June 8, 2022

VIA INTERNET

Dear Interested Party:

The Audit Manual (AM) is a guide for the California Department of Tax and Fee Administration (CDTFA) in administering tax and fee programs. It is available to the public and can be accessed from the CDTFA web page at https://cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm.

The Business Tax and Fee Division is proposing to revise AM Chapter 1 to update the entire chapter. Because the chapter is so large, it has been separated into three sections. This section, 0100.00 to 0103.00 covers general knowledge auditor competency, standard of proof, terminology, and treatment of confidential information.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed AM revisions, you may contact the CDTFA at BTFD-BTCT-AM.RevisionSuggestions@cdtfa.ca.gov. Your comments or suggestions must be received by the CDTFA no later than July 8, 2022 in order to be considered.

Thank you for your consideration.

Sincerely,

Aimee Olhiser
Tax Policy Bureau Chief
Business Tax and Fee Division
Audit Manual

Chapter 1

General Information

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

This is an advisory publication providing direction to staff administering the Sales and Use Tax Law, in addition to team members administering the Sales and Use Tax Law, as well as a variety of other taxes and fees. 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.
The California Department of Tax and Fee Administration (CDTFA) was created by the Taxpayer Transparency and Fairness Act of 2017, which restructured the State Board of Equalization (BOE) into three separate entities: the BOE, the CDTFA, and the Office of Tax Appeals (OTA). Before the existence of the CDTFA, the BOE was the agency responsible for administration of the tax and fee programs now administered by the CDTFA, CDTFA, and the Office of Tax Appeals (OTA). Before the establishment of CDTFA, the BOE was the agency responsible for administering the tax and fee programs now administered by CDTFA.

For all sections of this manual, the term “taxpayer” includes a taxpayer or a feepayer, as applicable. The CDTFA is housed within the Government Operations Agency. The BOE is responsible for property, alcoholic beverage, and insurance taxes, but the CDTFA administers the alcoholic beverage and insurance tax programs on behalf of BOE through an interagency agreement. The CDTFA is responsible for the remaining taxes and fees previously collected by the BOE. The CDTFA conducts appeals hearings between tax/feepayers and the CDTFA and the Franchise Tax Board (FTB). CDTFA is housed within the Government Operations Agency. BOE is responsible for property, alcoholic beverage, and insurance taxes, but CDTFA administers the alcoholic beverage and insurance tax programs on behalf of BOE through an interagency agreement. CDTFA is responsible for the remaining taxes and fees previously collected by BOE. OTA conducts appeals hearings between taxpayers and CDTFA or the Franchise Tax Board (FTB).

The mission of the CDTFA: We CDTFA: To make life better for Californians by fairly and efficiently collecting the revenue that supports our essential public services. The CDTFA is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax and fee laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. The CDTFA’s audit program is one of many ways in which we provide assistance and information to the public while, at the same time, providing a fair program that ensures that taxes and fees are reported properly.

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

This manual, however, is not a substitute for experience, training in accounting and auditing, good judgment, and active supervision. The procedures outlined in this manual are not inflexible. However, auditors should discuss any situation with their supervisor for any deviations from these guidelines and instructions. All sections of Chapter 2, Field Audit Reports, are to be followed exactly. The audit supervisor must approve any deviation from these instructions.

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

Clearance Process

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

Business Taxes Committee (BTC) Process

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

Approval Process

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

TAX AUDIT POLICIES 0101.20

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

A. Purpose of Tax Auditing

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

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

B. Relationship of Taxpayer and Tax-Auditor

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

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

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

D. Evaluation of an Auditor’s Skills

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

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

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

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

STANDARD OF PROOF

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

The “preponderance of evidence” standard is usually defined in terms of probability of truth, meaning, “evidence that has more convincing force than that opposed to it” relates to the probability of truth, and can be defined as, “such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth” or, more succinctly, “more likely to be true than not true.” (1 Witkin, Cal. Evidence (4th ed. 20105th ed. 2021) Burden, § 3536; CACI 206.) The preponderance of the evidence standard does not require that the existence or nonexistence of a fact be proven by clear or convincing evidence or beyond a reasonable doubt; rather, it simply requires proof that the existence or nonexistence of a fact is more probable than not.

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

Pursuant to RTC sections 7053 and 7054, it is the responsibility of the taxpayer to maintain, and make available for examination, all records and other pertinent documents necessary to determine the correct tax liability or credit. In performing an audit or other examination, staff team members should communicate with the taxpayer and/or its taxpayers and/or their authorized representative to the fullest extent possible in an effort to establish facts that are relevant for sales and use tax audit purposes. When applying the preponderance of evidence standard, it is important that staff team members view all evidence in an objective manner, focusing on the quality of the evidence (i.e., for example, original source documentation) and its probable truth or accuracy, and not only on the quantity of evidence produced. There should be no preference assigned to evidence supporting the application of tax over similar evidence which weighs against the application of tax, unless the auditor has a reasonable basis for considering it to be more persuasive.
For transactions determined to be taxable by the auditor, the auditor must make detailed comments in the audit working papers describing the evidence and supporting documentation reviewed and their reviewed and his or her conclusions. If the auditor has a reasonable basis to believe that certain evidence is not credible, the auditor must also make detailed comments in the audit working papers in support of his or her conclusion in that respect. The failure to include such comments does not deem the evidence credible and has no evidentiary impact. However, the auditor may later be required to support his or her conclusions.

STANDARDS OF COMPETENCY FOR AN EXPERIENCED TAX AUDITOR

0101.25

A. Ability to apply the following basic knowledge to practical situations:
   - Thorough knowledge of accounting principles and systems.
   - Thorough knowledge of auditing procedures and techniques.
   - A general knowledge of business law, practices, and procedures.

B. Ability to apply the following special knowledge to practical situations:
   - Knowledge of the California Revenue and Taxation Code (RTC) as it pertains to sales and use tax. RTC as it pertains to business taxes and fees.
   - Thorough knowledge of the authorized rules and regulations of the CDTFA.
   - Knowledge of established administrative policies.
   - Knowledge of special techniques peculiar to tax auditing and sales and use tax, business taxes and fees administration.
   - Effective use of tools, manuals, annotations, memorandum opinions, and directives.

C. Ability to prepare professional audit reports with particular reference to:
   - Use of computers.
   - Completeness of reports.
   - Clear and concise, well-organized comments with headings and captions.
   - A working paper technique which is readily understood by others.
   - Use of auditing procedures consistent with acceptable standards.
   - Accuracy in comments, facts, and calculations.
   - Ability to make decisions commensurate with duties and responsibilities.
   - Ability to clearly explain and support, verbally and in writing, audit procedures and findings. Such explanations must be readily understood by supervisors, reviewers, Appeals Division Bureau attorneys, taxpayers, and taxpayers' representatives (i.e., such as, accountants, attorneys, etc.).
D. Judicious use of time such as:
   • Proper use of audit short-cut techniques.
   • Good organization and planning of work.
   • Recognition of the “Concept of Materiality” in making audit decisions. *(Both the amount (quantity) and nature (quality) of misstatements are relevant to deciding what is material.)*

E. General work habits:
   • Good general and business-like appearance.
   • Promptness in keeping appointments.
   • Promptness in completing and submitting assignments.

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

G. Use of initiative, inquisitiveness, and ingenuity:
   • Ability to adapt working habits and audit practices to differing environments.
   • Alertness to recognize situations involving possible tax liability even though not directly concerned with a specific assignment.
   • Willingness and ability to do research work on complex audit problems.
   • Willingness and ability to develop alternative approaches to particular problems.

H. Relationships with people:
   • Ability to get along and work well with fellow employees, supervisors, and team members.
   • Ability to get along and work well with taxpayers and taxpayers’ employees, accountants, attorneys and other representatives.
   • Ability to instill confidence.
   • Ability to maintain an atmosphere of dignity and professionalism consistent with the auditing profession.
   • Ability to discuss with the public such things as:
     o The structure, history, mission, philosophy, and functions of the CDTFA.
A general overview of the various tax programs.

- Taxpayer benefits from tax revenues.
- Some background knowledge of legislative intent in enacting law changes, exclusions, and exemptions.

**KNOWLEDGE OF THE LAW** 0101.30

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

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

**REGULATIONS AND PUBLICATIONS OF THE CDTFA** 0101.35

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

**BUSINESS TAXES LAW GUIDE** 0101.45

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

**USE OF ANNOTATIONS** 0101.47

When using an annotation to clarify CDTFA’s position regarding a statute or regulation, a review of the annotated legal opinion is often helpful. In addition to the online Business Taxes Law Guides, a complete list of annotated opinions is available by subject area on the Sales and Use Tax Annotated Legal Opinion Letter web page at http://www.cdtfa.ca.gov/lawguides/business/current/btlg/vol2/suta/sales-and-use-tax-annotations-toc.html. BTLG, a complete list of annotated opinions is available by subject area on the Laws Regulations and Annotations web page, found here at https://cdtfa.ca.gov/lawguides/#BTLG.

This page also provides a link to the redacted copy of the annotated opinion, if available. If the electronic annotated opinion is not posted, use the online request form may be used the online request form to receive a copy of the legal opinion. Suggestions and comments regarding published annotations may be submitted using the same online request form, located at https://www.cdtfa.ca.gov/taxes-and-fees/cldmail.aspx.
Annotations do not have the force or effect of law, but are intended to provide guidance regarding the interpretation of the Sales and Use Tax Law with respect to specific factual situations. Annotations may be revised or deleted. Opinions supporting deleted annotations should not be retained in section or field office libraries, reference files, or files maintained by CDTFA employees, team members.

INDUSTRY GUIDES

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

TERMINOLOGY

The term “taxpayer” includes “seller” or “retailer” as defined in the Sales and Use Tax Law, as well as the person upon whom use tax is imposed, and any person upon whom the special taxes and fees administered by CDTFA are imposed.

See Exhibit 1, Tax Code Table, for a listing of common sales and use tax program codes used to assign tax code account number prefixes. A complete listing of account characteristic codes can be found in Compliance Policy and Procedures Manual (CPPM) section 325.030.

TAX AUDITORS

TAX AUDITORS NOT TO SIGN TAXPAYERS DOCUMENTS

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

ACCEPTANCE OF PAYMENTS BY TAX AUDITORS

TAX AUDITORS AUDITORS PROHIBITED

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

TAXPAYERS’ BILL OF RIGHTS

In 1988, the Harris-Katz California Taxpayers’ Bill of Rights was placed into law, effective January 1989, to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. All holders of seller’s permits and consumer use tax accounts are provided protection under this law. Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax and fee programs administered by CDTFA.

The Harris-Katz California Taxpayers’ Bill of Rights, added RTC sections 7080 through 7099 and section 7156. RTC sections 6593.5, 6832, 6964 and 7094.1 were later added.
The law guarantees that the rights, privacy, and property of taxpayers are protected during the course of assessment and collection activity. Tax auditors Auditors should be familiar with the provisions of the law.

Publication 70, Understanding Your Rights as a California Taxpayer, which explains procedures, remedies, rights, and obligations of taxpayers and the CDTFA, must be provided to taxpayers via instructions on how to locate the publication on CDTFA’s website, as explained in the Audit Engagement Letter or by hardcopy at the beginning of every audit. A hardcopy of the publication should be provided to the taxpayer, upon request, at the beginning of every audit.

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

The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Government code section 15570.84, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibits CDTFA staff team members from disclosing confidential taxpayer and feepayer information to any unauthorized persons regarding a taxpayer’s affairs obtained through audit investigation or from returns or reports. (This includes information contained in form CDTFA–1164, Audit Memorandum of Possible Tax Liability, see AM section 0401.02.) In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests with the CDTFA. [See Compliance Policy and Procedures Manual (CPPM) section 135.074 sections 120.022 and 120.023 for detailed information on the IPA.]

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

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, and status of permit (i.e., for example, active/ inactive), and tax area code. This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides, in part, that the CDTFA may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the RTC.) Account numbers for individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) are considered confidential because an individual’s account number when input into the resale verification function on CDTFA’s website would reveal an individual’s name and address, which is considered confidential. Staff Team members should be aware that nonconfidential information in special tax and fee programs may differ should be aware that
nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

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

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

**Conditions for Disclosure of Information**

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

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in the Centralized Revenue Opportunity System (CROS) CDTFA’s system, in CRM Notes. Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

**Verbal Authorization by the Taxpayer**

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

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

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

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

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

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

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

Authorization by Possession of Agency Forms, Documents, or Correspondence

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

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

1) A person visits a CDTFA office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by the CDTFA in the taxpayer’s name. The person states that certain payments made by the taxpayer were not credited to the taxpayer’s account and requests a record of all payments made during the last three months on the taxpayer’s account. If, there is no record in CROS the system indicating the person is an authorized
representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, staff team members shall not provide the information.

2) The same situation as above, except CDTFA staff the CDTFA team member is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has knowledge of the account and the documentation is sufficient to indicate the person is the authorized representative of the taxpayer (sole proprietor).

3) A taxpayer calls CDTFA to obtain information on their account. Team members must first verify the caller is the taxpayer who may receive the information by doing the following:

   a. For Sole Proprietorship, Married Co-Ownership, or Registered Domestic Partnership, the inquiring taxpayer must provide their:
      • Full social security number, or
      • Driver’s license number

   b. For corporations or other organizations, the corporate officer or member inquiring (who is listed on the account as an active officer or member) must provide one of the following to be verified:
      • Driver’s license number, or
      • Full social security number if the number is available in the system (corporate officers are not required to provide their social security number during registration, see CPPM section 275.060)

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

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

**Information Requiring Written Authorization**

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

1) A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing the information, however, team members should check the system staff should check CROS to ensure the representative was not terminated by the taxpayer.

2) Taxpayer directed — Written authorization is not required when supplying copies of audit working papers to the taxpayer’s bookkeeper or accountant when the taxpayer directed the CDTFA to contact the taxpayer’s bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.

3) Oral inquiries — Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by the CDTFA to represent the taxpayer. Most oral requests are for an informal review of audit working papers before the audit is posted and billed working papers before the audit is transmitted to Headquarters — generally when the representative has been working with field staff team members. Team members, Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer’s business name or account number, but have not been asked by the taxpayer to represent them. Staff Team members should check the taxpayer’s file and the appropriate CROS system Springboards to verify the person has represented the taxpayer in the past. (CROS System Springboards have fields for the name of the taxpayer’s accountant or representative; audit Audit springboards can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)

- Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney’s or CPA’s relationship with the taxpayer. If the only information available in the system on CROS involves a prior audit, or the representative has recently been added, the file springboards in the system should be carefully reviewed to determine what event created the authorization. If staff is team members are still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may team members must contact the taxpayer by telephone to confirm the authorization. Alternatively, staff Team members should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.

- Requests for copies of field office documents, appeals, and central files must be obtained in writing.
Without written authorization from the taxpayer, a person purporting to represent the taxpayer should not be permitted to close a taxpayer’s account or change a taxpayer’s address or ownership information. Only under limited circumstances may federal tax information be provided to a taxpayer representative with a power of attorney. Staff Team members must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

REPORTING BREACHES OF CONFIDENTIAL INFORMATION

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

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

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

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

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

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

- Board of Equalization Administrative Manual California Department of Tax and Fee Administration Manual of Administrative Policy (CMAP) (DEAM) section 2205 – Lost, Stolen or Destroyed Property, and section 8025 – Loss, Theft, Damage, Misuse, or Improper Dissemination of an Information Asset Lost, Stolen or Destroyed Computer Equipment
- Audit Manual section 0101.65 – Confidential Information
- State Administrative Manual (SAM) section 5300 – Information Security
- State Information Management Manual (SIMM) sections 5340-A – Incident Reporting and Response Instructions
• State Information Management Manual (SIMM) sections 5340-C – Requirements to Respond to Incidents Involving a Breach of Personal Information
• Budget Letter (BL) 03-03 – Notification of Information Technology Incidents and Computer Crimes
• Civil Code section 1798.29
• Procedures for Reporting an Information Security Incident located on the ISO’s myCDTFA webpage

AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA 0101.67

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

The completed CDTFA-82 must be maintained in the taxpayer’s file, taxpayer or feepayer’s file. For audit cases, the receipt of the CDTFA-82 must be documented on form CDTFA-414-Z in the system under CRM Notes, and a scanned copy attached under CRM Attachments – Assignment Activity History using the 414-Z Program and a scanned copy maintained in the Forms subfolder of the audit case folder. The authorization will remain in effect, until rescinded in writing, for the current assignment only and not future or prior assignments.

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

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

Confidential information includes, but is not limited to, the Audit Engagement letter series of letters (CDTFA-80s), and any other form that may indicate a taxpayer or feepayer is under audit. Confidential data also includes email correspondence during an audit. For example: Form CDTFA-122, Waiver of Limitations, references audit, but does not specifically say the taxpayer or feepayer is under audit. Although not specifically referenced, this form is used almost exclusively for audit purposes and should be considered confidential.
If a CDTFA-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer or feepayer. For instructions on encrypting email, search myCDTFA for “Sending and Viewing CDTFA Encrypted Email.” However, CDTFA team members must not encrypt files before transmitting via e-mail if the taxpayer or feepayer’s internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, CDTFA employees must either obtain the CDTFA-82 or provide the data to the taxpayer in hard copy.

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

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

There is a Take 5 video available that explains how to use the SFT service and an information sheet.

For assistance in encrypting files, CDTFA employees must contact their PC or LAN Coordinator.

TAXPAYER CORRESPONDENCE IN GENERAL

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

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

Taxpayers who verbally request tax information are to be advised that, although information is being provided, the taxpayers may also wish to put such a request in writing to receive a written response from CDTFA that may serve as the basis for relief, based on reliance on written advice. Request in writing to receive from the CDTFA a written response that may serve as basis for RTC section 6596 relief.