

Audit Manual

Chapter 1

General Information

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

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

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GENERAL INFORMATION**0100.00****INTRODUCTION****0101.00**

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.

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 OTA conducts appeals hearings between tax/feepayers and the CDTFA and the Franchise Tax Board (FTB).

MISSION AND PHILOSOPHY**0101.03**

The mission of the CDTFA: We 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.

PURPOSE OF AUDIT MANUAL**0101.05**

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, all sections of Chapter 2, Field Audit Reports, and the italicized portions of the other chapters are to be followed exactly. The audit supervisor must approve any deviation from these instructions.*

AUDIT MANUAL REVISIONS**0101.10**

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 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 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 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 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 amount of tax has been reported correctly. The tax auditor should aid the taxpayer in gaining a correct understanding of the law 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 skill 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 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 a Tax 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 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 audit and provide a complete set of audit work 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 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 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 satisfactory.

E. Implementation of Auditing Policy

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

STANDARD OF PROOF**0101.22**

Pursuant to Revenue and Taxation Code (RTC) section 6091, it is presumed that all gross receipts are subject to tax until the contrary is established. The effect of this rebuttable presumption is to impose upon the taxpayer the burden of proving 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 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. 2010) Burden, § 35; CACI 200.) 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. In performing an audit or other examination, staff should communicate with the taxpayer and/or its 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 view all evidence in an objective manner, focusing on the quality of the evidence (i.e., 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 workpapers describing the evidence 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 work 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.
- 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 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 attorneys, taxpayers, and taxpayers' representatives (i.e., 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.

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.

GENERAL INFORMATION

STANDARDS OF COMPETENCY FOR AN EXPERIENCED TAX AUDITOR

(CONT.) 0101.25

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. Relationship with people:

- Ability to get along and work with fellow employees, supervisors, and staff from other offices and units.
- Ability to get along and work 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.
 - o A general overview of the various tax programs.
 - o Taxpayer benefits from tax revenues.
 - o Some background knowledge of legislative intent in enacting law changes, exclusions, and exemptions.

KNOWLEDGE OF THE LAW

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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.

REGULATIONS AND PUBLICATIONS OF THE CDTFA

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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 www.cdtfa.ca.gov.

BUSINESS TAXES LAW GUIDE

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

USE OF ANNOTATIONS

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When using an annotation to clarify CDTFA’s position regarding a statute or regulation, a review of the annotated legal opinion is often helpful. In addition to the online 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>. 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 to receive a copy of the legal opinion. Suggestions and comments regarding published annotations may be submitted using the same online request form.

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.

TERMINOLOGY

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The term “taxpayer” includes “seller” or “retailer” as defined in the Sales and Use Tax Law, as well as the person upon whom use tax is imposed.

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 NOT TO SIGN TAXPAYERS DOCUMENTS

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Tax 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

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Tax Auditors must not accept payments in the office or field. If a taxpayer in the office wishes to make a payment, the taxpayer must be taken to the office cashier for processing of the funds. 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.

TAXPAYERS’ BILL OF RIGHTS

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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 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 at the beginning of every audit. This publication is available at www.boe.ca.gov.

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

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The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibit CDTFA staff 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 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, status of permit (i.e., 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 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 for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

GENERAL INFORMATION

DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION

(CONT.1) 0101.65

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). 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 case with an authorized representative may be accepted by CDTFA staff 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 must first verify the identity of the taxpayer by use of a driver's license or social security number through CROS before accepting the verbal authorization. If the authorization is in person, staff must ask for identification such as driver's license, Department of Motor Vehicles identification card, or any other document which establishes his or her identify.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information 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 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 should advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization for longer than 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 member regarding a bank levy that attached community property funds in the spouse's separate bank account and authorizes staff to discuss the circumstances relating to the levy with the spouse, staff 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., the accounts receivable balance, payment history, delinquencies) without specific authorization by the taxpayer.

Before providing confidential taxpayer information to an authorized representative over the telephone, staff 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 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.

Authorization by Possession of Agency Forms, Documents, or Correspondence

Pursuant to Civil Code section 1798.24(c), confidential taxpayer information for accounts registered to individuals (sole owners, 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 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., CROS) or by telephoning the taxpayer. If staff 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 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 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 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 should not provide the information.
2. The same situation as above, except CDTFA staff 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).

Staff 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 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.

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

(CONT.3) 0101.65

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 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, 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 working papers before the audit is transmitted to Headquarters – generally when the representative has been working with field staff. 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 should check the taxpayer's file and the appropriate CROS Springboards to verify the person has represented the taxpayer in the past. (CROS Springboards have fields for the name of the taxpayer's accountant or representative; audit springboards can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)
 - Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or CPA's relationship with the taxpayer. If the only information available on CROS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff 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, appeals, and central files must be obtained in writing.

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

(CONT.4) 0101.65

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 must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

REPORTING BREACHES OF CONFIDENTIAL INFORMATION

0101.66

In accordance with the Information Practices Act (Civil Code section 1798 et seq.) and CDTFA policy, any loss, compromise, or theft of taxpayer information must be immediately reported by staff 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 printouts, taxpayer forms)
- Computer hard drive
- USB or other data storage device

In addition, any detection or suspected breach of computerized data 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 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 (BEAM) section 2205 – Lost, Stolen or Destroyed Property, and section 8025 – Lost, Stolen or Destroyed Computer Equipment
- Audit Manual section 0101.65 – Confidential Information
- State Administrative Manual (SAM) section 5300 – Information Security
- Budget Letter (BL) 05-32 – Encryption of Portable Computing Devices
- Budget Letter (BL) 03-03 – Notification of Information Technology Incidents and Computer Crimes
- Civil Code section 1798.29

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. 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 or feepayer's file. For audit cases, the receipt of the CDTFA-82 must be documented on form CDTFA-414-Z, *Assignment Activity History* using the 414-Z Program and a scanned copy maintained in the Forms subfolder of the audit case folder (See AM section 0302.20). 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 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. However, CDTFA staff 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. audit data, statistical sample data, sales data, payables data, etc.) using Secure File Transfer (SFT). 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 two users with two separate logins can access the same secured folder and can securely upload and download files. 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.

GENERAL INFORMATION

TAXPAYER CORRESPONDENCE IN GENERAL

0101.70

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 signer. In accordance with State Board of Equalization Administrative Manual (BEAM) section 7600, all incoming correspondence (including e-mail correspondence) will be responded to or acknowledged within 12 calendar days of receipt.

Taxpayer correspondence must serve as a complete source of the questions asked, the facts presented, and the answer 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 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 request in writing to receive from the CDTFA a written response that may serve as basis for RTC section 6596 relief.

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

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

PROCEDURES**REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**

When an auditor encounters a person who appears to be selling counterfeit goods, they must report the suspected activity to the Tax Recovery and Criminal Enforcement Task Force (TRaCE) by completing the *Report a Crime* electronic form available on the CDTFA's TRaCE webpage. Auditors must check the Other box and identify themselves as "CDTFA Staff" in the *What is your relationship to the suspect? Check all that apply* section located at the bottom of report form. TRaCE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

REPORTING CONVICTED TRAFFICKERS OF COUNTERFEIT GOODS

When an auditor receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media) they must send a referral directly to the Investigations Division. Staff should address the referral memo to the Chief of Investigations and Special Operations Division and include, at a minimum:

1. Auditor's name and contact information,
2. Any pertinent information about the convicted trafficker (e.g., taxpayer's name, business DBA, permit information if available), and
3. The source of the information.

DESTRUCTION OF EVIDENCE PURCHASED WITH STATE FUNDS**0103.10****GENERAL**

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

PROCEDURES

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

Once the items of evidence are no longer needed, a CDTFA employee will destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. *For example*, alcohol or soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle. The supervisor or manager should document the destruction of the evidence on the CDTFA-414-Z for the respective audit.

DIGITAL SIGNATURES**0103.15**

This section clarifies the policy for accepting digital signatures on documents received by CDTFA staff. The California Government Code allows the use of digital signatures provided they meet certain requirements. As long as the requirements below are met, CDTFA staff may accept digital signatures on documents such as waivers of limitation, claims for refund, powers of attorney and resale certificates.

California Government Code Requirements

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

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

DIGITAL SIGNATURES**(CONT.) 0103.15**

The Secretary of State regulations state that for a digital signature to be valid, it must be created by an acceptable technology. The regulations list the acceptable technologies, which currently include Public Key Cryptography and "Signature Dynamics." (See California Code of Regulations, Title 2, Sections 22000-22005.)

Accepting Digital Signatures

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

For example:

A taxpayer emailed form CDTFA-122, Waiver of Limitation, to the auditor that was digitally signed using Adobe Acrobat software. The digital signature includes the date, time, name of signer, email of signer and company name. The file, once digitally signed by the taxpayer, cannot be changed. The auditor has verified the signer is authorized to sign the waiver and the email address is valid. The auditor also followed-up with a phone call and recorded the contact on the CDTFA-414-Z. Therefore, the auditor may accept the waiver with a valid digital signature.

STATE ISSUED CELLULAR TELEPHONES**0103.20**

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

CDTFA employees with state-issued cell phones must follow Board of Equalization Administrative Manual (BEAM) section 5363.3, *Cellular Telephone Guidelines*, and the data security provisions in BEAM 8670, *Encryption of Electronic Storage and Computing Devices* and BEAM 8605, *Active Content (Mobile Code)*.

Additionally, the following guidelines should be observed:

- Music should not be downloaded to the device from any source, this includes ring tones.
- Any pictures and videos taken with a state-issued cell phone should only be for business purposes. The pictures or videos should only be transferred via email or a direct download to the auditor's computer and then moved to the LAN. Pictures of taxpayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. When taking pictures of taxpayer records is not conducive (i.e. voluminous amount of records), staff must issue a properly completed CDTFA-945, *Receipt for Books and Records of Account*, when a scanner or photocopier is unavailable.
- The state-issued cell phone is to be used for CDTFA email only. Staff must not place personal email accounts on the device.
- Instant messaging between CDTFA employees is not allowed because these messages are not securely maintained.
- Do not connect to Wi-Fi using the state-issued cell phone as it is not a secure connection. All connections to the state-issued cell phone must be through secure means.

LEAD SOURCE SUBSYSTEM**0103.25**

The Lead Source Subsystem tracks the results of special programs and pilot projects undertaken by the CDTFA. The Lead Source Subsystem is comprised of Lead Source and Lead Source Sub-types that enable the CDTFA to capture and identify revenue and payments resulting from a specific program or project. This is accomplished by attaching a Lead Source and Lead Source Sub-type to an account or a Financial Obligation (FO) in the system. By doing so, reports reflecting revenue and payment information related to a specific program or project can be generated.

The Lead Source and Lead Source Sub-type should be assigned to accounts or liabilities established from the results of efforts of a special program or project team (“responsible team”), for example, Statewide Compliance and Outreach Program (SCOP), U.S. Customs group, In-State Service Program, or Special Taxes project teams.

Lead Source and Lead Source Sub-type **should** be assigned:

- To an account when a new permit is issued that will result in previously unreported revenue being reported to the CDTFA.
- To an audit, field billing order, or other FO generated as a result of the development of the lead by a responsible team and used to determine a liability or offset a payment.

Lead Source and Lead Source Sub-type **should not** be assigned:

- To a new permit issued to correct an ownership or other situation for a business, in which revenue was routinely being reported.
- To an FO selected and assigned for audit through the annual audit selection process. However, lead information relating to an account selected and assigned for audit should be forwarded to the auditor conducting the audit.

Lead Source and Lead Source Sub-type for Audits:

- If a lead exists for an account that has been selected for audit and is unassigned, the responsible team should contact the field office or Headquarters (HQ) program area of the account to determine whether the account will be assigned. If the audit is not assigned by the field office or HQ program area, the lead should be referred to the appropriate administrator for a review of the lead information. If the account is assigned as a result of the responsible team lead information, then the lead source information should be assigned to the audit FO. However, if an account was already assigned, the lead information should be forwarded to the auditor without a request to assign the lead source information to the audit FO.
- If a lead exists for an account that has not been selected for audit, the responsible team should refer the lead to the appropriate administrator with a request that if the account is assigned for an audit as a result of the lead information, then the responsible team lead source information should be assigned to the audit FO.

To assign a Lead Source and Lead Source Sub-type:

- Lead Source and Lead Source Sub-type can be assigned to an account or FO by accessing the *Maintain/Inquire Lead Source Information* screen (LSR ML) in the system. When assigning Lead Source and Lead Source Sub-type information for a new account, it is important to use an accurate Report Start Date and Report End Date.
- The Report Start Date is the date that revenue and payment information, *posted to a new account*, becomes eligible for inclusion in revenue and payment reports. Unless instructed otherwise, it should be the same date as the account creation date. Using a Report Start Date that is after the account creation date will result in delinquent return information and payments being excluded from the revenue and payment reports.
- The Report End Date is the date for which revenue posted to the new account is no longer eligible for inclusion in the revenue and payment reports. Since special programs and pilot projects typically have a two year evaluation cycle, the Report End Date should always be two years after the Report Start Date, unless instructed otherwise.
- The Report Start Date for a **closed out and reinstated** account is the date the account was reinstated (re-opened).

Note: Report Start and Report End dates are not needed when assigning Lead Source and Lead Source Sub-type information to a specific FO, since the FO will always be included as revenue.

Responsibilities:

- All Lead Source referrals to the field office or HQ program area should clearly state which Lead Source and Lead Source Sub-type should be assigned.
- It is the responsibility of the field office or HQ program area that receives the application or referral for audit from the responsible team to timely process the application or referral and assign the Lead Source and Lead Source Sub-type. If the application or referral cannot be processed, it is the responsibility of the field office or HQ program area to contact the responsible team and explain why the work cannot be completed and return the application or referral for audit, if necessary.

Revenue and Payment Report:

- The Revenue and Payment Report was designed to report on a specific Lead Source and Lead Source Sub-type or for an entire Lead Source group. The report is generated from the system through the reports sub-menu in the LSR library. It can be requested for a specific TAT (e.g. SR) or a group of TATs (e.g., all Sales and Use Tax TATs). The report may also be sorted by TAT and/or between existing and new accounts.
- The report may be requested for a specific period of time and will automatically generate an accompanying fiscal year report whenever a report is requested. The report is separated into self-assessed and CDTFA-assessed categories and will provide tax/fee, interest, penalty, and payments identified to a Lead Source and Lead Source Sub-type.

Activity Report:

- The Activity Report was designed to provide a history of user activity pertaining to Lead Source and Lead Source Sub-type changes made to an account or FO.
- The report is generated through the Lead Source Activity Report screen (LSR RA). The report can be requested for a specific user or office and can be requested for a specific TAT or TAT group.
- The report will display the before and after description codes, user executing the change or deletion, date, and reason the Lead Source or Lead Source Sub-type was changed or deleted.

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

0104.00

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

Tax of Fee Program	Revenue and Taxation Code
Sales and Use Tax	6593.5
Motor Vehicle Fuel Tax	7658.1
Use Fuel Tax	8878.5
Private Railroad Car Tax	11409
Cigarette and Tobacco Products Tax	30283.5
Alcoholic Beverage Tax	32256.5
Timber Yield Tax	38455
Energy Resources Surcharge	40103.5
Emergency Telephone Users Surcharge	41097.5
Hazardous Substances Tax	43158.5
Integrated Waste Maintenance Fee	45156.5
Oil Spill Response, Prevention, and Administration Fees	46157.5
Underground Storage Tank Maintenance Fee	50112.4
Fee Collection Procedures ¹	55046
Diesel Fuel Tax	60212

¹ The fees and taxes collected pursuant to the Fee Collection Procedures Law include the following programs: California Tire Recycling Fee, Covered Electronic Waste Recycling Fee, Marine Invasive Species Fee, Fire Prevention Fee, Lead-Acid Battery Recycling Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services (MTS) Surcharge, Regional Railroad Preparedness & Immediate Response Fee, Water Rights Fee, and Lumber Products Assessment.

GENERAL INFORMATION

REQUEST FOR RELIEF FROM INTEREST – UNREASONABLE ERROR OR DELAY (CONT.) 0104.00

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

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

**GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE
ON CDTFA WRITTEN TAX OR FEE ADVICE** **0105.00**

GENERAL **0105.02**

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

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

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

General Correspondence

The CDTFA receives and responds to numerous tax/feepayer inquiries received via letter and email. Responses prepared by CDTFA staff to email inquiries, whether sent by email or by letter, qualify as written tax/fee advice. Therefore, written responses to tax/feepayer inquiries via email or letter should contain the appropriate disclaimer language regarding the authorizing statutes.

QUALIFIED WRITTEN ADVICE **0105.04**

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

Staff should emphasize that tax/feepayers should obtain written advice with respect to the questions they may have regarding the application of tax/fees to a particular type of transaction. The tax/feepayer should be given a copy of CDTFA-8, *Get It in Writing*, or a reference to the CDTFA-8 link on the CDTFA website.

Tax or Fee Advice Provided in a Written Communication

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

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

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

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

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

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

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

QUALIFIED WRITTEN ADVICE

(CONT.2) 0105.04

If individual tax/feepayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. Any additional facts obtained must be in writing from the tax/feepayer or set forth in writing in the response. If staff is unable to obtain the additional facts from the tax/feepayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written advice may be relied upon for relief under the authorizing statutes. Written advice to tax/feepayers that include staff's assumptions must also include the following statement:

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

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

Review – Tax or Fee Advice Provided in a Written Communication

Sales and Use Tax Program

FOD Administrators and Section/Branch Supervisors will review all letters involving tax questions to ensure that the information is correct and in the proper format before the letters are mailed. FOD Administrators and Section/Branch Supervisors must report the number of written inquiries received and responded to electronically on SharePoint. Written inquiries received and responded to must be reported by the 7th of the month following the quarter end. For example, written inquiries received and responded to in 4th quarter 2015 must be reported by January 7, 2016.

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

Special Tax and Fee Programs

Special Tax and Fee Programs staff will forward all responses to requests for written advice regarding specific application of special tax or fee laws to their supervisor and branch administrator for review. Final approval will come from the Bureau Chief before mailing. Bureau Chiefs are responsible for ensuring all written responses are accurate.

QUALIFIED WRITTEN ADVICE

(CONT.3) 0105.04

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

Written Tax or Fee Advice Provided in a Prior Audit

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

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

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

QUALIFIED WRITTEN ADVICE

(CONT.4) 0105.04

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

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

1. A prior audit's examination of sales invoices, whether on an actual or a sample basis, qualifies as written advice with respect to the charges on the invoices examined.
2. Prior audit comments or schedules that state that a specific item or charge is not subject to a tax/fee or was properly reported constitute written advice with respect to that item or charge.
3. Markings on a no-change audit report indicating the examination of a specific type of transaction generally qualify as written advice with respect to that type of transaction.

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

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

REASONABLE RELIANCE ON WRITTEN ADVICE

0105.06

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

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

RESCISSION OF ERRONEOUS ADVICE

0105.08

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

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

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

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

Written advice may also be invalidated by a change in statute or constitutional law, a change in the Sales and Use Tax Regulations, Special Tax and Fee Regulations, or a final decision of a court whether or not notice of such action is provided to the tax/feepayer, rendering the CDTFA's earlier written advice invalid.

REQUEST FOR RELIEF**0105.10**

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

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

Exhibit 2 provides a sample of a request for relief memorandum under RTC section 6596 using the format above.

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

The current AWP's shall include a copy of the following:

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

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

TRACKING OF AUDITS, FIELD BILLING ORDERS, REAUDITS AND ADJUSTED FIELD BILLING ORDERS

0106.00

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

Sales and Use Tax Programs

The Audit Determination and Refund Section (ADRS) of the Headquarters Operations Division is responsible for ensuring that audits, FBOs, reaudits, and adjusted FBOs are properly processed for sales and use tax programs.

The ADRS is responsible for ensuring that audits and FBOs contained on the Transmittal Reconciliation Report (TRR) are properly processed. The TRR is produced quarterly for field offices and the ADRS. The report lists, by account number, transmitted audits and FBOs that have not been determined (billed), refunded, returned to a field office, or otherwise processed. The TRR is retained for two years.

On a quarterly basis, the ADRS informs the field offices, by e-mail or memo, of any audits or FBOs that have not been billed for more than 60 days or have not been refunded for more than 120 days past the date of transmittal. The ADRS follows up on any unprocessed audits or FBOs with the appropriate Headquarters section or field office to ensure that any unprocessed assignments are completed.

The ADRS tracks unprocessed reaudits and adjusted FBOs quarterly. On the first working day of each new quarter, the ADRS staff identifies all reaudits and adjusted FBOs transmitted 120 or more days ago that remain unprocessed. This information is obtained by requesting a report using the AUD AS screen in IRIS. The ADRS retains the reports identifying unprocessed reaudits and adjusted FBOs for two years. These reports must identify the name of the person performing the review and the date the review was performed.

Special Tax and Fee Programs

The Appeals and Data Analysis Branch (ADAB) of the Audit and Carrier Division is responsible for ensuring that audits, FBOs, reaudits, and adjusted FBOs are properly processed for special tax and fee programs.

On the first working day of each new quarter, the supervisor of the Audit Determination and Refunds Section identifies all audits, FBOs, reaudits, and adjusted FBOs that were transferred for billing 60 or more days ago and that remain unprocessed. The supervisor or designee reviews all unprocessed audits, FBOs, reaudits, and adjusted FBOs and follows up to ensure any unprocessed assignments are completed. This information is obtained by requesting a report using the AUD AS screen in the system. The supervisor retains the reports identifying unprocessed audits, FBOs, reaudits, and adjusted FBOs for two years. These reports must identify the name of the person performing the review and the date the review was performed.

ADJUSTMENTS TO BILLED DIFFERENCES**0107.00**

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

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

SAMPLE REVIEW PROCESS BY DIVISION/SECTION**0107.02****Petitions Section**

Ten percent of an entire day's transactions not requiring supervisor approval are reviewed once every two weeks. Review days are selected randomly so that transactions performed by all employees have an opportunity to be reviewed. Transactions requiring review are identified by using the Audits Results Released for Billing Report and the Revenue Transaction Audit Trail Report (Audit Trail).

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

Return Analysis Unit

Every two weeks, a day is selected for one employee's work to be reviewed. On the day selected for review, an employee's name is randomly selected. The section supervisor or designee will review the Audit Trail, IRIS Document Management browses, daily work summaries, re-file material, or any other available resource to determine if the employee had any transactions posted for the previous day.

The employee selected is notified that his or her work is up for review and is required to submit all completed work from the previous day to the reviewer. The reviewer also performs a quality assurance review, such as proper notations left on documents, proper payment application, and extensions granted.

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

Consumer Use Tax Section

Ten percent of an entire day's transactions not requiring supervisor's approval are reviewed once every two weeks. Review days are randomly selected so that transactions performed by all section employees have a chance to be reviewed. Transactions requiring review are identified by using the CUT SR screen in IRIS in conjunction with the Audit Trail.

The section maintains a log to record the reviews performed. Log entries identify the date and the total number of transactions reviewed. The account number of any transaction with discrepancies is noted in the comment portion of the log. A memorandum that identifies the total number of accounts reviewed is prepared for the section files. The hard copy documentation of each report used for the review is attached to the memorandum. The log will be retained for two years.

Special Taxes and Fees Division

Every two weeks, a day is selected for one employee's work to be reviewed. On the day selected for review, an employee's name is randomly selected. The section supervisor or designee will review the IRIS Document Management subsystem browses, daily work summaries, re-file material, or any other available resource to determine if the employee had any transactions posted for the date selected for review.

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

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

Special Operations Branch

Adjustments not requiring supervisor's approval that are less than \$5,000 in the Special Operations Branch will be routinely sampled. A Business Taxes Compliance Specialist, on a quarterly basis, will review an employee's transactions that did not require approval. The employee will be randomly selected and the day of the review will vary so that no set pattern is followed. All employees involved in completing transactions not requiring approval will have their work reviewed. Quarterly reports will be used to identify transactions selected for review.

The section will maintain a log to record the reviews performed. The log entries will show the employee name, date of review, number of transactions reviewed, and the reviewer's name and initials. The log will also contain the number of transactions that show discrepancies. The log will be retained for two years.

Timber Tax Section

No sample review is performed as all cancellations and adjustments to previously billed differences require the approval of a supervisor or designee. Employees authorized to approve difference adjustments cannot create and approve the same adjustment.

GUIDELINES FOR PROCESSING REFUNDS, CREDITS, CANCELLATIONS AND DENIALS

0108.00

Refunds

- The following policies apply to all sections or units involved with processing or approving refunds: Audit Determination and Refund Section (ADRS) handles claims for refund for sales and use tax programs. The Appeals and Data Analysis Branch (ADAB) handles claims for refund for special tax and fee programs.
- All refunds of \$5,000 or greater require approval of the section or unit supervisor or designee.
- All refunds where the payee name or address has been changed require the approval of the section or unit supervisor or designee.
- Refunds cannot be created and approved by the same employee.
- The section/branch supervisor or designee will verify the validity of at least ten percent of all refunds processed by their section for one day every two weeks that did not require supervisory approval (that is, refunds of less than \$5,000). The DIF BX screen in IRIS is used to request a random sample of the refunds processed and identifies the specific refunds requiring review. This review should be performed at least monthly, and the reports identifying the refunds reviewed should be retained for two years. These reports must identify the name of the person performing the review and the date on which the review was performed.
- When a CDTFA-101, *Claim for Refund or Credit*, is submitted to the appropriate refund section or unit, refund staff should create a case in the system. Then a copy of the claim for refund form should be forwarded to the Taxpayer Records Unit for sales and use tax accounts, Return Processing Branch for special tax and fee accounts (except interstate user and use fuel accounts), or Motor Carrier Office for interstate user or use fuel accounts.

Refunds, Credits, Cancellations, and Denials Over \$100,000

Effective March 1, 2016, the Board delegated authority to CDTFA staff to issue all refunds, credits, cancellations, and denials (hereafter, collectively, “refunds”). This applies to items that appear on the Board meeting agenda as “Nonappearance Matters, Matters for Considerations” and “Credits, Cancellations and Refund Matters” on either the Consent or Adjudicatory calendar. Prior to this delegation of authority, Board approval was required for items in excess of \$100,000.

Deputy Director Approval Required

If an assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section’s Department for approval. The assigned section’s multi-level review process for refunds in excess of \$100,000 remains the same with final approval by each Department’s Deputy Director.

GENERAL INFORMATION

GUIDELINES FOR PROCESSING REFUNDS, CREDITS, CANCELLATIONS AND DENIALS(CONT.) 0108.00

Public Records Requirement

Revenue and Taxation Code (RTC) sections 6901 and 6981, and similar provisions for special tax and fee programs, generally require items in excess of \$50,000 be available as a matter of public record for at least 10 days prior to the effective date of that determination. Thus, all items in excess of \$50,000 will be submitted to the Board Proceedings Division to begin the ten-day public record period.

Report to Board Members

A monthly report must be submitted to the Board Members listing all approved refunds greater than \$250,000. The Petitions Section is responsible for coordinating with the relevant Division in the Business Tax and Fee Department (BTFD) to provide the monthly report to the Board Members.

The BTFD Division will submit approved sales and use tax and special tax and fee refunds for the month in excess of \$250,000 to the Petitions Section by the 5th of the following month (or the first working day thereafter when the 5th falls on a weekend or holiday). The reports should include the following information:

- Category (i.e., refund, credit, cancellation or denial)
- Tax/feepayer name, account number and case ID number
- Dollar amount of the approved item

The Petitions Section will compile the information and provide the report to the Chief of Headquarters Operations Division (HOD) by the 15th of the following month (or the first working day thereafter). The chief of HOD will submit the report to the Board Members by the 20th of the following month (or the first working day thereafter).

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

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

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

PRE-CONSULTATION ACTIVITIES**0110.04**

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

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

Although outside the guidelines as set forth in criteria (1.), field offices have the discretion to perform consultations for taxpayers who have been in business for more than 12 months. Such taxpayers may request a consultation and amend returns (CPPM section 505.120) within the appropriate statute of limitations. The taxpayer must be advised that since the taxpayer does not meet the criteria for an educational consultation, the consultation the taxpayer receives may result in the CDTFA conducting a full audit based upon its findings.

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

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

Contact information throughout the consultation process may be documented on Form CDTFA-414-Z, *Assignment Activity History*, using the CDTFA-414-Z program.

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

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

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

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

POST-CONSULTATION ACTIVITIES**0110.10**

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

1. Material Debit Amount Discovered

If the auditor finds a material debit discrepancy, the auditor will advise the taxpayer to amend its return(s) and pay the appropriate tax and interest.

2. Material Credit Amount Discovered

If the auditor finds a material credit discrepancy, the auditor will furnish the taxpayer with Form CDTFA-101, *Claim for Refund or Credit*, and instruct the taxpayer how to properly file the claim.

3. Educational Consultation Report

After completion of the consultation, the auditor will complete Form CDTFA-1300, *Taxpayer Educational Consultation Report* (Report), and either Form CDTFA-1298, *Taxpayer Educational Consultation Program Letter* (Findings), or Form CDTFA-1299, *Taxpayer Educational Consultation Program Letter* (No Findings) cover letter, depending on the outcome of the consultation. The Report form requires the following information:

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

While each consultation varies from taxpayer to taxpayer, district staff shall make efficient use of their time spent on consultations (e.g., 8 hours per consultation recommended). The auditor submits the Report to their supervisor in the same manner as other audit cases. The district reviewer reviews the Report for accuracy and related comments, and enters the date in the section "Date of Review" and signs in the section "Reviewed By" on the Report. Both the Report and the cover letter must be mailed to the taxpayer. Field staff should archive this report in the digital audit archive. In addition, staff should forward a copy of the Report to the Taxpayer Records Unit (MIC 36).

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

GENERAL INFORMATION

POST-CONSULTATION ACTIVITIES

(CONT. 2) 0110.10

Presentation of a taxpayer's books and records to a tax auditor for examination is considered a written request for an audit report. If a prior audit report of a person requesting RTC section 6596 relief contains written evidence that demonstrates the issue in question was examined, such evidence will be considered "written advice from the CDTFA" and qualify for relief under RTC section 6596. (AM section 0105.04.) The same holds true for a consultation wherein the auditor examines the taxpayer's books and records and completes the Report form. Audit staff should be careful to accurately describe the types of transactions and records examined because only those types of transactions and/or records will qualify as written advice from the CDTFA under RTC section 6596. A taxpayer cannot file a valid RTC section 6596 claim for relief regarding transactions and records not examined by the auditor should the taxpayer dispute an audit finding at a later date. Therefore, auditors should describe in the Report transactions the taxpayer engages in, but were not examined during the consultation. For example, "Claimed exempt shipping charges were not verified against actual shipping documents."

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

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

4. Follow-up Actions

The auditor should enter appropriate comments in IRIS (TAR AI Comments screen) to document that a consultation was requested and completed, rejected, refund recommended, etc.

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

**PROCEDURE FOR OBTAINING AND SAFEGUARDING
INFORMATION FROM THE IRS AND FTB****0115.00****INTERNAL REVENUE SERVICE (IRS)****0115.02**

Federal Tax Information (FTI) is any information provided by the IRS regarding a taxpayer, including, but not limited to, information provided on federal income tax returns, quarterly federal tax returns, and annual federal unemployment tax returns. All data contained in the returns such as ownership information, personal and business addresses, and revenue and expense information is considered FTI.

The following are considered FTI:

- Original records received from IRS in both paper and electronic form.
- Copies of information received from IRS in both paper and electronic form.
- Data transcribed from IRS documents into any data base, audit working papers, written and electronic forms or correspondence such as, but not limited to, levy letters.
- The printing of FTI from external agencies. The IRS has authorized the CDTFA to access and print FTI in the FTB's online databases. The FTB has flagged the FTI information that is contained on screens in the online databases as required by IRS Publication 1075. When a resource person accesses Franchise Tax Board (FTB) information on the FTB's online databases (TI, "Taxpayer Information System" and BETS, "Business Entity Tax System") and prints IRS information contained on screens of the databases, it is considered FTI.

There are two options for obtaining FTI from the IRS:

1. Transcript Delivery System (TDS)
2. Photocopies of IRS income tax returns

TDS provides transcripts to the CDTFA electronically and is generally available within two weeks of the IRS receiving the request. Processing of requests for photocopies may take several months. Most FTI should be obtained by the TDS option.

The following transcripts are available through TDS:

1. *Account Transcript* includes the following information:
 - Subsequent activity posted to an account after the return is filed (e.g., payments, credits, adjustments).
 - Information on the account balance, interest and penalties.
 - Taxpayer's filing status (e.g., "married filing joint").
 - Line item information from the return such as "Adjusted Gross Income," "Taxable Income," and "Tax Per Return." The amounts shown may be "per return" or "IRS adjusted." The transcript identifies the date on which IRS processed the return.
2. *Return Transcript* contains most lines from the original return, including attached forms and schedules. The transcript contains both the "per return" and "IRS adjusted" entries. It does not contain subsequent activity on the account. Return transcripts are available for returns filed during the current and three prior tax years.
3. *Record of Account* includes both the "Account Transcript" and "Return Transcript" information, and is available for returns filed during the current and three prior years.

GENERAL INFORMATION

INTERNAL REVENUE SERVICE (IRS)

(CONT.1) 0115.02

4. *Wage and Income Documents* shows income reported by taxpayers on forms such as W-2 and 1099. Wage and income information are only available for individual tax returns. Wage and Income documents are only available for wages and income earned during the current and ten prior years.

Requesting FTI

Requests for FTI under either option noted above should only be made when the information is not available from FTB or any other sources. A request for FTI should be made using Form CDTFA-33-B, Request for Federal Tax Information.

The following information should be included on Form CDTFA-33-B:

- Taxpayer's name and address.
- CDTFA account or reference number.
- Taxpayer's social security number (if requesting individual income tax returns).
- Spouse's name and social security number (if known) when requesting individual income tax returns. Include the spouse's name if both the husband and wife are on the permit, if attempting to locate community property assets, or if there is evidence the spouse was involved with the business but is not listed on the permit.
- Federal Employer's Identification Number (FEIN) must be included when requesting partnership or corporate information.
- Write in the specific IRS form number(s) filed by the taxpayer. A complete list of available forms is provided in Exhibit 3. However, the following forms most commonly requested are:
 - (a) 940-Employer's Annual Federal Unemployment Tax Return
 - (b) 941-Employer's Quarterly Federal Tax Return
 - (c) 1040-U.S. Individual Income Tax Return
 - (d) 1065-U.S. Partnership Return of Income
 - (e) 1120-U.S. Corporate Income Tax Return
- Requesting unit, name of requestor, date of request, name and title of the approver, date approved, and signature (see the third bullet below).

The procedures for electronic handling of Form *CDTFA-33-B* are as follows:

- The Requestor will complete Form *CDTFA-33-B* (except for the items to be completed by the approver as explained below).
- The Requestor will send the completed Form *CDTFA-33-B* for approval via email. The *CDTFA Exchange of Information* list contains the names of *CDTFA* staff within the field office and headquarters unit or section, authorized to request, receive, and disclose tax information on behalf of the *CDTFA* (approver). The approver is generally the Administrator, Principal Auditor, Principal Compliance Supervisor or headquarters section supervisor.
- The approver will complete the section of the form titled “Approved By,” “Title,” and “Date Approved.” In lieu of a signature, the approver will type in their name followed by the word “emailed” in parentheses on the “Approved By” (signature) line.
- The approver will email the completed Form *CDTFA-33-B* to the *BTFD-FTI Custodian mailbox*. The approver must use the unique Field Office / Section Identifier in the subject line of the email sent to the *BTFD-FTI Custodian Mailbox*. The unique identifier format will include the field office or section letters and a number sequence. For example: Sacramento Field Office would be KH 00001. The email from the approver documents the approver’s signature.

Processing FTI

The Compliance and Technology Section (CTS) is responsible for maintaining the *BTFD-FTI Custodian mailbox* and IRS Tracking Database, as well as processing FTI requests. The procedures for processing FTI requests are as follows:

- Check the *BTFD-FTI Custodian mailbox* for incoming Form *CDTFA-33-B* requests.
- Verify that the person who approved the request is included in the *CDTFA Exchange of Information* list.
- Process the request and send the Requestor FTI materials in a double sealed envelope marked “Confidential.”
- The IRS Tracking Database sends an email to the Administrator, HQ-SUP or their designee notifying them the FTI has been mailed.
- The FTI materials consist of the following documents:
 - TDS transcripts, photocopies of IRS returns, or IRS letters (FTI documents).
 - *Form CDTFA-33, Records of Authorized Examination of Federal Income Tax Returns.*
 - *Form CDTFA-85, Inspection or Disclosure Limitations (Federal).*
- If the request is for “Photocopy of Return,” enter the information on *IRS Form 8796-A, Request For Return/Information*. Send the form and a cover memo to:

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

- Maintain the IRS Tracking Database. The database documents all activities that occur in the process of issuing and destroying FTI materials. The required actions and the related database requirements are shown on the *FTI Actions and Database Activity Table (Exhibit 4)*.

Receiving FTI

Upon receipt of the FTI materials in a double sealed envelope marked “Confidential” from CTS, the Requestor must confirm receipt via email to the *BTFD-FTI Custodian’s mailbox*. The date of the email is entered into the database in the “District Acknowledgement” section.

Safeguarding FTI

The CDTFA has a statutory obligation to protect FTI from unauthorized access and disclosure under the Internal Revenue Code. (IRC § 6103(d)). In order to comply with the IRS information safeguarding requirements, Form CDTFA-85, *Inspection or Disclosure Limitations (Federal)*, must be attached to the AWP to flag any page that includes FTI. It is *not* necessary to attach Form CDTFA-85 to AWP that include information from income tax returns obtained from someone other than the IRS, such as the taxpayer or FTB, if not identified as FTI.

The requestor is personally responsible for safeguarding the FTI documents. When staff is in possession of FTI, it is critical that the information is treated with the utmost security and confidentiality. Only staff with a business reason to view the information may access it. If the information is examined for any reason, the viewing must be documented as follows:

Hard-copy documents

Form CDTFA-33 must be attached to all hard-copy documents and reports containing FTI (including, but not limited to paper documents, audit working papers, etc.). Any person inspecting the document must complete the *Date, Purpose of Examination, Signature of Board Representative, and Employee Number* fields. The form must be signed by the Administrator or headquarters unit or section supervisor.

Electronic documents

The viewing or examining of electronic documents containing FTI (including, but not limited to documents on electronic media, i.e., CD-Roms (CDs), flash drives, etc.) must be documented in the *FTI Tracking Log*. To begin the entry, select *Add New Request* and complete the required fields.

Storage of Hard-copy and Electronic documents

While the hard-copy documents, reports and documents on electronic media are in the possession of staff, they must be stored in a separate, locked cabinet during all times when not being examined by staff. CDs and flash drives must have a label indicating that FTI data is stored on them.

FTI in ACMS

When accessing the “IRS Address Detail” or “IRS Levy Detail” screens in ACMS, the user is presented with a warning banner that reads “CONFIDENTIAL IRS DATA.” ACMS has an IRS Summary feature in which the user must record any FTI. It is crucial for the user to update ACMS and properly record FTI data using the IRS Summary.

Levy Letters Containing FTI

Levy letters that contain information from IRS are considered FTI. The following information may be noted on levy letters:

- Tax Debtor's SSN or FEIN
- Tax Debtor's address
- Tax Debtor's "aka" or "dba"
- Tax Debtor's spouse (name, SSN, address)
- Sources of income (i.e. Banking institutions, Financial institutions, Sources of Independent Contractor income, Insurance policies, etc)

Levy letters that contain this type of information from IRS must be documented in the *FTI Tracking Log* as described above.

Audits Containing FTI

Digital audits stored on the J: drive, archived on CDs, or uploaded to the Audit Archive must be identified if they contain FTI. To do so, the file folder should utilize the following naming convention: District Code_Case Number_Taxpayer Name_FT I. CDs must be encrypted and labeled as FTI. In addition, if viewing digital audits with FTI information, you must enter the viewing information on the *FTI Tracking Log* as described above.

Destroying FTI

When hard copy documents, including transcribed notes, levy letters and *Memorandum of Garnishee*, that are provided to CDTFA are no longer needed, they must be forwarded to the supervisor of the CTS (MIC 40) in a double sealed envelope marked "Confidential" for destruction. In addition, an email must be sent to the *BTFD-FTI Custodian's mailbox* confirming the FTI materials are being returned for destruction. The date of the email is entered into the database in the "District Return Notification" section. When CTS receives the FTI materials and CDTFA forms, they date stamp the envelope and enter the date returned in the database "Received from District" section.

The FTI materials will be destroyed with the approved shredder located in CTS.

Requests for information from the FTB, must be made using the “External Access Tracking (EAT) System,” program, which is located at <http://eboe/eboe3/checklogin/eattr.cfm>. This location also contains the guidelines for requesting information. To access this program, the tax auditor must be authorized to do so by his or her supervisor. Requests for information are processed only by designated resource persons within the requestor’s field office.

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

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

Supervisory guidance on periodic review of requests for information is located at <http://eboe/eat/doc/EATHelp/helpnmanual/index.html>, under “Supervisor Functions.”

DESTRUCTION OF FILE MATERIAL

0117.00

AUDIT WORKPAPER RETENTION POLICY

0117.02

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

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

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

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

See AM section 0306.00, Electronic Audit Working Papers.

REWARD PROGRAM

0122.00

GENERAL

0122.02

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

Individuals occasionally indicate that they have information that would enable the CDTFA to recover sales tax revenues. Tax auditors should advise these individuals that there is currently no state funding that would enable us to provide a reward. However, tax auditors may attempt to obtain such information by appealing to the person's sense of duty as a good citizen. The tax auditor should advise the person providing information that he or she may request that his or her identity not be divulged.

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

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

Under the Information Practices Act (IPA)(Civil Code § 1798 et seq.), all information provided by an informant, as well as the informant's name, may be withheld during the investigation of criminal or non-criminal matters if disclosure of the information would compromise the investigation or a related investigation. Once the investigation has been completed, information relating to the identity of the informant may continue to be withheld provided the informant was promised confidentiality. A promise of confidentiality shall be documented in writing. For purposes of this paragraph, the investigation will be considered complete when a determination is issued, regardless of the fact that the taxpayer subsequently petitions for a redetermination. If the informant was not promised confidentiality, then the informant's identity must be divulged upon request by the taxpayer. While the IPA is only applicable to individual taxpayers, as a policy matter, the CDTFA has extended the protection of the IPA to all taxpayers.

Whether or not confidentiality is promised, the information provided by the informant must be divulged if a request is made by the taxpayer, but only after the investigation is completed. Additionally, staff may provide either an exact copy of the information provided by the informant, with the informant's identity deleted if confidentiality has been promised or a comprehensive summary of the substance of the information. If the informant's identity can be readily determined from an exact copy of the information, then it would be preferable to provide a comprehensive summary. If a comprehensive summary is provided, staff should pay particular attention to providing all personal information that could affect the taxpayer's reputation, rights, benefits, or privileges.

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

GUIDELINES**0124.04**

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

- **INITIAL CONTACT.** Generally, staff should not encourage informants to request confidentiality. If an informant contacts the CDTFA by phone or in person and asks to remain confidential, that request and the promise of confidentiality should be documented in writing. The informant should be advised that under certain circumstances, such as a court proceeding, the CDTFA may be unable to maintain the informant's confidentiality.
- Where the informant contacts the CDTFA in writing, confidentiality should be maintained if so requested.
- The CDTFA may accept information that is provided anonymously.

GENERAL INFORMATION

GUIDELINES

(CONT.) 0124.04

- **DOCUMENTS.** In those cases where the informant provides his/her name, any documents containing the informant's allegations should clearly state whether or not his/her name was provided with the promise of confidentiality. If the information was provided with the promise of confidentiality, then to ensure against the improper release of the informant's identity it is imperative that staff clearly print in red "INFORMANT — CONFIDENTIAL" on the top of such documents. In addition, when the document is prepared by staff, the informant's name as well as other information which should not be released to protect the identity of the informant (i.e., telephone number, address, etc.) should be placed in one central location and circled in red. He or she should thereafter be referred to in the document as "the informant."
- **INVESTIGATION.** During an investigation, if a taxpayer or the taxpayer's authorized representative requests file material, staff must provide a copy of all documents in the file except those with confidential information such as an informant's name or the information received from the informant. However, in doing so, staff must inform the taxpayer that such information exists and is being withheld until completion of the investigation as required by the IPA. Staff should not provide details of the information provided by the informant during the investigation.
- **FOLLOWING THE INVESTIGATION.** Once the investigation is complete, the CDTFA will withhold the identity of the informant if there was a promise of confidentiality; otherwise, we must disclose his/her identity. Whether or not confidentiality was promised the informant, the taxpayer is entitled to either an exact copy of the information with only such deletions as are necessary to protect the informant's promised confidentiality or a comprehensive summary of the substance of the material.
- **COURT PROCEEDINGS.** When the CDTFA's records are subpoenaed as the result of court proceedings such as a discovery order or a criminal investigation where the defendant has the right to confront his or her accuser, the matter should be referred to the CDTFA's legal staff for action.

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

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

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

PROCEDURES**0126.04**

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

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

EVIDENCE**0126.08**

The innocent party is responsible for providing staff with documentary evidence supporting the claim of identity theft. Documentation may include the following:

- Police and/or court reports;
- Documentation that shows a fraud alert has been placed on credit reports;
- A copy of the Identity Theft Affidavit filed with the Federal Trade Commission (FTC). (The FTC serves as the federal clearinghouse for complaints by victims of identity theft.);

GENERAL INFORMATION

EVIDENCE

(CONT.) 0126.08

- Written responses of results of investigations by creditors, banks, or companies that provided the perpetrator with unauthorized goods or services;
- Written responses of results of investigations by district attorney's office or other investigators supporting the claim of identity theft;
- Copies of other applications and business records relating to transactions and accounts that show that those transactions involved identity theft;
- Affidavits from landlords, vendors, accountants, or bookkeepers supporting a claim of identity theft;
- Deposition from a private handwriting expert certifying a forged signature; or
- A birth certificate indicating that the innocent party was a minor at the time the application was signed which may indicate identity theft occurred.

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

The responsible OMA or headquarters section will examine the evidence. The compliance principal or headquarters section supervisor should contact other potentially affected sections or divisions (e.g., Special Operations Branch, Audit and Carrier Division, and field offices) when a related account is identified that may have additional pertinent information or may be impacted. Once the responsible OMA or headquarters section is satisfied the documentation supports the identity theft, the compliance principal or headquarters section supervisor should review the case, and if in agreement, should approve a request for a legal adjustment to the account.

Staff will use a CDTFA-200-A, *Special Operations Action Request*, which is available in the system, to request a legal adjustment. The CDTFA-200-A is then sent to one of the following for final approval:

Section/Field	Final Approval
Field Offices	Office Administrator
Headquarters Operations	Division Chief
Audit and Carrier Division	Division Chief
Legal Division	Chief Counsel

Once the request for a legal adjustment has been approved, the approving party should forward the CDTFA-200-A to the Special Operations Branch (SOB) for adjustment. Staff originating the request should put detailed comments in the system.

The SOB will process and approve the adjustment in IRIS using the adjustment type code "IDT" on the "Maintain Legal Adjustments for Account" screen (DIF LA). Once the adjustment is completed, SOB staff will generate a statement of account in IRIS, which will include bill note #999 (free form text) that explains the adjustment performed, and provide it to the innocent party.

If liens have been filed in the innocent party's name, a separate CDTFA-200-A should be completed and sent to the SOB requesting a release of lien filed in error, or requesting a single party release of lien. The SOB will send the lien release directly to the county recorder unless otherwise instructed by the innocent party or an escrow company acting on behalf of the innocent party.

AUDIT MANUAL
TABLE OF EXHIBITS

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

GENERAL INFORMATION

TAX CODE TABLE FOR SALES AND USE TAXES

EXHIBIT 1

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

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

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

SAMPLE OF REQUEST FOR RELIEF MEMO

State of California

California Department of
Tax and Fee Administration

M e m o r a n d u m

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

Date:

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

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

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

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

Background

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

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

Current Audit

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

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

GENERAL INFORMATION

SAMPLE OF REQUEST FOR RELIEF MEMO

EXHIBIT 2
PAGE 2 OF 2

[Insert Deputy Director's Name]

[Date]

Prior Audit

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

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

Application of Tax

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

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

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

Recommendation

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

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

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

AUDIT MANUAL

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

EXHIBIT 3

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

GENERAL INFORMATION

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

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

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