as “disagreed with case handling” only when the TRA Office finds that:

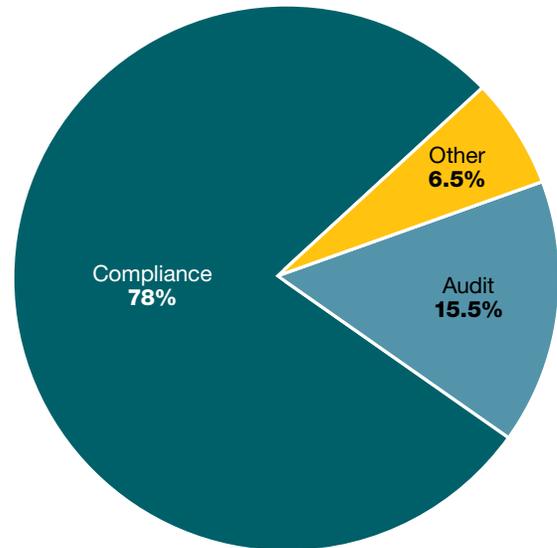
- Staff did not adhere to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- Staff caused unreasonable delays; or
- Staff violated the taxpayer’s rights.

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

### ***Taxpayer inquiries cover a wide range of issues***

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

### **Types of Business Taxes Cases**



### **Specific Issues Leading to TRA Office Contacts.**

Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 3](#).

Not surprisingly, many of the business taxes cases include the need for general information and guidance. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by CDTFA staff was appropriate and in compliance with the law and CDTFA policy.

### **Examples of Business Taxes Cases**

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

***Billings should not be issued by compliance staff in situations that may warrant an audit Issue.*** The taxpayer’s power of attorney (POA) contacted the TRA Office because his client was issued a Notice of Determination (billing) prior to an audit. The billing was issued by compliance staff in the CDTFA’s Return Analysis Unit (RAU) who reviewed the taxpayer’s return and noticed the taxpayer’s deduction for nontaxable sales of food products. Staff believed that the deduction

was too high. Although the taxpayer provided documentation, staff disallowed the deduction and issued a billing. Because staff did not have evidence to support the billing, the POA believed the billing was erroneous and that an audit should have been conducted to determine the taxpayer's taxable sales.

**Resolution.** The TRA Office questioned the reason why the entire deduction was disallowed. The taxpayer's business is a bakery/restaurant. According to the taxpayer, most of her sales were cold food to-go, which is typically nontaxable. Furthermore, it is more likely than not that this taxpayer would have a deduction for nontaxable sales of food products. However, staff disallowed the entire deduction without any evidence and without the benefit of an audit.

Regulation 1698.5 (b)(1) provides:

*The purpose of an audit is to efficiently determine whether or not the amount of tax has been reported correctly based on relevant tax statutes, regulations, and case law.*

Without an audit, there would be no means to determine if the correct amount of tax had been reported. Standard audit procedures such as an observation test would have allowed an auditor to evaluate the taxpayer's taxable sales vs. nontaxable sales.

In this case, a billing was issued in the absence of an examination of the taxpayer's financial records. The TRA Office brought this to the attention of the applicable supervisor in RAU, with a recommendation to refer the matter to the field office as an audit lead. However, the supervisor agreed with the TRA Office and the billing was canceled.

**Summary – Services Provided.** One of the functions of the TRA Office is to ensure CDTFA policies and procedures are being followed by staff. In this case, the TRA Office's intervention quickly resolved the issue which resulted in the billing being canceled.

***Tax does not apply to the sale of tangible personal property used in an activity that does not require a seller's permit***

**Issue.** A taxpayer sold his animal clinic along with fixtures and veterinary equipment. During

a close-out audit, the taxpayer was assessed tax on the sale of veterinary equipment. The taxpayer disagreed. The taxpayer did his own research on the law and consulted with attorneys and Certified Public Accounts (CPAs) involved in veterinary services who agreed that the veterinary equipment was not taxable in this situation. He brought his findings to the audit supervisor, but to no avail. The taxpayer had hoped to solve this during the audit rather than go through a lengthy appeal. He contacted a Board Member from the Board of Equalization who referred him to the TRA Office for assistance.

**Resolution.** The TRA Office examined the nature of the taxpayer's business. The taxpayer's business activities included both sales of tangible personal property and services. As a veterinarian, the majority of his business was service based and therefore not taxable. In this situation, the veterinary equipment the taxpayer sold was used exclusively in non-taxable activities. In addition, the sale of the veterinary equipment was an occasional sale.

Regulation 1595 (a)(1) provides, in part:

*Tax does not apply to a sale of property held or used in the course of an activity not requiring the holding of a seller's permit unless the sale is one of a series of sales sufficient in number, scope and character to constitute an activity for which the seller is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state.*

Accordingly, tax only applies to the gross receipts from the sale of tangible personal property held or used in the selling activity for which a seller's permit is required, as long as it is not considered an occasional sale. The TRA Office reached out to the Audit Principal with their findings. Subsequently, the taxable measure for fixtures and equipment was adjusted from \$150,000 to \$1,000.

**Summary – Services Provided.** The TRA Office's knowledge of the Sales and Use Tax Law can be instrumental in resolving the taxpayer's issues. In this case, because of TRA's involvement, the taxpayer's audit was adjusted before a Notice of Determination was issued. Furthermore, because the issue was resolved during the audit, the taxpayer did not have to file a Petition for Redetermination and was spared a potentially time consuming tax appeal.

***Documents in the CDTFA's possession indicated that the taxpayer qualified for an interstate and foreign commerce exemption***

**Background.** Use tax generally applies to purchases made outside of California of trucks and trailers by California residents if the truck or trailer is purchased for use in California. However, if the truck or trailer was used primarily in interstate or foreign commerce, it may qualify for an exemption from use tax. For a truck or trailer to qualify for the interstate and foreign commerce exemption, a taxpayer must:

- Take delivery of the truck or trailer outside of California;
- First functionally use the truck or trailer outside of California; and
- One-half or more of the miles traveled by the truck or trailer must be commercial miles traveled in interstate or foreign commerce during the six-month period immediately following the truck or trailer's first entry into California.

"First functional use" for a truck or trailer occurs when the vehicle first hauls cargo or is first dispatched to pick up a specific load of cargo. First functional use occurs outside of California when:

- The first load of cargo is picked up outside of California, or
- A contract is in place prior to the truck or trailer's first entry into this state to pick up a specific load in California.

Taxpayers must also provide the following documentation to support that the truck or trailer was used in interstate or foreign commerce:

- A purchase contract.
- If the purchase was from a California dealer, a copy of a completed [CDTFA-448, Statement of Delivery Outside California](#).
- A load confirmation, bill of lading, or other similar document verifying the truck or trailer was first functionally used outside of California.
- Bills of lading and driver logs, fuel receipts, and other similar documents verifying the location and use of the truck or trailer and the origin and destination of each load from the date of out-of-state delivery until the vehicle first enters California and for the next six months.

**Issue.** In two cases, taxpayers contacted the TRA Office regarding levies that were issued on a use tax liability. In each case, the liability was a result of a truck purchased by the taxpayer that should have qualified for the interstate and foreign commerce exemption.

**Case #1.** In 2015, a taxpayer submitted original documents to the CDTFA to prove the transaction qualified for the exemption. However, those documents had been misplaced and now he was expected to pay the liability. A levy captured funds which partially satisfied the liability.

After the records could not be located in Headquarters, the TRA Office reached out to the Principal Compliance Supervisor in the field office who found the records. Those records included documents showing the new truck was delivered outside of California, bill of lading, fuel receipts, and International Fuel Tax Agreement (IFTA) documents. The documentation was sufficient to demonstrate that the taxpayer qualified for the interstate and foreign commerce exemption. The taxpayer received a refund and a free release of lien.

**Case #2.** The taxpayer purchased two trucks in Nevada. Evidence provided by the taxpayer supported his assertion that the vehicles in question were used in interstate and foreign commerce. The taxpayer took delivery of the trucks in Nevada and then drove the trucks into California to pick up loads for delivery in Pennsylvania. Staff originally denied the exemption because the first load was not picked up outside of California. However, TRA staff brought to the attention of management that the taxpayer had a contract in place, prior to the trucks' first entry into California, to pick up specific loads that constituted interstate commerce. Annotation 325.0013.200 provides, in part: "If such vehicle or vessel is deadheaded into California, the first functional use will be in California unless the vehicle or vessel is brought into California to fulfill an existing lease or charter, or to pick up a specific load of cargo or group of passengers."

**Summary – Services Provided.** The TRA Office is committed to helping taxpayers when they cannot resolve problems through normal channels. In the first case, the exemption was granted because of the TRA Office's persistence in tracking down the taxpayer's records. In the

second case, the TRA Office's knowledge of the law was instrumental in obtaining the exemption for the taxpayer. In both cases, the TRA Office continued to stay involved until refunds were issued and liens were released.

## ISSUE RESOLUTION

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws to improve and ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights meetings, suggestions received from CDTFA staff, and issues identified by TRA Office staff, recommendations are presented to CDTFA management for evaluation. The TRA Office then works with CDTFA staff in the development and implementation of policy, procedure, or law changes to address any identified areas of concern.

### Accomplishments—Changes Implemented, Concerns Resolved

The following changes to business taxes laws, policies, and procedures; or improvements to the training and education provided to CDTFA staff and the public were accomplished this past year.

#### **Legal opinion clarifies that a foreign purchase does not have to be first functionally used outside of California for 90 days to be exempt from use tax**

**Background.** When tangible personal property such as artwork, antiques, furniture, jewelry, etc., is purchased outside of California and brought into California for storage, use, or other consumption, use tax applies. However, when the property is first "functionally" used outside of California and then used in excess of 90 days outside of California it is generally not subject to use tax.

Regulation 1620(b)(3) provides in part:

*For purposes of this regulation, "functional use" means use for the purposes for which the property was designed. Except as provided in subdivision (b)(5) of this regulation, when property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought*

*into California within 90 days after its purchase, unless the property is used, stored, or both used and stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Except as provided in subdivision (b)(5) of this regulation, prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.*

"Use" as defined in Revenue and Taxation Code 6009, *includes the exercise of any right or power over tangible personal property incident to the ownership of that property.*

**Issue.** The Taxpayers' Rights Advocate was contacted by the representative of a California resident who received a letter from the CDTFA's Use Tax Administration Section (UTAS). The letter was in reference to use tax on a dinosaur skull their client had purchased six years prior to bringing the skull into California.

The TRA manager contacted the UTAS supervisor about the letter and was told that UTAS believed that the transaction was taxable even six years after the purchase because the incident that made the transaction taxable occurred when the skull entered California in April of 2014. They believed this was true even though the skull was out of state for six years because it had not been "functionally" used for 90 days prior to entry into California and cited Sales and Use Tax Regulation 1620(b)(3). The TRA Office disagreed with their interpretation of the regulation. The TRA Office believed that as long as the skull was first "functionally" used outside of California and then used outside of California for more than of 90 days, the skull was not purchased for use in this state.

**Resolution.** The TRA Office met with UTAS staff and ultimately agreed that an opinion from the CDTFA Legal Division was needed. The legal

opinion stated that the skull was not taxable as it had been first “functionally” used outside of California and had remained outside of California for more than 90 days. There was no requirement in the regulation that the item must be “functionally” used for 90 days prior to entering California. Any use, exclusive of time of shipment to California or time of storage for shipment to California, is included.

**Summary.** In this case, the TRA Office was able to work with another division to resolve an issue and avoid the need for the taxpayer to be billed and go through the appeals process, which possibly could have been very costly.

### ***The Advocate has the authority to determine if a hardship exists***

**Background.** A financial hardship is the inability of the taxpayer to provide the necessities of life such as rent or mortgage, utilities, food, transportation, and health care. Taxpayers claiming a financial hardship should be assisted immediately in case the levy or notice to withhold threatens the health or welfare of the taxpayer or the taxpayer’s family and needs to be modified.

When a taxpayer requests a hardship review, the initial review is completed by CDTFA compliance staff per Compliance Policy and Procedure Manual (CPPM) section 753.259. The taxpayer is required to disclose their financial condition by providing supporting documentation. Staff should concentrate on the taxpayer’s immediate situation when reviewing the taxpayer’s financial information. It is not necessary to request months of financial documents.

Although compliance staff has the initial review, anytime there is a disagreement between the taxpayer and staff, staff must prepare a report and notify the TRA Office per CPPM section 155.022, which contains the procedures for implementing Revenue and Taxation Code (RTC) section 7094.

RTC section 7094 provides in part:

*7094(b)(1)(A). The Taxpayers’ Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300)*

*of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.*

**Issue.** The TRA Office had a number of cases in which staff did not follow policy and procedure regarding hardship reviews. In these cases, staff had:

- Requested unnecessary financial documents;
- Prolonged the review process; or
- Not notified or submitted a report to the TRA Office when there is a disagreement between the taxpayer and staff.

**Resolution.** The TRA Office brought this concern to the attention of Business Tax and Fee Division (BTFD) staff. As a result, guidance has been issued to staff reminding them of the provisions of RTC section 7094 and to follow the procedures outlined in CDTFA’s policy regarding hardship reviews.

### ***Guidance provided to staff when collection activity was the result of a policy violation***

**Issue.** The CDTFA is authorized to take collection action on past due liabilities such as levying a bank account, wages, or other income or seizing and selling assets. Anytime staff takes collection action, staff must follow policy and procedure to ensure that the law is followed, and taxpayers’ rights are not violated. If policy and procedure are not followed, wrongful collection action can take place which may cause an undue burden on the person.

The TRA Office believes that anytime staff fails to follow policy and procedure when taking collection action such as issuing a levy, the levy should be immediately released. For example, staff sent a levy with an attached spousal affidavit to reach any community interest of the taxpayer in a spouse’s account. However, it was never established that the funds were community property.

CPPM 753.220 provides in part:

*Before staff sends a levy for community property, a thorough investigation must be done to determine whether the funds of the non-debtor spouse or registered domestic partner are community property.*

In this situation, the levy should have been immediately released once the TRA Office

brought this policy violation to the attention of the field office. Instead, the return of the funds was delayed because the burden of proof was placed on a non-liable former spouse to prove that her funds were not subject to the levy.

**Resolution.** The TRA Office worked with the BTFD to address this issue. Subsequently, guidance has been provided to staff to remind them that it is not always appropriate to require documentation to secure a release of levy when collection action is in violation of CDTFA policy.

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

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

*7083(a). . . The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. . . .*

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

*7094(b)(1)(A). The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.*

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

**Issue.** For the most part, when a taxpayer cannot resolve a disagreement over the terms

of a payment plan or an earnings withholding order and turns to the TRA Office for assistance, the TRA Office is able to work with both parties and bring about a mutually agreeable resolution. However, on occasion, there is a difference of opinion between the TRA Office and collection staff regarding the need to adjust the terms of the agreement or the order to avoid subjecting the taxpayer to a hardship.

**Work in process.** In November 2015, the Advocate proposed to BTFD management, as a logical extension of the authorities granted to the Advocate by RTC sections 7083 and 7094, a revision to policy allowing the TRA Office to be the final arbiter of disputes about the terms of payment plans or earnings withholding orders when the taxpayer claims a hardship. After discussing the Advocate's proposed change with senior management, it was agreed that the first attempt to resolve a dispute should rest with the Field Operations Division (FOD) Deputy Director. This process will provide senior management with an opportunity to come up with a mutually agreeable resolution in order to address the Advocate and taxpayer's concerns. If an agreeable resolution cannot be reached with the FOD Deputy Director, the Advocate will elevate a formal recommendation to the CDTFA Director for a final decision. In addition, the Advocate plans to work with the BTFD and the FOD on the necessary policy to ensure this process is memorialized.

### **Work in Process – Issues Identified**

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

#### ***Policy and procedure updates are needed regarding out-of-state levies***

**Background.** A levy is an effective collection tool when used properly. It is a legal action used to seize a taxpayer's property controlled by the taxpayer or a third party to satisfy a tax debt. It is usually served on financial institutions. The CDTFA does not need a court order to send levies to financial institutions or third parties located in California. However, a levy should not be sent to financial institutions when the taxpayer is located out-of-state except in certain circumstances.

*CPPM 753.205 states in part:*

*When an out-of-state financial institution has no in-state branches or offices and no designated central levy processing center, a levy can be sent to the financial institution's agent for service of process if:*

- 1. The taxpayer resides in California, or*
- 2. There is evidence to support the taxpayer is withdrawing and depositing funds from ATMs or point-of-sale locations within California.*

*Unless the CDTFA has successfully pursued a judgement in another state, a levy should not be used to access funds from an out-of-state maintained account if the taxpayer resides outside California.*

**Issue.** A notice of levy should not be sent to capture funds held in an out-of-state maintained bank account unless the CDTFA has successfully pursued a judgement in another state. Because staff has been sending levies to taxpayers who reside out-of-state and have no assets in California, the TRA Office identified the need for clarification on procedures regarding out-of-state levies. In these situations, staff sent the levy because the bank has branches in California or the taxpayer had originally opened the bank account in California. However, the underlying factor on whether or not staff can send a levy depends on the taxpayer's situation and not that of the bank. If the taxpayer does not live in California, does not have assets in California, and does no business in California, a levy should not be sent on out-of-state maintained accounts. If collections are to be pursued, a referral to the Attorney General is needed.

**Work in process.** The Taxpayers' Rights Advocate has a responsibility to make sure policies and procedures are clear, so staff can take the correct actions in the performance of their duties while observing taxpayers' rights. The TRA Office has been working with BTFD staff to revise policy and provide guidance to staff on the procedures for sending out-of-state levies.

### **Concerns regarding the implementation of CDTFA's Centralized Revenue Opportunity System (CROS)**

**Background.** On May 7, 2018, the CDTFA implemented rollout 2 of its new Centralized Revenue Opportunity System (CROS). CROS will

replace and modernize the existing computer and information systems by improving online services for customers and enhancing internal processes such as automating liens and levies. Before implementing CROS, steps were taken to provide a smooth and effortless transition. Staff was trained and the public was notified and given instructions on how to access their accounts.

**Issue.** The TRA Office's main goal is to protect the rights of taxpayers. With the implementation of CROS, one of TRA's concerns is the automation of liens and levies. The TRA Office believes that the issuance of liens and levies, without direct involvement by staff, has the potential of greatly infringing upon taxpayers' rights. According to CDTFA policy, personal contact with taxpayers should be utilized by staff before employing active collection procedures such as liens or levies. This priority is also expressed in the Taxpayers' Bill of Rights. RTC section 7081 and equivalent Special Taxes statutes provide, in part, that it is the intent of the legislature to promote enhanced voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws. Section 7081 and its counterparts also state that taxpayers should be given every opportunity to present all relevant information pertaining to their liability. Contacting taxpayers allows the CDTFA representative to explain the nature of the liability, provide options, such as a payment arrangement, and answer any questions the taxpayer may have. If staff is not involved in making decisions regarding these collection actions, taxpayers will be deprived of their opportunity to resolve any issues prior to collections.

Another goal of the TRA Office is to identify issues that cause unnecessary burdens to taxpayers as they attempt to comply with the tax laws. Since the implementation of CROS, taxpayers have been contacting the TRA Office to voice their concerns about CROS. Many are having issues such as accessing account information, filing and paying returns, and receiving timely refunds. Although CDTFA staff is working diligently to address these problems, the TRA Office will continue to assist these taxpayers and identify any additional problems associated with CROS.

**Work in process.** The TRA Office brought its concerns to CDTFA management's attention. The BTFD is reviewing the potential problems associated with the automated collection actions such as liens and levies, and at this time, these automated processes have not been implemented. Furthermore, as a result of the growing concerns from taxpayers, the TRA Office will continue to monitor CROS and offer assistance to CDTFA management in developing strategies that will ensure that taxpayers' rights are protected and that they can comply with tax laws.

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

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

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

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

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

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

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

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

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

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

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

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

### **Work in Process**

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

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

**Issue.** In fiscal year 2010-11, the Sales and Use Tax Department (now BTFD) developed a standard report (letter) to be provided to individuals proposed to be held personally liable for a business' tax liability under RTC section 6829. The letter explains the basis of the proposed billing and how requirements for personal responsibility are deemed met. The CDTFA-1515, *Notice of Proposed Determination*, is sent to the proposed responsible person(s) 15 days prior to final review and billing. The CDTFA-1515 outlines the basis for holding the person personally liable under RTC section 6829, explains their appeal rights, advises them to respond within 15 days if they disagree, and explains that they may obtain copies of documentation relied on by staff to determine the person's liability.

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

**Work in Progress.** The TRA Office continues to work with the BTFD on proposals for additional notification letters on dual determinations, and drafted a proposed letter to successors for consideration. In addition, the TRA Office has met with the Special Operations Branch in the Legal Division, regarding the impact of new letters and procedures on its review and billing operations for the dual determinations.

### ***Amendments to RTC section 7094 et al to restore the Advocate's authority***

**Background.** The CDTFA is authorized to issue levies to collect delinquent amounts. Prior to January 1, 2016, Sales and Use Tax Law (RTC section 7094) and most of the special taxes and

fees laws authorized the Advocate to release a levy or notice to withhold (levy) or order the return of up to \$1,500 to the taxpayer within 90 days of receiving levied funds, if the levy threatens the health or welfare of the taxpayer or taxpayer's family. The provision allowing the return of levied funds up to \$1,500 was added to these laws in 1995. In early 2015, the Advocate identified the issue that the \$1,500 limit the advocate is authorized to return to the taxpayer to help cover basic living expenses has not been adjusted in 20 years, regardless of the effect of inflation. The Advocate suggested an amendment to RTC section 7094 and equivalent special taxes statutes to address this issue.

Working closely together, the Advocate and the Legislation Bureau assisted the Legislature in its consideration of Assembly Bill (AB) 1277.

The CDTFA's predecessor agency, Board of Equalization sponsored this bill. AB 1277 provided, amongst others, for an increase in the amount of levied funds the Advocate is permitted to return to a taxpayer upon a finding of a health or welfare threat from \$1,500 to \$2,300.

**Issue.** AB 1277 contained a drafting error that limits the Advocate's authority to *release* the full amount of a levy or notice of withhold. Under the new law the Advocate's authority to *release* a levy was inadvertently limited to \$2,300 when the only purpose to amend the statute was to increase the amount the Advocate was allowed to *return* in hardship cases. Since 1992, with the enactment of the Katz-Harris California Taxpayers' Bill of Rights, the Advocate has had authority to *release* without limit a levy that threatens the health or welfare of the taxpayer or the taxpayer's family.

**Work in Progress.** The Advocate, and again in collaboration with the Legislation Bureau, suggested legislation to amend RTC section 7094 and equivalent special taxes statutes to restore the Advocate's authority to release a levy in its entirety, while maintaining language that limits a levy return to \$2,300. This amendment will achieve consistency with similar authority in other taxing agencies, for example, the Franchise Tax Board, and will provide flexibility to address taxpayer hardship without relieving the taxpayer of liability.<sup>5</sup>

<sup>5</sup> SB 1507 was signed by the Governor on August 20, 2018, restoring the Advocate's authority to release a levy in its entirety.

# TAX APPEALS ASSISTANCE PROGRAM

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## ABOUT THE PROGRAM

The Tax Appeals Assistance Program (TAAP) was created by the Taxpayers' Rights Advocate to provide low-income and underrepresented taxpayers who have filed an appeal with the CDTFA or disagree with a final decision made by the Franchise Tax Board (FTB) the opportunity to seek free legal assistance. TAAP provides assistance through the appeals process up to and including a hearing before the Office of Tax Appeals (OTA). Supervised by CDTFA tax attorneys, law students advise qualifying individuals with appeals under \$30,000.<sup>6</sup>

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

### Franchise and Personal Income Tax Appeals

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

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

### Business Taxes Appeals

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

- Use tax billings;
- Cigarette and Tobacco Products Licensing Act violations;
- Dual determinations;
- Cigarette internet purchases;
- Underground Storage Tank Maintenance Fee;
- Environmental Fee;
- Generator Fee;
- Successor liability; or
- Use tax billings resulting from U.S. Customs leads.

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

## CASE RESOLUTION

During fiscal year 2017-18, 601 individuals and businesses were informed about the program, 209 new cases were accepted, and 105 cases were resolved.

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

- Educate and assist taxpayers in voluntarily complying with California's tax laws while minimizing their tax compliance burden;
- Enhance the preparation and quality of the appeals going to the OTA;
- Provide taxpayer representation that promotes and achieves more efficient and cost-effective resolution of taxpayer petitions.

<sup>6</sup> As of January 1, 2019, franchise and income tax appeals will no longer be a part of CDTFA's TAAP program and will be transferred to FTB.

## Example of Tax Appeals Assistance Program Case

The case listed below demonstrates the services provided by TAAP.

*TAAP representative helped taxpayer understand the Cigarette and Tobacco Products License Act requirements*

The Cigarette and Tobacco Products Licensing Act of 2003 (CTPLA) authorizes the CDTFA to inspect any location where cigarettes or tobacco products are sold, produced, or stored, or any site where there is evidence of tax evasion related to cigarette or tobacco products or non-compliance with the Master Settlement Agreement.

As a holder of a cigarette and tobacco retailer's license, the retailer must:

- Conspicuously display the cigarette and tobacco retailer's license at each retail location so that it is visible to the public.
- Keep complete and legible cigarette and tobacco products invoices at each licensed location for at least one year after the date of purchase. The invoices must be kept at the same location as the inventory.
- Keep purchase invoices for cigarettes and tobacco products for four years.
- Allow CDTFA staff or law enforcement officers to review cigarette and tobacco products purchase invoices upon request.
- Purchase and sell only those cigarettes and roll-your-own tobacco authorized for sale in California as listed on the Office of the Attorney General's California Tobacco Directory.

**Issue.** The petitioner is a retailer of cigarettes and tobacco products. An inspection conducted by the CDTFA found the retailer was in violation of the CTPLA because he failed to have the required one year of cigarette and tobacco product purchase invoices at his retail location. As a result, the retailer was issued a civil citation under Business and Professions Code section 22974 and faced a 20-day suspension of his license. The retailer filed a petition, appealing the 20-day suspension of his license and requested assistance from TAAP.

**Resolution.** In this case, the retailer did not speak English. The language barrier contributed to his violation because he did not understand the law. A law student intern, who was fluent in the retailer's language, was assigned to help him. The intern explained to the retailer the requirements of the CTPLA in his own language. Once he understood his mistake, he felt confident that he could now comply with the law. In addition, the intern informed the retailer of the many sources of assistance that the CDTFA provides such as classes, events, and additional information available on the website. The intern represented the retailer at the appeals conference. During the appeals conference, the intern explained the taxpayer's misunderstanding of the law and that he would now be in compliance. As a result, the 20-day suspension was reduced to zero days.

**Summary – Services Provided.** In this case, because the law student intern was able to speak with the retailer in his own language, she was able to help the retailer understand the law so he will be in compliance going forward. In addition, the law student intern was successful in removing the 20-day suspension.

# APPENDIX 1

## THE HARRIS-KATZ CALIFORNIA TAXPAYERS' BILL OF RIGHTS

(Revenue and Taxation Code Sections)

**7080. Title.** This article shall be known and may be cited as “The Harris-Katz California Taxpayers’ Bill of Rights.”

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

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

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

**7082. Administration.** The board<sup>7</sup> shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

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

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

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

- (1) Taxpayers newly registered with the board.
- (2) Taxpayer or industry groups identified in the annual report described in Section 7085.
- (3) Board audit and compliance staff.

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

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

<sup>7</sup> Assembly Bill 102, Section 15680: SEC 20 (a) Except as otherwise provided in subdivisions (b) and (c), and notwithstanding any other law, “board” means the California Department of Tax and Fee Administration.

- (2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.
- (3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.
- (4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.
- (5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

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

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

- (b) As part of the identification process described in subdivision (a), the board shall do both of the following:
- (1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:
    - (A) The statute or regulation violated by the taxpayer.
    - (B) The amount of tax involved.
    - (C) The industry or business engaged in by the taxpayer.
    - (D) The number of years covered in the audit period.
    - (E) Whether or not professional tax preparation assistance was utilized by the taxpayer.
    - (F) Whether sales and use tax returns were filed by the taxpayer.
  - (2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

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

- (1) Changes in statute or board regulations.
- (2) Improvement of training of board personnel.
- (3) Improvement of taxpayer communication and education.

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

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

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.

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

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

**7088. Evaluation of employee's contact with taxpayers. (a)** The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(e)** For the purposes of this section:

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

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

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

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

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

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

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

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

(2) The total amount in dispute.

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

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

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

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

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

**(e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

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

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

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

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

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

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

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

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

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

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

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

(1) The taxpayer shall establish that:

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

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

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

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

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

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

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

(1) The name of the taxpayer.

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

(3) The amount offered.

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

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

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

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

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

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

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

**(j)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

- (1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.
- (2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

**(k)** For purposes of this section, “person” means the taxpayer, a member of the taxpayer’s family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

**(l)** This section shall become operative on January 1, 2018.

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

**(b) (1) (A)** The Taxpayers’ Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

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

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

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

- (i) On or before March 1, 2016, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).
- (ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

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

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

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy assessment.

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

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

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

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

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

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

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

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

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

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

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

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

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

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

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

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs, as defined for purposes of Section 7156.

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

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

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

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

(3) For purposes of this section:

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

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

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

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

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

## APPENDIX 2

### OUTCOME OF BUSINESS TAXES CASES

Location	Types of Cases			Total Cases	Customer Service Concerns	Disagreed with Case Handling <sup>1</sup>	Case Handling Changed <sup>2</sup>
	Audit	Compliance	Other				
Appeals & Data Analysis Branch	0	2	0	2	0	0	0
Appeals Bureau	4	2	0	6	0	0	2
Audit Determination and Refund Section	8	7	0	15	1	0	1
Bakersfield Office	5	7	1	13	0	0	5
Cerritos Office	5	16	1	22	2	0	9
Consumer Use Tax Section	0	4	1	5	0	0	0
Culver City Office	4	33	0	37	2	0	9
Customer Service Center	1	19	0	20	2	0	0
El Centro Office	0	3	0	3	0	0	1
Fairfield Office	0	5	2	7	0	0	1
Fresno Office	5	26	0	31	1	0	7
Glendale Office	7	23	0	30	4	1	11
Investigations (Cigarette/Tobacco)	0	1	0	1	0	0	0
Irvine Office	4	27	2	33	2	0	9
Motor Carrier Office	0	1	0	1	0	0	0
Oakland Office	7	20	2	29	1	1	9
Offer in Compromise Section	0	10	0	10	0	0	1
Other <sup>3</sup>	4	30	16	50	1	0	2
Other Government Agencies	2	36	2	40	1	0	1
Out-of-State Offices	5	13	1	19	0	0	0
Petitions Section	3	2	0	5	0	0	4
Program and Compliance Bureau	1	46	5	52	0	0	8
Rancho Cucamonga Office	4	16	0	20	1	0	7
Rancho Mirage Office	3	4	0	7	0	0	2
Redding Office	3	2	1	6	0	0	1
Return Analysis Unit	0	5	0	5	1	0	2
Riverside Office	9	30	4	43	5	0	10
Sacramento Office	9	45	4	58	1	0	12
Salinas Office	4	10	1	15	0	0	5
San Diego Office	7	34	1	42	1	1	14
San Francisco Office	5	24	0	29	4	0	2
San Jose Office	4	24	2	30	0	0	6
Santa Clarita Office	2	20	1	23	1	0	4
Santa Rosa Office	2	12	3	17	0	0	5
Settlement & Taxpayer Services Bureau	3	5	0	8	0	0	1
Special Operations Branch	0	3	0	3	0	0	1
Statewide Compliance and Outreach Program	0	1	0	1	0	0	0
Tax Policy Bureau	0	2	0	2	0	0	0
Use Tax Administration Section	1	58	2	61	2	0	22
Ventura Office	3	7	0	10	2	0	1
West Covina Office	4	8	1	13	1	0	2
<b>Total</b>	<b>128</b>	<b>643</b>	<b>53</b>	<b>824</b>	<b>36</b>	<b>3</b>	<b>177</b>

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

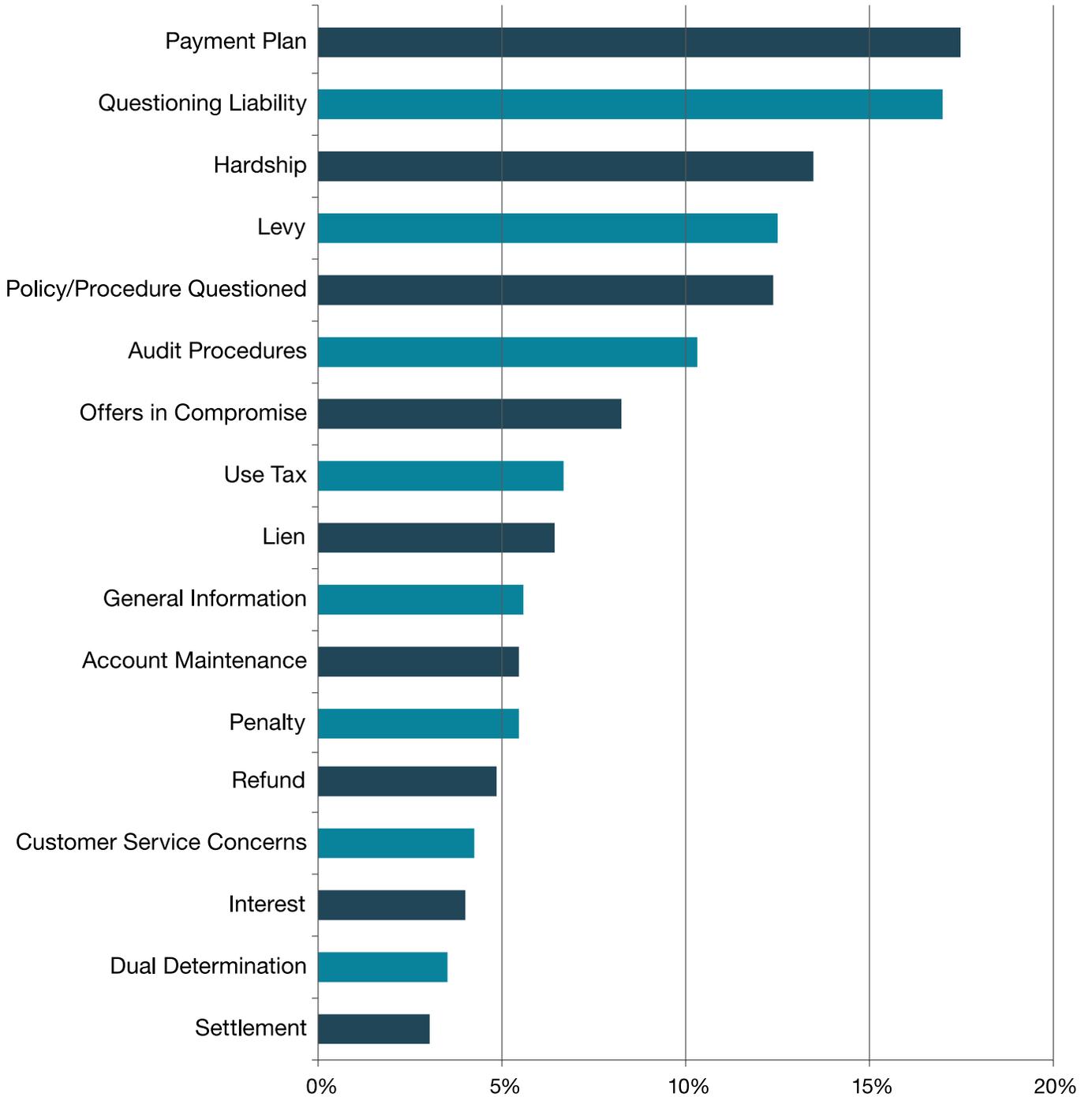
<sup>1</sup> In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate senior management and division manager detailing cases in which the TRA Office disagreed with how CDTFA staff handled the case. See the Business Taxes Issues Chapter for additional information on Disagreed with Case Handling.

<sup>2</sup> Involvement by the TRA Office resulted in a change to the outcome of a case. See the Business Taxes Issues Chapter for additional information.

<sup>3</sup> The category of "Other" under "Location" includes cases that have no particular issue of origin—for example, contacts from the public asking questions about how tax applies or requesting general information; or cases where the office was not disclosed.

# APPENDIX 3

## MOST COMMON ISSUES IN BUSINESS TAXES CASES



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

# TAXPAYERS' RIGHTS ADVOCATE OFFICE CONTACT INFORMATION

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