

Compliance Policy and Procedures Manual

Chapter 9

Miscellaneous

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

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

COMPLIANCE POLICY AND PROCEDURES MANUAL

MISCELLANEOUS
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MISCELLANEOUS**900.000****LOCAL TAXING JURISDICTION REVIEW OF BOARD RECORDS 901.000****BACKGROUND 901.010**

Revenue and Taxation Code (RTC) section 7056(b) allows authorized officers, employees, and designated persons of jurisdictions imposing taxes under the Uniform Local Sales and Use Tax Law (RTC section 7200, et seq.) and jurisdictions imposing taxes under the Transactions and Use Tax Law (RTC section 7251, et seq.) (commonly known as “district taxes”) to view the confidential records of the Board of Equalization (BOE) pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdictions they represent. For an authorized officer, employee, or designated person to gain such access to BOE’s confidential records, the legislative body of the jurisdiction must adopt a resolution designating the representative as a person authorized to view such confidential records on the jurisdiction’s behalf. Unless the person so designated is an authorized officer or employee of the jurisdiction, the resolution must certify that the designated person has an existing contract with the jurisdiction to examine records of BOE pertaining to the ascertainment of the sales or transactions and use taxes to be collected by the BOE on the jurisdiction’s behalf. The resolution must also certify that the contract between the jurisdiction and the person designated by the resolution has met all of the following conditions:

1. Is required by the contract to disclose information contained or derived from those confidential records only to an officer or employee of the jurisdiction who is also authorized by the resolution to examine the records;
2. Is prohibited by the contract from performing consulting services for a retailer during the term of that contract; and
3. Is prohibited by the contract from retaining the information contained in or derived from the confidential records after that contract has expired.

RTC section 7056(b)(2) further provides that information obtained by examination of BOE’s records may be used only for purposes related to the collection of the local or district tax pursuant to the contract, or for purposes related to other governmental functions of the jurisdiction as set forth in the jurisdiction’s resolution.

INFORMATION SUBJECT TO DISCLOSURE

901.020

The Local Revenue Allocation Unit (LRAU) is responsible for determining whether the legislative body of a local jurisdiction has adopted a valid resolution authorizing an officer, employee, or designated person to view confidential taxpayer records pursuant to RTC section 7056. A duly authorized officer, employee or designated person of a local jurisdiction may only examine all of the sales or transactions and use tax records of the BOE pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the county, city and county, city, or district that person represents. This means the duly authorized officer, employee or designated person of a county, city and county, or city will be given access to file information for (1) taxpayers with retail sales locations within the boundaries of the jurisdiction, (2) taxpayers whose local tax was allocated to the jurisdiction by BOE, (3) taxpayers reporting tax to that jurisdiction's countywide pool, and (4) taxpayers reporting tax to the statewide pool. A county, city and county, or city is entitled to information from the countywide and statewide pools because the jurisdiction shares in those taxes. For example, a duly authorized officer, employee, or designated person of the City of Sacramento shall be given access to file information for taxpayers with retail sales locations in, or local tax allocated to the City of Sacramento and may review the file of a taxpayer reporting local tax to the County of Sacramento's countywide pool and the statewide pool.

A duly authorized officer, employee, or designated person of a district shall be given access to the district tax allocation file for that district. A district with boundaries coterminous with county boundaries may obtain the countywide pool data for the county in which the district is located. Authorized officers, employees, or designated persons of a district encompassing more than one county (such as the Bay Area Rapid Transit District) may obtain the countywide pool data for each county with boundaries coterminous with that district. A district's duly authorized officer, employee, or designated person is not authorized to view statewide pool data.

Before allowing a person access to confidential taxpayer information, the Allocation Group (AG) and field offices, must verify with LRAU that a person seeking access to confidential records on behalf of a jurisdiction imposing local or district tax is authorized by a valid resolution of that jurisdiction. If the person is a designated person of the jurisdiction, the AG and field offices must also verify that the designated person has an existing contract with that jurisdiction. This verification may be done by checking the current LRAU Resolution Log or by telephone or email. If LRAU does not have a copy of the required authorizing document(s) on file, the person must provide a certified copy of such document(s), which should be faxed or scanned and emailed by AG or the field office to LRAU. LRAU will verify that the document(s) meets all the administrative criteria required to authorize the person to view confidential records. If the documents do not meet the criteria, the person must be advised that, pending receipt of the applicable document(s), access to confidential file material will be denied.

Questions regarding the validity of resolutions, contracts, or other RTC section 7056 authorization issues should be directed to LRAU.

**REQUEST TO REVIEW SALES OR TRANSACTIONS
AND USE TAX RECORDS MAINTAINED BY HEADQUARTERS**

901.030

Requests by jurisdiction representatives to review taxpayer records should be forwarded to AG for processing. AG will verify that a valid resolution and contract are on file and will order the requested files from the Taxpayer Records Unit for review. AG will then review each file to locate and remove any information not subject to disclosure prior to presenting the file to the requester for review.

The requester will be required to complete a Form BOE-755, Authorized Examination of Board Records, for each file reviewed. The completed BOE-755 should detail the specific documents reviewed, including the time period of returns or other documents. Each completed BOE-755 will then be included in the taxpayer's file.

AG will provide space for the requester's examination of files in an observable area. Upon request, AG will also make copies of file material at no charge

**REQUEST TO REVIEW SALES OR TRANSACTIONS
AND USE TAX RECORDS MAINTAINED AT A FIELD OFFICE**

901.040

Requests for records maintained at the field office should be forwarded to either the District Principal Auditor or the District Principal Compliance Supervisor, who will confirm with LRAU that a valid resolution and contract are on file. Audit or compliance staff, when contacted directly by a person seeking access to taxpayer records on a jurisdiction's behalf, will inform and consult with the District Principal Auditor or District Principal Compliance Supervisor before acting on the request.

If the request concerns the examination of a field office file and such file exists, a review of that file will be made to locate and remove any material not subject to disclosure prior to presenting the file to the requester for review. The requester will be given access only to the field office files that pertain to the ascertainment of those sales or transactions and use taxes to be collected for the jurisdiction it is determined to represent. Care will be taken to ensure that the requester is given access only to taxpayer records that pertain to the authorizing jurisdiction.

The requester will complete a BOE-755 for each file reviewed. The completed form should detail the specific documents reviewed and include the time period of tax returns and/or dates of other documents.

The field office will provide space for the examination of files by the requester in an observable area. Upon request, the field office will also make copies of file material at no charge.

The original BOE-755, completed at the field office, will be sent to the taxpayer's file maintained by headquarters. A copy of the form may be included in the taxpayer's field office file.

INFORMATION NOT SUBJECT TO DISCLOSURE**901.050**

Information not subject to disclosure includes:

1. Memoranda to or from the Legal Department marked “Confidential: Attorney — Client Privilege.” (See explanation below regarding documents incorrectly marked, or not marked, as confidential.)
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda to or from the Attorney General’s office when the Attorney General is acting as the BOE’s attorney.
4. Documents which relate to an ongoing criminal investigation.
5. Federal or state income tax returns or any item marked as Federal Tax Information.
6. Any information in the taxpayer’s file that does not pertain to that taxpayer.

Internal memoranda, other than those specified above, are normally not to be regarded as confidential unless so marked. However, some documents may not be appropriately marked as confidential. If you question whether a document has been appropriately marked as confidential, or believe that a document should be so marked, contact the author of the document, the BOE’s Disclosure Officer, or the Legal Department for guidance.

REQUEST FOR TAXPAYER RECORDS IN IRIS AND ACMS**901.060**

There are no circumstances under which a jurisdiction’s representative may be given unrestricted or unsupervised access to the IRIS or ACMS systems. In order to request records concerning specific taxpayer payments, the requester must complete a BOE-755, for each IRIS or ACMS account and specify the documents or confidential information being requested. When completed properly, BOE-755 meets the accounting requirements of the Information Practices Act, Civil Code section 1798.25.

Each BOE-755 must be verified to ensure that the requester is authorized to receive information pursuant to the Board of Equalization Administrative Manual sections 7207 – 7214 or RTC section 7056. The requestor must sign and date the BOE-755.

If a request is made, a BOE employee will access the requested information, e.g., 2QXX local tax breakdown, and print out the information for the representative as specified on the BOE-755.

PROCESS FOR REVIEWING LOCAL TAX REALLOCATION PETITIONS

905.000

Regulation 1828, Petitions for Distribution or Redistribution of Transactions and Use Tax, applies to appeals from petitions of suspected improper distributions of district tax under the Transactions and Use Tax Law. The provisions of Regulation 1828 are essentially identical to Regulation 1807; for convenience, this CPPM chapter only refers to Regulation 1807.

DEFINITIONS

905.010

Petition

A “petition” is a written request or inquiry from a jurisdiction for investigation of suspected misallocation of local tax or district tax submitted to AG, except for a submission under RTC section 6066.3. (See CPPM 905.090 for RTC section 6066.3 submissions.) The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

1. Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.
2. Taxpayer’s permit number or a notation stating “No permit number.”
3. Complete business address of the taxpayer.
4. Complete description of taxpayer’s business activity or activities.
5. Specific reasons and evidence why the taxpayer’s allocation is questioned. If the petition alleges that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or is a place of business, as defined by Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes. If the petition alleges that the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.
6. Name, title, and phone number of the contact person.
7. The tax reporting periods involved.

“Petition” also includes an appeal by a jurisdiction based on a notification from LRAU that local taxes or district taxes previously allocated to it were misallocated and will be reallocated. If LRAU has a valid resolution and contract on file authorizing a representative of the jurisdiction to view confidential taxpayer information under RTC section 7056, LRAU will also send this notification to that representative.

A jurisdiction receiving such a LRAU notification may object to that notification by submitting a written petition to the AG supervisor within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification by LRAU is considered final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from LRAU. Such a request must provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days and must be received by LRAU within 30 days of the date of mailing of its notification. Within five days of receipt of the request, LRAU will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of LRAU is further extended to the 60th day after the date of mailing of the notification of misallocation.

Substantially Affected Jurisdiction

A “substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools. How jurisdictions are identified as substantially affected based on disputed pool allocations is discussed below.

Notified Jurisdiction

A “notified jurisdiction” is a jurisdiction that has been notified as a substantially affected jurisdiction. Once a jurisdiction is properly notified as a substantially affected jurisdiction, it maintains its status as a notified jurisdiction throughout the appeals process.

Note that the reallocation period may extend to the current day if the subject taxpayer remains engaged in the same activities covered by the petition, in which case, for purposes of this calculation, the reallocation period is regarded as extending through the end of the last quarter for which a return is filed prior to the finality date of the appeal. In such circumstances, the longer the appeals process takes to resolve, the more local tax will be at issue. Thus, a jurisdiction that is not substantially affected at one point in the appeals process can later become a substantially affected jurisdiction as the petition is appealed and time passes. For example, a jurisdiction that is not substantially affected when AG issues its supplemental decision may be substantially affected, and thus notified, at the time when the Decision and Recommendation is issued. Similarly, if a hearing is timely requested, a jurisdiction that is not notified as a substantially affected jurisdiction when the oral hearing notice is issued may later become substantially affected because the oral hearing is postponed or rescheduled and thus requires notification. Further, a jurisdiction not previously notified as substantially affected, will be notified if it becomes substantially affected upon discovery of an error in the original notice, or upon granting a petition for rehearing when the notice for rehearing is issued.

For a reallocation that would be made of amounts originally allocated through a countywide pool, the calculation of whether a jurisdiction must be notified as a substantially affected jurisdiction is not based on the actual amount that was originally allocated to that jurisdiction through its countywide pool, or on the amount that may be reallocated if the ultimate decision is to reallocate funds, but rather is based on the “Pool Notification Threshold List” maintained and updated annually by LRAU. This list will be posted to the BOE’s website each calendar year as soon as it is available.

This document lists, for each jurisdiction, the amount of countywide pool funds whose reallocation would result in the loss of sufficient revenue by that jurisdiction for it to constitute a substantially affected jurisdiction. The calculation is based on the average percentage of the countywide pool the jurisdiction received for the four calendar quarters of the year prior to the year of the list (e.g., the 2011 list is based on the four calendar quarters of 2010). That percentage is then used to determine the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of \$50,000, and the specific amount of countywide pool funds whose reallocation would result in a decrease in revenue to the jurisdiction of 5 percent or more of its average quarterly allocation (also based on the four calendar quarters prior to the year of the list). The lower of these two figures is the dollar amount of pool funds whose reallocation would result in that jurisdiction’s being substantially affected, and is the amount used for that jurisdiction in establishing the Pool Notification Threshold List.

DEFINITIONS**(CONT. 2) 905.010**

The first step in determining which jurisdictions must be notified because they are substantially affected by a decision is to determine the amount of funds from the applicable countywide pool that the decision recommends be reallocated. If the amount to be reallocated is equal to or greater than the threshold amount, that jurisdiction will be substantially affected by the decision and must be notified. For example, AG issues a decision finding that a petition should be granted reallocating \$1,070,000 of County A's pool funds. AG will review the County Pool Notification Threshold List for the jurisdictions sharing in County A's pool funds. If \$1,070,000 is equal to or greater than the threshold amount reflected on the list for a jurisdiction, AG would notify that jurisdiction. Thus, a jurisdiction with a pool threshold amount of \$1,000,000 would be notified, but a jurisdiction with a pool threshold amount of \$2,000,000 would not be notified. (The same analysis is done to decide who must be notified of an appeals conference or Board hearing, except the comparison is to the amount of pool funds that would be reallocated if the petition is granted or denied.)

Thereafter, if a decision to reallocate funds originally allocated through a countywide pool becomes final, the actual amount reallocated will be based on the percentage of the pool that each pool participant receives for the quarter in which the reallocation is made. Upon request, the petitioner or any substantially affected jurisdiction will be furnished copies of the calculations made to determine the parties to be notified.

SUBMITTING INQUIRIES**905.020**

[Revised language for this section of the CPPM is currently in the process of being discussed with interested parties as part of the business taxes committee process. Revised language will be added as soon as it is approved by the board]

To expedite processing, requests should be submitted by the inquiring jurisdiction or consultant (IJC) on Form BOE-549-L, Claimed Incorrect Distribution of Local Tax - Long Form, or BOE-549-S, Claimed Incorrect Distribution of Local Tax - Short Form. The BOE 549-L is used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed. The BOE 549-S is used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters. These forms are available on the BOE website. All inquiries are to be sent directly to headquarters, rather than to a district office. Inquiries should be mailed to:

Allocation Group
 Board of Equalization
 450 N Street, MIC 39
 P.O. Box 942879
 Sacramento, CA 94279-0039

(For inquiries under Revenue and Taxation Code section 6066.3, see CPPM 905.090)

ACKNOWLEDGMENT AND REVIEW OF SUBMISSIONS**905.030**

AG will log in and acknowledge submissions intended as petitions via email within 30 calendar days of receipt by the Board. Petitions will be logged in by date, permit number (if any), jurisdiction (if known), and representative (if any). AG will review submissions for completeness and absent extraordinary circumstances, within 30 calendar days of the acknowledgement of receipt, AG should send the submitting jurisdiction an acknowledgement that the submission was accepted as a valid petition, or return the submission, as discussed below. If the submission does not contain the elements identified in Regulation 1807(a)(3), the submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from AG requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements in Regulation 1807(a)(3), then the date of receipt of the original submission will be regarded as the date the BOE received a valid petition. In the event that a submission is not perfected within this 30 day period, the submission will not qualify as a valid petition.

DATE OF KNOWLEDGE**905.040**

Unless an earlier date is operationally documented by the BOE, the date AG receives a valid petition is the “date of knowledge,” which is a date that is critical for determining the beginning of the allocation period. (RTC section 7209 (statute of limitations for these petitions)). Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge remains the date AG received the valid petition.

A potential misallocation is “operationally documented” when a BOE employee questions the allocation based on information contained in the Board files and provides sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data means information consistent with the definition of a petition in Regulation 1807¹. In other words, a date of knowledge is operationally documented when two conditions are satisfied: (1) an employee of the Board discovers factual information sufficient to support the probability that an erroneous allocation of local tax may have occurred, and (2) the Board employee questions and documents that suspected erroneous allocation. The operationally documented date of knowledge will be the date the employee documents the date on which the distribution was questioned, such as the date the employee issues a BOE-75 form, LRAU Goldenrod and references the data that supports the suspected misallocation. An LRAU goldenrod is an internal form used by LRAU to record questionable local and/or district tax distributions, fund transfer approvals, and reallocation notifications.

If a petition regarding suspected improper distribution of local tax under the procedures set forth above and a submission under RTC section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed as a valid appeal, with its date of receipt establishing the date of knowledge for the alleged improper distribution (unless there is an even earlier operationally documented date of knowledge).

¹ While staff may contact the taxpayer as part of the investigation, that contact is not always necessary and is not required to operationally document a date of knowledge.

Investigation

Petitions will be coded for type of alleged misallocation and assigned to an auditor in AG. Assignments may coincide with investigations handled by LRAU. (Note that for assignments coinciding with investigations handled by LRAU, the LRAU Supervisor may be consulted.)

AG staff will use the BOE-414-Z, Assignment Activity History, to record contacts, requests, staff actions, and other relevant events. For example, the BOE-414-Z should be used to record:

- Appointments made – record date, time, and purpose of the appointment.
- Appointments cancelled or rescheduled – record who requested the change and the reason for the request.
- Correspondence – record all letters and other materials given to and received from jurisdictions and taxpayers.
- Emails – record email contacts including a summary of the discussion or agreement; emails should not be copied directly into the BOE-414-Z.
- Record requests – record all requests for records from taxpayers including the deadline given (usually 45 days).
- Referral to field office – record date referred and appropriate follow-up date (30 days for in-state field offices and 60 days for out-of-state field offices).

The auditor will attempt to resolve all petitions through communication with the taxpayers including contacting the “contact person” identified in the petition or other such taxpayer personnel. If for some reason a satisfactory response cannot be obtained, the petition may be referred to the appropriate field office for action. The petition will be discussed with the AG supervisor and the petitioner will be notified before a petition is referred to a field office. Referrals to the field office will include specific instructions to field office staff for the information sought. A copy of any correspondence will be sent to the petitioner.

The AG lead and AG supervisor will review the status of petitions as the petitions age. The AG lead will follow-up monthly with staff for any assignments aged 180 - 270 days. The AG supervisor will follow up on assignments aged greater than 270 days.

Initial Decision

After a petition has been investigated, AG will prepare a written decision to grant the petition, deny the petition, or grant the petition in part and deny it in part. The written decision will include the basis for that decision and the date of knowledge, and if that date is other than the date the petition was received, will include the basis for that date. AG will send its decision to the petitioner and, if applicable, any substantially affected jurisdiction.

If a petition is denied, in whole or in part, the petitioner may submit to AG a written objection to the decision, and if the petition is granted, in whole or in part, a notified jurisdiction may likewise submit to AG a written objection to the decision. Any such objection must be submitted within 30 days of the date of mailing of AG’s decision, or within a period of extension as explained below.

If no timely objection is submitted, the AG decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation — Petitioner's Recourse

If AG does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, AG will issue its decision based on the information in its possession.

Second Review by AG

If the petitioner or a notified jurisdiction submits a timely written objection to the AG decision, AG will consider the objection and issue a written supplemental decision to grant the objection, deny the objection, or grant the objection in part and deny it in part, along with the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

The petitioner or any notified jurisdiction may appeal the AG supplemental decision by submitting a written objection to AG within 30 days of the date of mailing of the supplemental decision (or within a period of extension as explained below). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position. If the petitioner or any notified jurisdiction timely appeals the AG supplemental decision, AG will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection.

If no timely objection is submitted, the AG supplemental decision is final as to the petitioner and all notified jurisdictions.

Delayed Investigation — Petitioner's and Notified Jurisdictions' Recourse

If AG does not issue a supplemental decision within three months of the date it receives a timely objection to the AG decision, the petitioner or any notified jurisdiction may request that AG issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, AG will issue its supplemental decision based on the information in its possession.

Extensions of Time

The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection to either a decision or supplemental decision issued by AG. The request must:

1. Provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days,
2. Be copied to all other jurisdictions to whom AG mailed a copy of its decision or supplemental decision, and
3. Be received by AG within 30 days of the date of the decision or supplemental decision.

Within five business days of receipt of the request, AG will mail notification to the petitioner and all notified jurisdictions whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection is extended to the 60th day after the date of the mailing of AG's decision or supplemental decision. If the request for extension is denied, the time for the petitioner and any notified jurisdiction to file an objection to AG's decision or supplemental decision is extended to 10 days after the mailing of the notice denying the extension.

REVIEW BY APPEALS DIVISION**905.060**

If a timely objection to the supplemental decision has been submitted, AG will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The Appeals Division will coordinate with the Case Management Section of the Board Proceedings Division, who will schedule the appeals conference and mail notice of that conference to the petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted or denied, and AG. Generally, appeals conferences are scheduled in the order received by the Appeals Division.

Return of Petition to AG

The petitioner or any notified jurisdiction may continue to discuss the dispute with AG staff after the petition is referred to the Appeals Division. If, as a result of such discussions or otherwise, AG decides its supplemental decision was incorrect or that further investigation is warranted, it will so notify the Appeals Division, the petitioner, and all notified jurisdictions.

If AG sends such notice to the Appeals Division no later than 30 days prior to the appeals conference, the Appeals Division will suspend its review and will return the petition to AG. Thereafter, AG will issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

If AG sends such notice to the Appeals Division less than 30 days prior to the appeals conference, the Appeals Division will decide whether the petition should be returned to AG or should remain with the Appeals Division, and will notify the parties accordingly. If the petition is returned to AG, AG will thereafter issue a second supplemental decision, or will return the petition to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

Where AG issues a second supplemental decision, it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection within 30 days of the date of mailing of that supplemental decision, or within a period of authorized extension. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

Appeals Conference

The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and AG have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. See Regulation 1807(c)(3) for procedures for local tax appeals.

Decision and Recommendation

The appeals conference holder will notify the conference participants when the final submission of information authorized by Regulation 1807(c)(3) is received following the appeals conference. Within 90 days after the final submission, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law, and the conclusions of the Appeals Division. The BOE's Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and AG. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to AG.

Request for Board Hearing

The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R and include all additional information in its possession that supports its position.

Request for Reconsideration

The petitioner, any notified jurisdiction, or AG may also appeal the D&R by submitting a written request for reconsideration (RFR) to the Appeals Division within the same 60-day period during which a timely request for hearing may be submitted. If an RFR is submitted within this period, the Appeals Division will issue a Supplemental D&R (SD&R) to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. Where a Board hearing has been timely requested and an RFR is submitted more than 60 days after the mailing of the D&R, the Appeals Division will determine whether it should issue an SD&R in response. If not, a Board hearing will be held pursuant to the prior request.

Supplemental Decision and Recommendation

Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by AG as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. However, in the rare circumstance where the members of the Board at an oral hearing request that the Appeals Division hold another conference, the Appeals Division will issue an SD&R.

Where the Appeals Division issues an SD&R (whether because an RFR was filed within 60 days of the mailing of the D&R or a prior SD&R or because the Appeals Division decides issuance of an SD&R is appropriate in response to a "late" RFR or on its own initiative), a copy of the SD&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to AG. The procedures for appealing the SD&R (i.e., requesting a Board hearing or reconsideration) are the same as those for appealing a D&R.

Finality of D&R or SD&R

If no RFR or request for Board hearing is submitted within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R (as applicable) is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues a SD&R prior to the time AG acts on the recommendation in the D&R or prior SD&R as a final matter.

REVIEW BY BOARD MEMBERS**905.070**

If the petitioner or any notified jurisdiction submits to the Board Proceedings Division a timely written request for Board hearing (i.e., within 60 days of the date of mailing of the D&R or SD&R) the Board Proceedings Division will notify AG, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

AG, the petitioner, and all jurisdictions notified of the Board hearing are parties to the Board hearing. The taxpayer, however, is not a “party” to the Board hearing unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing.

To the extent not inconsistent with Regulation 1807, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Regulations 5510 - 5576). Briefs may be submitted for the hearing in accordance with the Rules for Tax Appeals (Regulations 5270 - 5271). (Note that no party to the hearing is required to file a brief; submission of a brief is entirely optional.) The party who requested the Board hearing may file an opening brief with the Chief of Board Proceedings no later than 55 days before the Board hearing. The brief must contain a statement of the facts and issues and a discussion of applicable legal authorities. When an opening brief is filed, the other party may file a reply brief with the Chief of Board Proceedings no later than 35 days before the Board hearing.

Only the jurisdiction(s) requesting the hearing can file an opening brief, and AG and any opposing jurisdiction(s) may file a reply brief only if the jurisdiction requesting the hearing or taxpayer actually files an opening brief. Since a taxpayer is specifically authorized by Regulation 1807, subdivision (d)(3), to become a party by filing a brief, a taxpayer may file a brief even though it is never the party who requested a hearing in reallocation matters and even if the jurisdiction(s) that did request the hearing does not file an opening brief.

The filing of the opening and reply briefs generally completes the pre-Board hearing briefing. However, if, and only if, the reply brief raises a new issue or argument, any other party may file a response brief with the Chief of Board Proceedings no later than 20 days before the Board hearing.

The Board’s decision on the petition will become final 30 days after the date notice of the Board’s decision is mailed to the petitioner(s) and notified jurisdiction(s) (and the taxpayer if it is a party), unless within that 30-day period a party to the petition files a Petition for Rehearing or the Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order. A Petition for Rehearing may be filed in accordance with the Rules for Tax Appeals (Regulation 5561).

The Board’s final decision on the petition exhausts all parties’ administrative remedies on the matter.

LIMITATION PERIOD FOR REDISTRIBUTIONS**905.080**

Redistributions (also known as reallocations) cannot be made of amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. (RTC section 7209, Reg. 1807(e).) It should be noted that this does not generally mean that the redistribution is limited to taxes incurred two quarters prior to the date of knowledge because this period is based on the date of distribution, not the date the tax was incurred, or the date the tax was remitted to the BOE. Generally, distributions are made the quarter following the period for which the tax is reported and paid. Taxes generally must be reported and paid by the last day of the month following the quarter incurred. Thus, the two-quarter limitation period for redistribution of local tax, which is based on the distribution date, allows redistributions of local tax incurred during the three quarters immediately preceding the calendar quarter of the date of knowledge.

For example, on March 15, 2008, City A files a petition for reallocation of local tax, asserting that in November 2006, a specific taxpayer who opened a business making over-the-counter retail sales in City A has not allocated any local tax to City A. AG issues a decision granting the petition based on its findings that petitioner is correct and that the taxpayer timely reported and paid local tax, but improperly allocated the tax to City B. The petition date, March 15, 2008, is the date of knowledge. Since that is in the first quarter 2008, the limitation period extends back two more quarters, to distributions made during the third quarter 2007. Since the local taxes for the second quarter 2007 were distributed during the third quarter 2007, pursuant to the decision of AG, local tax will be reallocated to City A beginning with the local taxes incurred during the second quarter 2007, beginning April 1, 2007. The local tax incurred by the taxpayer's location in City A for the periods prior to April 1, 2007 (i.e., November 2006 through March 2007) were reported and paid with the return due January 31, 2007, and April 30, 2007, and those taxes were distributed during the first and second quarters 2007, respectively, more than two quarters prior to the quarter of the date of knowledge. Therefore, reallocation of such taxes is barred.

The discussion above is based on the taxpayer's actual payment of tax when due. However, the BOE cannot distribute local tax until such tax is remitted by the taxpayer. Thus, where a taxpayer files a timely "non-remittance" return (without payment of the reported tax due) with all required local tax allocation schedules, there is no local tax revenue to distribute. When these funds are remitted, they will be distributed in accordance with the taxpayer's return, and it will be that date of actual distribution that is relevant for purposes of the date of knowledge analysis, not the date the tax was incurred. For example, using the same facts as in the prior paragraph except that the taxpayer filed a non-remittance return for the fourth quarter 2006 (November and December 2006), not paying that amount until June 15, 2007. The taxpayer timely paid the tax reported on all later returns. Thus, since the taxes incurred for the fourth quarter 2006 were not paid until June 2007, they were not distributed until the third quarter 2007, reallocation of such taxes is permitted for the date of knowledge in the first quarter 2008. However, since the taxes incurred for the next quarter (first quarter 2007) were distributed more than two quarters prior to the quarter of the date of knowledge (i.e., distributed during the second quarter 2007), reallocation of such local tax is barred.

The following schedule shows the remittance and distribution dates for a typical four-quarter period. The term "Remittance Date" means the date on which the BOE receives a taxpayer remittance. The term "Distribution Date" means the quarter in which the BOE makes payment of revenue to local jurisdictions.

Remittance Date	Distribution Date
Feb. 13 – May 13	2nd Quarter
May 14 – Aug 13	3rd Quarter
Aug. 14 – Nov. 13	4th Quarter
Nov. 14 – Feb. 12	1st Quarter

APPLICATION TO RTC SECTION 6066.3 SUBMISSIONS**905.090**

The procedures set forth above are in addition to, but separate from, procedures established under the authority of RTC section 6066.3. That section authorizes each jurisdiction to collect and transmit to the BOE information from persons desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property. The information submitted serves as (1) a preliminary application for seller's permit, (2) notification to the BOE by the local jurisdiction of a person desiring to engage in business in that jurisdiction for the purpose of selling tangible personal property, and (3) notice to the BOE for purposes of redistribution.

Where a petition regarding suspected improper distribution of local tax is filed under the procedures established under Regulation 1807 and a submission is also made under RTC section 6066.3 for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to the earliest submission. If multiple petitions are received for the same business, jurisdiction, and period, the petitions will not be considered duplicates if the petitions contain different reasons for error and therefore would be worked as separate petitions. The procedures set forth in subdivisions (b), (c), and (d) of Regulation 1807, which are discussed above, also apply to appeals from reallocation determinations made under RTC section 6066.3.

KNOWLEDGE OF INCORRECT LOCAL TAX ALLOCATIONS OTHER THAN FROM PETITIONS BY LOCAL JURISDICTIONS AND REPRESENTATIVES 906.000

FIELD OFFICE RESPONSIBILITY 906.010

As explained in CPPM 905.040, a BOE employee who discovers an error in the allocation of local tax must record the date that knowledge of the error was obtained.

If an error in the reported allocation of local tax is discovered by the field office, the auditor or field staff should confine his or her report of the necessary redistribution to amounts originally distributed within the limitation period, as explained above, which generally consists of tax reported for the three quarters immediately preceding the quarter in which the error was discovered unless the field office file contains evidence of late returns and payments on billings, in which case, the extent of the limitation period should be determined based on the schedule in CPPM 905.080. If there is any question regarding the extent of the limitation period, the auditor or field representative should contact AG for assistance. Every effort should be made to determine all amounts to be redistributed during the original field investigation. For additional instructions regarding Form BOE-414-L Auditor's Work Sheet Local Sales and Use Tax Allocation, see Audit Manual 0209.00.

HEADQUARTERS RESPONSIBILITY 906.015

Redistributions in Headquarters will be subject to the same review as redistributions that are received from field offices.

Allocation Group (AG)

In general, AG will make all redistributions of local tax and district taxes as a result of petitions from jurisdictions or their authorized representative, submitting on behalf of the jurisdiction. AG also has the responsibility to examine all reports of errors in distribution that are received from field offices (BOE audits, reaudits, field billing orders, petitions from jurisdictions, and submissions under RTC section 6066.3) and verify by an examination of the master file, or any other records in Headquarters, that the report includes all amounts within the limitation period. If this examination discloses that the limitation period extends beyond the point covered by the report and information regarding the amount to be redistributed cannot be determined from the records in Headquarters, the necessary additional information will be requested from the field office.

Local Revenue Allocation Unit (LRAU)

LRAU handles redistributions of local tax and district taxes discovered during reviews of returns, as well as redistributions resulting from corrections to the Tax Area Codes, excluding redistributions resulting from BOE audits, reaudits, field billing orders, petitions from jurisdictions (see CPPM 905.000), and submissions under RTC section 6066.3 (see CPPM 905.090). LRAU processes all field audit redistributions of district taxes submitted by field offices.

MISCELLANEOUS

**INFORMING JURISDICTIONS PRIOR TO PROCESSING
A LARGE DEALLOCATION OF LOCAL TAX RESULTING
FROM A REFUND OR CREDIT IN AN AUDIT**

907.000

Sales and use tax refunds and credits in audits occasionally result in large deallocations of local tax to individual jurisdictions. When a pending refund or credit in an audit results in a deallocation of \$50,000 or more in local tax to a jurisdiction, the Refund Section will send a courtesy email to that jurisdiction and its authorized representative. The email will be sent when the Public Agenda Notice is published for the Board Meeting in which the pending refund is placed on calendar for Board approval or, if Board approval is not required, at least ten days prior to staff's approval of the pending refund. The email will be for information purposes only. Such a deallocation will not be subject to appeal by a jurisdiction or its authorized representative.

**ELECTRONIC FUNDS TRANSFER (EFT) PROGRAM
FOR LOCAL AND DISTRICT TAX JURISDICTIONS****908.000****BACKGROUND****908.010**

The EFT program for local tax jurisdictions was implemented as a result of a decision by the State Controller's Office (SCO) to discontinue the Same Day Banking program as of April 2001. Currently, jurisdictions (cities, counties, and special taxing jurisdictions) have the option of receiving their local sales, transactions, and use tax payments by paper warrant or by EFT. Those jurisdictions choosing to receive a paper warrant will receive their warrant through the U.S. Postal Service.

PROCEDURE**908.020**

The Local Revenue Allocation Unit (LRAU) is responsible for administering the EFT program for local jurisdictions. If a city, county or special tax district contacts a BOE district office for information or instructions regarding this program, the local jurisdiction should be directed to contact the warrant desk in LRAU.

The warrant desk will provide guidance and the appropriate forms required to register new EFT accounts or make changes to existing accounts. The standard form BOE-555-LJ, *EFT Authorization Agreement for Local Jurisdictions*, must be submitted by jurisdictions that want to enroll in the EFT program or change their banking information. When the completed form has been received in LRAU and verification procedures have been performed, the pertinent banking information will be entered to register an account or make changes to an existing account. A letter of confirmation will then be mailed to the jurisdiction's designated contact person.

One to two pre-note tests are run for each monthly pay cycle to verify banking information for each participating jurisdiction. It is the timing of the pre-note tests that dictates the effective date of the change to EFT status. Generally, the registration and pre-note process requires up to 60 days to complete, whether for a new enrollment or a change to an existing account. Under these circumstances, the jurisdiction will generally receive a paper warrant through the U.S. Postal Service until the EFT process is implemented. Warrants are mailed by SCO on the same day that EFT deposits are posted. Information about the most recent warrant payment amounts distributed to local jurisdictions can be found on the BOE's website under Local Jurisdiction Statement of Tax Distribution.

Any questions should be emailed to SUTD-LRAS Warrant Desk.

INFORMATION SHARING BETWEEN CALIFORNIA MUNICIPALITIES AND THE BOE (AB 990)**909.000****GENERAL****909.010**

The procedures to implement the provisions of RTC sections 6066.3 and 6066.4 are referred to as the AB 990 process. AB 990 provides municipalities with the statutory authority to obtain seller's permit information from sellers desiring to engage in business in their jurisdictions. This enabled the municipalities and the BOE to form a partnership for the purpose of identifying and reporting unregistered sellers and to correct any misallocation of local tax. Participating municipalities will compare their licensing data with BOE's seller's permit information using a Statewide Registration CD provided to them each month by the BOE. The municipalities provide information for non-registered businesses, questionable Tax Area Codes (TACs), and/or business address discrepancies on a template provided by the BOE.

The BOE is required to provide the municipalities with an acknowledgment of each submittal and issue a finding for each record in the municipalities' submittals. If a finding can be made based on the information submitted by the municipality, the finding shall be issued within 30 days of receipt of the information. If additional information is required before a finding can be made, an interim report shall be sent to the municipality within 30 days of receipt of the information and a finding must be sent within 120 days of receipt of the information.

DISTRICT OFFICE PROCEDURES**909.020**

District offices will designate an AB 990 Coordinator to act as a liaison between the municipalities and the BOE regarding the AB 990 requests from the municipalities. Municipalities generally become aware of the AB 990 program when they contact the BOE to verify the registration of a business to ensure they are receiving the proper tax allocation. More information about AB 990 can be found in Publication 28, *Tax Information for City and County Officials*. Municipalities choosing to participate in the AB 990 program will contact the District Principal Compliance Supervisor or a designee at the BOE district office having jurisdiction over the municipality's area and provide information regarding their AB 990 contact person. The information should include the contact person's email address and phone number, and the municipality's mailing address. The contact person's information and the municipality mailing addresses, including any updates for all participating municipalities in the district's jurisdiction, will be emailed to the Allocation Group of the Audit Determination and Refund Section (ADRS) and the Statewide Compliance and Outreach Program (SCOP) at SUTD.AB990allocation@boe.ca.gov and SUTD.SCOP-AB990@boe.ca.gov respectively. The AB 990 Coordinator will also provide the municipalities' mailing addresses to the Production Operations Group of the Technology Services Division (TSD) at **TSD-PFP** advising them to add the municipality to its statewide registration CD mailing list.

The District Principal Compliance Supervisor or designee will ensure that the AB 990 Coordinator establishes contact with the municipality's AB 990 contact person and provides the contact person with his/her name, email address, phone number, a copy of the BOE's proprietary AB 990 Process CD (AB 990 Input Program) and instructions for its use. The AB 990 Input Program is installed on a computer in the municipality's office and allows registration information to be transferred to a template and submitted electronically to BOE headquarters. The AB 990 Coordinator will assist the municipality in the installation and operation of the AB 990 Input Program. To facilitate this assistance, the AB 990 Database Program is installed in each district office.

SCOP AND ADRS ALLOCATION GROUP PROCEDURES**909.030**

The AB 990 Database Program is installed in the district offices and on computers in BOE headquarters units responsible for the AB 990 program, specifically the SCOP Coordinators and the Allocation Group. The program will be used to process AB 990 requests from participating municipalities. In addition to the Input Program issued to participating municipalities, the AB 990 Database Program has the following three components:

1. **Assignment Program** (dbAssigner.mdb) used by the SCOP and Allocation Group to import the municipalities' submittals into the program for assignment to BOE staff in their respective offices, and then forwarding the submittals to a central database on the network server.
2. **End User Program** (dbEndUser.mdb) used by the SCOP and Allocation Group to retrieve the AB 990 files from the network server and to work the assignments resulting from the municipalities' submittals.
3. **Central Database** residing on the network server. This is a database of all submittals by municipalities statewide, including records of SCOP and Allocation Group activity on each assignment based on these submittals.

If problems are noted with the AB 990 Database Program, the SCOP and Allocation Group staff should work through their respective LAN Coordinators. The LAN Coordinator should open a HEAT ticket with TSD if the problem cannot be resolved.

AB 990 Submittals from Municipalities

BOE's Local Government webpage provides municipalities participating in the AB 990 program with phone numbers and email addresses for various groups responsible for allocation, distribution, and petitions of local tax allocation. In addition, AB 990 submittals regarding no-permit operations or unregistered sub-locations will be sent to SCOP at SUTD.SCOP-AB990@boe.ca.gov. Submittals regarding TAC changes and reallocation of local tax will be sent to the Allocation Group at SUTD.AB990allocation@boe.ca.gov.

If problems are noted with the incoming AB 990 emails and attachments, the SCOP and Allocation Group staff will seek the assistance of their respective LAN Coordinator. If the problem cannot be resolved by the LAN Coordinator, he or she will open a HEAT ticket with TSD.

Processing AB 990 Submittals

AB 990 submittals regarding no-permit operations and unregistered sub-locations will be received and processed by the SCOP, and those regarding TAC changes, reallocation of local tax, or other miscellaneous requests such as name or address changes will be received and processed by the Allocation Group. SCOP and Allocation Group staff will acknowledge receipt of incoming AB 990 emails. If extenuating circumstances prevent the sending of an acknowledgment the same day, it must be sent as soon as possible on the next business day.

SCOP AND ADRS ALLOCATION GROUP PROCEDURES**(CONT.1) 909.030**

SCOP and Allocation Group staff should check their respective AB 990 mailboxes for incoming emails from the municipalities. The attachment files will be initially saved in a folder and then imported to the Assignment Program. The assignment process involves taking the following four steps for every record in the files:

1. Assigning the records to users either in SCOP or in the Allocation Group.
2. Choosing and assigning the district office of control. The district office of control will be based on the business address provided for the record in the submittal.
3. Entering the date of knowledge. This date will be the date the submittal was received from the municipality.
4. Adding the records in the attachment files to a table in the AB 990 Database Program.

After all records in the files are assigned, they will be moved to the central database on the network server. Subsequently, the End User Program will be used to retrieve and work the newly created assignments. Working the assignments will include investigative activity, issuance of findings, and possibly registration or modification to registration information in IRIS.

Date of Knowledge and AB 990 Timelines

The receipt of an AB 990 submittal from a participating municipality constitutes the date of knowledge and starts a 30-day timeline during which a finding will be made on the municipality's submittal and conveyed to the municipality. This usually involves determining whether a permit is required or whether the TAC of an existing account is correct. The 30-day period can be extended to 120 days for requests that require more information to make a finding. In such cases, the requesting municipality should still be notified within 30 days that more information is required to make the finding. For the purposes of local tax reallocation, the date of knowledge also determines the specific periods (tax quarters) subject to reallocation under RTC section 7209. The date of knowledge is valid if the information provided is sufficient to indicate the probability of improper allocation (see "Threshold Information"). If the submittal is rejected for insufficient information, and is later resubmitted by the municipality with sufficient information, the latter date (i.e., re-submittal date) will constitute the date of knowledge.

Threshold Information

AB 990 submittals from the municipalities requesting new registrations (no-permit operations) and for changes to existing seller's permits should contain the information shown in the respective tables below. Accounts or records with information missing from any mandatory field should be rejected.

1. New Registrations

MANDATORY INFORMATION	OPTIONAL INFORMATION
Legal Owner Name	Business Type: (S) Sole Proprietor, (P) Partnership, (C) Corporation
DBA or "None" if not known	NAICS or SIC code applied
Starting date of business	FEIN
Business telephone number	
Owner's telephone number or "same" if applicable	
Business address (USPS format)	
Mailing address (USPS format)	
Description of business activity	
Description of product sold	
Action request-see decision table following	
Submitted by:	
City or County name	
Contact person	
Email address	

2. Change to Existing Seller's Permit -Adding Sub-location, Change of Address, or TAC

MANDATORY INFORMATION	OPTIONAL INFORMATION
Legal Owner Name	Business Type: (S) Sole Proprietor, (P) Partnership, (C) Corporation
DBA or "None" if not known	NAICS or SIC code applied
Starting date of business	FEIN
Business telephone number	
Owner's telephone number or "same" if applicable	
Business address (USPS format)	
Mailing address (USPS format)	
Seller's permit number provided by licensee	
Action request-see decision table following	
Submitted by:	
City or County name	
Contact Person	
Email address	

AB 990 Action Request Field

The following choices appear on a pull-down menu of the Input Program for the user in the municipality to make a selection to fill the mandatory **Action Request** field. The selection in this field will dictate the action required to be taken by the SCOP or Allocation Group.

ACTION REQUEST DECISION TABLE:
NO PERMIT IDENTIFIED
NO SUBPERMIT IDENTIFIED
PERMIT MISALLOCATED TO STATE POOL
PERMIT MISALLOCATED TO COUNTY POOL
IN LIEU MISALLOCATED TO CITY
CITY MISALLOCATED TO IN LIEU
TEMPORARY VENDOR NO PERMIT IDENTIFIED
TEMPORARY VENDOR NO SUBNUMBER IDENTIFIED
INCORRECT TAC
PERMIT ADDRESS INCORRECT
PERMIT NAME INCORRECT
OTHER

Working Assignments and Issuing Findings

The AB 990 assignments will be accessed by users through the End User Program of the AB 990 database. A finding will be issued for each assignment based on the municipality's action request noted (see "AB 990 Action Request Field") and the result of SCOP or Allocation Group investigation. The assigned user will verify the validity of the municipality's requests through a search of the BOE's registration records and/or contact with the business entity to make the appropriate finding from the list below. This list is available in a pull-down menu of the End User Program.

1. **Permit is required** - BOE has determined that the business activity requires a permit, and a permit will be issued. This finding requires follow-up action.
2. **Permit is not required** - BOE has determined that either the business did not operate or the business activity does not require a seller's permit.
3. **Permit located** - BOE has located a permit for the entity at the address indicated by the municipality. The permit number should be entered in the comments column.
4. **Sub-location added** - In response to the municipality's notification of an unregistered sub-location, or a no-permit operation, BOE has verified that an active permit exists and has issued a permit for the sub-location.
5. **TAC changed** - BOE has determined that the TAC on the permit was coded to the wrong jurisdiction, or was otherwise incorrect, and has been changed to reflect the correct registration. This finding may require follow-up action.
6. **TAC is correct** – Permit verified - BOE has verified the permit for the entity and has determined that the TAC is correct.
7. **Permit name or address is correct** - BOE has verified the name and address on the permit, and has determined that they are correct.
8. **Permit name/address corrected** - BOE has verified that the name and/or address on the permit were incorrect, and the correction has been made.
9. **Duplicate request** - BOE has determined that the submittal is a duplicate of one either being processed with a prior date of knowledge, or with the same date of knowledge.
10. **Rejected** – insufficient information - BOE has determined that there is not sufficient information provided by the municipality to make an informed finding. This "Rejected" finding will be used when information in any mandatory field of the municipality's submittal is missing or incomplete.

SCOP AND ADRS ALLOCATION GROUP PROCEDURES**(CONT.4) 909.030**

The assignment records will be marked complete after the findings have been issued and any necessary comments entered. Certain assignments require additional work after the findings are issued. The assignments requiring additional work after the findings are issued are the ones that require issuance of permits ("Permit is required") and assignments involving reallocation of local tax ("TAC changed").

AB 990 Reports

The findings made by the BOE are communicated to the municipalities by means of a "Completed Records Report." The "Work in Process Report" is an interim report that captures the records on which findings are pending because additional time and/or information are required. Both reports are generated through the End User program. Before sending these reports to the municipalities, copies will be saved on the G:\ drive in a folder titled "Outgoing Reports." The reports will be saved as Microsoft Excel files and each file name will include the respective municipality name and the date the report was created. The reports are communicated to the municipalities by means of an email attachment. To meet the requirements of RTC section 6066.3, these reports must be emailed to the municipalities no later than 30 days from the date of receipt of the submittal. Findings should be made on the records in the Work in Process Report as soon as possible, and communicated no later than 120 days from the date of receipt of the submittal. All reports to the municipalities containing confidential information will be encrypted.

SCOP staff uses a follow up report to work assignments that require follow up action after findings have been issued. This report generates the list of assignments for which the finding "Permit is required" was issued.

Action Requests for Businesses without Seller's Permits

In response to the municipalities' action requests regarding no-permit operations, SCOP staff should take the following actions. BOE registration records should be checked in IRIS to ascertain if the business has a valid permit issued by the BOE. If an active permit for the entity at the specified address is found, the finding "Permit located" will be issued and the permit number should be entered in the "BOE Permit" field of the actions worksheet in the End User Program.

If no record is found, phone contact should be made with the business, or a letter should be sent, inquiring about potential business operations to confirm that a permit is required. If phone calls and letters do not resolve the investigation, a field call will be made to determine if a permit is required. If the investigation confirms that the business is operating and requires a permit, the finding "Permit is required" will be issued. Appropriate notes will be added to the assignment record and the record will be marked complete. If a permit is required, SCOP will assist the business in registering for a seller's permit and will follow-up to add an account characteristic code 21 (AB 990 Account) in IRIS to track the account for statistical purposes. After the permit is issued, an email notification will be sent to the municipality referencing the date of knowledge of the assignment and the permit number.

If the investigation reveals that the business is engaged in an activity not requiring a seller's permit, the finding "Permit is not required" will be issued. This finding will also be issued when a closed-out permit is found for the entity at the indicated location and the investigation reveals that the business did not operate, or is no longer operating.

The process of issuing the permit and notification to the municipality should be completed no later than 120 days from the date the BOE was informed of the no-permit operation. If, in spite of SCOP staff's repeated attempts to obtain compliance, a no-permit operator fails to register for a seller's permit, and therefore, a permit cannot be issued within 120 days of receiving the information from the municipality, a criminal complaint (as allowed under RTC section 6071) should be pursued. The municipality should be informed via email that compliance activity is in progress. As soon as the permit is issued, an email notification including the permit number and the date of knowledge will be sent to the municipality. If a "Permit is required" finding is issued, and later investigation reveals that a permit is not required, the municipality should be notified.

Action Requests for Businesses with Unregistered Sub-locations

Action requests from municipalities regarding unregistered sub-locations should be validated by SCOP staff through a search of registration records in IRIS. If the indicated sub-location is registered and is active, the finding "Permit located" will be issued. The permit number and the sub-location number will be entered in the assignment record and conveyed to the municipality.

If the sub-location is not registered in IRIS, phone contact should be made with the business, or a letter should be sent inquiring about potential business operations at the reported sub-location. If necessary, a field call should be made to determine if a permit is required. If the purported sub-location is not operating, the finding "Permit not required" will be issued.

If the sub-location has been verified as an active selling location, SCOP staff will add the sub-location in IRIS and mail a permit for the sub-location to the taxpayer's mailing address. Comments will be added to the registration record in IRIS. The finding "Sub-location added" will be issued, and the permit number and the sub-location number will be entered in the "BOE Permit" field of the actions worksheet in the End User Program. Notes will be added to the assignment record in the AB 990 database before marking it complete.

Action Requests for Misallocated Permits and Incorrect TACs

The Allocation Group will address the action requests from municipalities regarding misallocated permits and incorrect TACs. These should be validated by verifying the business address and the TAC in IRIS. If the taxpayer's business address in IRIS is different from the business address indicated by the municipality, the taxpayer should be contacted to verify the correct address. If the business address and the TAC for that address are found to be correct, the finding "TAC is correct – permit verified" will be issued. The same finding will be issued if the business address is incorrect but the permit is correctly allocated. In such instances, the business address will be corrected in IRIS and a comment will be added in the assignment record to state that the business address has been changed.

If the business address is correct, but the TAC is incorrect or misallocated, or if both the TAC and the business address are incorrect, the appropriate change will be made to the account in IRIS to reflect the correct TAC and/or the business address. In cases where a TAC cannot be readily determined, (e.g. location is on a boundary line between two or more jurisdictions) the Local Revenue Allocation Unit should be contacted by email using the +Area Codes email address. The subject line should identify the email as an AB 990 request and the email should include the complete address for the location. After making TAC changes, comments will be entered in IRIS, and will include the date of knowledge and the name of the municipality that sent the action request. The finding "TAC changed" will be issued in the assignment record.

SCOP AND ADRS ALLOCATION GROUP PROCEDURES**(CONT.6) 909.030**

Reallocation of local tax, if required, will be done in accordance with the statutory provisions of RTC section 7209. Whenever a TAC change results in reallocation of local tax, the amount of local tax subject to reallocation and calendar quarters impacted by the reallocation will be communicated to the municipalities by email within the statutory AB 990 timelines. The account number and the date of knowledge for each account subject to reallocation should be referenced in the email.

The AB 990 procedures for submitting information for local tax reallocation are in addition to, and separate from, any procedures established under Uniform Local Sales and Use Tax Regulation 1807, *Petitions for Reallocation of Local Tax*. If inquiries regarding improper allocation of local tax or reallocation requests are received under both the AB 990 process and Regulation 1807, the date of knowledge and the processing of the request will be based on the earliest submission. Duplicate submissions will not be processed. Municipalities retain the right to appeal reallocation findings made by BOE under AB 990. Such appeals will be handled in accordance with the terms and procedures set forth in Regulation 1807.

AB 990 Assignments Follow Up and Purging of Records

The SCOP Coordinators and the Allocation Group Supervisor will have access to the AB 990 Database Program and will periodically monitor the AB 990 process to ensure the assignments are completed, changes to registration records in IRIS are made, permits are issued when required, and the reports and notifications to municipalities are sent in accordance with the mandated timelines and established procedures. They will also ensure that records of municipalities' submittals and copies of outgoing reports are maintained as specified in the preceding paragraphs. All submittals and copies of outgoing reports older than two years will be purged from their respective folders.

TSD PROCEDURES**909.040**

The Production Operations Group of TSD will maintain a mailing list of all municipalities participating in the AB 990 program. During the last week of each month, the Production Operations Group will mail a copy of the current Statewide Registration CD to each participating municipality, all district offices, the Allocation Group, SCOP offices, and other requesting units in headquarters. The Statewide Registration CD contains the registration information for all currently active seller's permits and for permits closed during the last three years. The mailing list will be updated every month in response to email requests from district offices and HQ units.

The TSD Service Desk will assist SCOP and Allocation Group staff in resolving problems with the AB 990 mailbox and with incoming emails from the municipalities. The programmer assigned to the AB 990 Database will be responsible for resolving problems or issues related to the AB 990 Database Program.

ACCOUNT FOLDER DESTRUCTION**910.000****HEADQUARTERS RESPONSIBILITY****910.010**

The headquarters Taxpayer Records Unit requests the Technology Services Division to produce a listing that represents all those accounts meeting the following criteria:

1. Process date of close-out at least 7 months old
2. No balance
3. No delinquency
4. No petition status or refund claims, or active appeals cases
5. No security
6. No active legal claim
7. No Attorney General status

Upon receiving the list, the headquarters Taxpayer Records Unit (Deletions) will review the files for pending legal actions and denial of claims for refund. If an account is clear, the file is forwarded to the State Records Center for storage and scheduled destruction after 3 years. The file destruction date will appear on the registration record. If the account is not clear, a new file destruction date is established by processing through the TAR SU screen. These accounts will come up on a new list from the Technology Services Division 7 months after the new file destruction date.

A report of the accounts sorted by district office is provided to the Taxpayer Records Unit who distributes the appropriate report to each field office.

DISTRICT ACCOUNT FOLDER DESTRUCTION**910.020**

Districts are authorized to destroy their account folders one year past the process date of closeout of the account if the account is clear. The review of closed-out accounts for balance, security, delinquency, petitions, pending legal action and claims for refund will be done by headquarters and is not to be duplicated by the field. Districts will review for all other items, such as pending audits, pending determinations, etc., and maintain a control record of all closed-out account folders retained after headquarters notification that the account is clear.

DISTRICT PROCEDURE**910.030**

The listing produced by the Technology Services Division will be used by district office compliance personnel as a guide to pull the account files to be reviewed for destruction. The review will determine if recommended audits have been made and billed, and if any other activity remains on the account. The last audit report and audit working papers are to be placed in the successor file. Any prior audit reports and audit working papers should be referred to the audit staff. The audit staff will review the account and, if there is no pending activity, ask the taxpayer if they wish to have the papers.

If the district determines the account file is to be destroyed, the requirements set forth in the State Administrative Manual (SAM) must be followed. Those districts whose branch offices also maintain account files should use the listing as a means of notifying their branches of account folders to be destroyed.

When an account file is to be retained, it will be the district's responsibility to establish a control record, which will bring the account file to its attention for subsequent review. The listing, properly noted, may be used for a follow-up file of account records to be retained.

DISTRICT ACCOUNT FOLDERS DESTROYED IN ERROR

910.040

The district will not duplicate the review made by the headquarters units.

If the district account file is destroyed and it is later found to be needed in whole or part, Taxpayer Records Unit, upon request, can reconstruct the file up to 2 years from the date the district received the list.

The following can be reconstructed:

1. Information that was not filed at the time of destruction.
2. Returns that have been microfilmed.
3. Any information online including account receivable, security, and notices and determinations mailed to the taxpayer.

SALES & USE TAX EXEMPTION FOR FOREIGN MISSIONS AND CONSULS**930.000****GENERAL****930.010**

In general, neither sales tax nor use tax applies to the sale or use of tangible personal property sold to foreign missions or representative offices, foreign consular officers, employees, and members of their families if those persons have been granted immunity from tax according to treaties or other diplomatic agreements with the United States. (Regulation 1619, *Foreign Missions and Consuls*)

TAX EXEMPTION CARDS**930.020**

Mission and Official Tax Exemption Cards – Diplomatic tax exemption cards labeled “Official Purchases Only” are issued by the U.S. Department of State, Office of Foreign Missions (OFM) to foreign missions and by the American Institute in Taiwan (AIT) to representative offices (such as the Taipei Economic and Cultural Representative Office in the United States and the Taipei Economic and Cultural Offices) for use when making official purchases. The person whose name and photo appear on the card is the mission’s or representative office’s point of contact and is responsible for ensuring the accuracy of the exemption. This individual does not need to be present when purchases are made in the name of the mission or representative office. Official purchases must be paid in a form of payment bearing the name of the foreign mission or representative office. Such forms of payment include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers). Cash, credit cards or personal checks in the name of the bearer of the mission tax exemption card cannot be used as payment.

Personal Tax Exemption Cards – Diplomatic tax exemption cards labeled “Personal Tax Exemption” are used by eligible foreign mission and representative office members and their dependents to obtain exemption from sales or use tax on personal purchases. The card is not transferable and must be used solely for the benefit of the individual identified and pictured on the card. Acceptable forms of payment include cash, credit cards or personal checks in the name of the bearer of the personal tax exemption card.

Each tax exemption card includes the name of the person to whom it is issued, personal identification information, a photograph, an expiration date, and an identification number (e.g., PID#). The tax exemption cards also contain text on the front and back that indicate the level of exemption authorized for the cardholder. Some cards authorize an unrestricted exemption from sales taxes, and other cards authorize an exemption with some degree of restriction, such as a minimum purchase requirement, excluded categories, or both. For example, if the tax exemption card is granted for a minimum level of exemption of \$100, as indicated on the card, the purchaser must purchase merchandise aggregating over \$100 in a single transaction to qualify for the exemption. The total purchase may be composed of all taxable merchandise or a combination of taxable and non-taxable merchandise, i.e., a sale of cigarettes for \$36 is exempt if sold together with \$64 non-taxable food products. Separate purchases in the same store will not qualify if the amount of each transaction does not exceed the amount indicated on the card, even though the combination of all individual purchases in that store may exceed that amount. Examples of tax exemption cards issued by OFM and AIT are provided in AM Chapter 4, Exhibit 19.

SUPPORTING DOCUMENTATION**930.030**

To support the exemption (for sales other than vehicles), the retailer must prepare and retain an invoice or other written evidence of the sale and should enter the name of the purchaser, the number of the exemption card, the name of the foreign mission or representative office, the expiration date of the card, and the minimum level of exemption specified on the card, if any. For official purchases, the retailer shall retain evidence that the form of payment was in the name of the foreign mission or representative office. Such payments may include official checks, official credit cards, or electronic funds transfers (automated clearinghouse debits, automated clearinghouse credits, or wire transfers).

The sale or lease of vehicles to foreign missions or representative offices, foreign consular officers, employees, or members of their families will be exempt from the sales and use tax if at the time of the transaction, the purchaser or lessee provides a valid Tax Exemption Card (Personal, Mission, or Official) or protocol identification card to the retailer and the U.S. Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan furnishes directly to the retailer or lessor a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax (eligibility letter). The retailer or lessor must retain a copy of the front and back of the Tax Exemption Card or protocol identification card and the eligibility letter to support the tax exemption.

Retailers who have any questions regarding the identification of the bearer may ask to see additional forms of identification, such as Diplomatic ID, Driver's License, etc. Questions regarding tax exemption cards issued by OFM may be made by telephone to the OFM at (202) 895-3500 x2. Questions regarding tax exemption cards issued by the AIT may be made by telephone to the AIT at (703) 525-8474.

STATE AND LOCAL BUSINESS LICENSE REQUIREMENTS**940.000****GENERAL****940.010**

The State of California, Technology, Trade, & Commerce Agency, Office of Small Business publishes a California Professional and Business License Handbook that lists all state agencies and the various licenses required by each. This handbook is available for purchase by contacting the above department, and can be viewed on their website at www.commerce.ca.gov. In addition, most State agencies also have Internet websites. These websites can be accessed at www.ca.gov (look under quick hits-state agency index). The following suggestions show the more common types of licenses and permits that may be required by the applicant in addition to the Board permit(s). Please note: This is an incomplete list and you are strongly urged to refer to the above handbook.

STATE BUSINESS LICENSES**940.020****1. Department of Alcoholic Beverage Control**

- Licenses the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State.

2. Board of Chiropractic Examiners

- Licenses chiropractors.

3. Department of Conservation

- Certifies recycling centers
- Issues permits to oil, gas, or geothermal exploration and production firms.

4. Department of Consumer Affairs**a. Architects Board**

- Registers architects and building designers.

b. Athletic Commission

- Licenses all clubs conducting boxing and wrestling shows.

c. Board of Behavioral Science Examiners

- Licenses clinical social workers, marriage counselors, and educational psychologists.

d. Cemetery Board

- Licenses cemeteries, cemetery brokers, and cemetery salespersons.

e. Contractors' State License Board

- Licenses contractors and persons engaged in the home improvement industry.

f. Board of Barbering and Cosmetology

- Licenses barbers and cosmetologists.

g. Board of Dental Examiners

- Licenses dentists.

h. Board of Funeral Directors and Embalmers

- Licenses funeral directors and embalmers.

i. Board of Guide Dogs for the Blind

- Licenses schools and persons engaged in the training and supplying of guide dogs for the blind.

j. Landscape Architect Technical Committee

- Licenses landscape architects.

STATE BUSINESS LICENSES

- k. Medical Board of California
 - Licenses physicians and surgeons.
 - Licenses dispensing opticians.
 - Registers contact lens dispensers.
- l. Board of Optometry
 - Licenses optometrists.
 - Accredits schools of optometry.
- m. Board of Pharmacy
 - Licenses pharmacists.
- n. Board for Professional Engineers and Land Surveyors
 - Registers professional engineers.
 - Licenses land surveyors.
- o. Board of Registered Nursing
 - Accredits schools of nursing
- p. Structural Pest Control Board
 - Licenses persons engaged in the practice of structural pest control.
- q. Veterinary Medical Board
 - Licenses veterinarians.
 - Registers all veterinary premises.

5. Department of Financial Institutions

- Licenses banks, credit unions, and savings and loan associations.

6. Department of Fish and Game

- Licenses fishing and party boats.
- Licenses commercial fishermen.
- Licenses hunting and fishing guides.
- Licenses hunting clubs.

7. Department of Food and Agriculture

- Licenses feed manufacturers.
- Licenses fertilizer manufacturers.
- Licenses retail sellers of some livestock drugs.
- Licenses horse meat and dog food dealers.
- Licenses poultry slaughtering and processing plants.
- Licenses milk product and processing plants.
- Licenses persons engaged in pest control for hire.
- Licenses pesticide dealers.
- Licenses individuals involved with selling nursery stock.

8. Department of Forestry and Fire Protection

- State Fire Marshal.
- Licenses timber or logging firms (including Christmas trees for commercial purposes).

- 9. Department of General Services (Small Business Office)**
 - Licenses businesses wanting to sell to state or bid on state construction contracts under small business preference.
- 10. Department of Health Services**
 - Licenses bottlers and distributors of bottled water and vending machines. (Food and Drug Branch)
 - Licenses hospitals and narcotic treatment.
- 11. California Horse Racing Board**
 - Licenses race track operators.
- 12. Department of Housing and Community Development**
 - Licenses salespersons, dealers, distributors, and manufacturers of mobilehomes, manufactured homes and commercial coaches.
- 13. Department of Insurance**
 - Corporate Affairs Bureau — Home Protection Companies, Motor Clubs, Fraternal Benefit Societies.
 - Licenses insurance agents, bail bond agents, permittees, and solicitors.
- 14. Department of Motor Vehicles**
 - Licenses dealers selling automobiles, trucks, recreational vehicles, motorcycles, trailers, and snowmobiles (new or used).
 - Licenses auto wreckers and auto body shops which dismantle vehicles.
 - Licenses motor vehicle distributors.
 - Licenses firms transporting vehicles using state highways.
 - Licenses driving schools and instructors.
- 15. Osteopathic Medical Board of California**
 - Licenses osteopathic physicians and surgeons.
- 16. Secretary of State**
 - a. Filing articles of incorporation (Corporation).
 - b. Filing organizational documents for business entities formed in California and business entities formed in other states that are engaged in business in California.
 - c. Filing documents amending organizational documents, documents dissolving, merging, or converting business entities.
 - d. Partnerships (General and Limited).
 - e. Limited Liability Companies (LLC), Limited Liability Partnerships (LLP)
 - f. Trade name registration.
 - g. Trademark/Service Mark application.
 - h. Uniform Commercial Code (UCC) filings.
- 17. California Department of Social Services**
 - Licenses child and adult daycare centers.
 - Licenses residential care facilities, e.g. for the elderly, chronically ill.
 - Licenses group homes.
 - Licenses foster family homes.

LOCAL BUSINESS LICENSES**940.030**

Many local cities and counties have websites. Cities can be accessed at www.ca.gov/About/Government/Local/Cities/index.html and counties can be accessed at www.ca.gov/About/Government/Local/Counties/index.html (use the link for "Need Government Information?" to access other cities and counties). The website address for the IRS is www.irs.gov and for the Franchise Tax Board (FTB) it is www.ftb.ca.gov.

1. City and/or county business license (business license section of city or county clerk).
2. Local law enforcement agencies (issue permits for dance, entertainment, etc.).
3. City or county health department (issues permits/clearances for businesses dealing in food products and also some health facilities).

Internal Revenue Service (IRS)

1. Issues Federal employer identification number (FEIN) to corporations, partnerships, limited liability companies, trusts (other than revocable trusts).
2. Issues FEIN to sole proprietorships who must obtain FEIN if it has employees or who may otherwise request it.