

M e m o r a n d u m**465.0530****To :** Mr. Gary J. Jugum**Date:** January 7, 1993**From :** Donald Fillman**Subject: Written Notice of Board Action Pursuant to
Revenue and Taxation Code Section 6486**

This memorandum is in response to a question raised at a recent Board meeting by a taxpayer's agent concerning the requirements for giving proper notice of Board actions.

The portion of the Revenue and Taxation Code which deals with sales and use taxes has numerous sections requiring notices of various kinds. This memo is restricted to section 6486, and those other sections which require notice to be given in the same manner as prescribed in section 6486.

This master section reads as follows:

“6486. Notice of determination. The board shall give to the retailer or person storing, using, or consuming tangible personal property written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering it to the person to be served and service is complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.”

The literal reading of this section (that notice need only be given to the retailer) was upheld by the court of appeal in *Pacific Gas and Electric Company v. State Board of Equalization* (1955) 134 Cal.App.2d 149. The Board, in *PG&E*, issued its notice of denial of claim under section 6906 which requires notification as specified in section 6486. The notice was sent only to the taxpayer, who did not, in turn, notify his attorney. The attorney claimed that notice should have been sent directly to him once papers were filed with the Board showing him as the attorney of record and containing his separate office address. He cited Code of Civil Procedure section 1015, which does require such procedure in normal civil litigation. He also

claimed that when the Board sent an earlier piece of correspondence to his client, which showed a copy going directly to the attorney, they could rely on future documents being handled in the same manner.

The court disagreed. It held that sending the notice only to the taxpayer was in full compliance with section 6486, when the notice was mailed to the taxpayer corporation using the address appearing in the Board's records. The court held that section 6486 was a special statute which takes precedence over any conflicting general statute on the same subject, such as Code of Civil Procedure section 1015. The voluntary sending of a copy of the notice to the attorney did not change the limited duty under section 6486 to send the notice only to the taxpayer.

Several other Revenue and Taxation Code sections require service of notice in the same manner as prescribed for deficiency determinations under section 6486:

- § 6479 Notice of requirement to make prepayments.
- § 6480.5 Notice of requirement to make prepayments of sales tax on motor vehicle fuel by distributors and brokers (also allows notice to be mailed along with blank tax return forms).
- § 6480.20 Notice of requirement to make prepayments of sales tax on motor vehicle fuel by producers and importers (also allows notice to be mailed along with blank tax return forms).
- § 6515 Determination of tax when no return is filed (notice must be given "promptly").
- § 6539 Jeopardy determinations.
- § 6566 Redeterminations. Also, if the Board claims an increase, the increase must be asserted at or before the hearing.
- § 6906 Disallowance of a claim for refund (within 30 days of the disallowance).

Three other questions have also been raised. First, must the notice be an original or may it be a copy? The purpose of section 6486, and all the other sections referring to it, is to see that the taxpayer receives notice of the Board's action. There is no requirement that the document be notarized, be sent by certified mail, or comply with any other formality. The only requirements of section 6486 are that it be written, placed into a sealed envelope, with postage, and addressed to the retailer at the address in the Board's records. It is my opinion that the notice need only be in a written form that makes the taxpayer aware of the Board's action.

The next question concerned the use of a "dba." If the taxpayer gives the Board a dba, may the notice be addressed to the dba, or must correspondence be addressed to the taxpayer's corporate name? There is no reason why the notice may not be addressed to the dba provided by the taxpayer for the business which is to receive the notice. One of the purposes of a dba is to distinguish one business from another, possibly owned by the same person. When an entity chooses a dba, and follows the requirement that it be filed with the county clerk and published in a newspaper of general circulation, the purpose is to be known by that name, do business under that name, and be addressed by that name. When the taxpayer provides the Board with its chosen dba, the Board may use that dba when corresponding with the taxpayer concerning the business of that dba.

The last item concerns what action the Board must take to comply with section 6563(a). After the Board makes a determination of an amount owed, the taxpayer may petition for a redetermination under sections 6561 et seq. Section 6563(a) provides that the Board may decrease or increase the amount of the determination before it becomes final, but an increase may only be made if the Board "asserts" the claimed increase "at or before the hearing." There is no formal requirement for the "assertion." If the taxpayer requests an oral hearing, the Board may first "assert" an increase at the hearing in any manner which will notify the taxpayer, including an oral announcement.

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