

Compliance Policy and Procedures Manual

Chapter 1

General

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.

GENERAL

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COMPLIANCE POLICY AND PROCEDURES MANUAL

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**CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION (CDTFA) - GENERAL 100.000**

MISSION, HISTORY, AND ORGANIZATION 105.000

MISSION AND PHILOSOPHY 105.003

The mission of the California Department of Tax and Fee Administration (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. This publication of the CDTFA's compliance policies and procedures demonstrates the CDTFA's commitment to 1) providing assistance and information to the public and 2) administering a fair and firm enforcement program to ensure that taxes and fees are reported and paid properly.

PURPOSE OF COMPLIANCE MANUAL 105.005

The information in this manual will assist compliance staff in the equitable and uniform administration of the business tax and fee programs administered by the CDTFA. The manual incorporates processes, procedures, and techniques that have evolved over a period of years and that have proven to be effective.

HISTORY 105.010

The CDTFA was created by the Taxpayer Transparency and Fairness Act of 2017, which restructured the California State Board of Equalization (BOE) into three separate entities: the BOE, the CDTFA, and the Office of Tax Appeals (OTA). Prior to the existence of the CDTFA, the BOE was the agency responsible for the administration of the tax and fee programs now administered by the CDTFA.

The BOE was created under the California Constitution of 1879 and was initially charged with the duty of maintaining a uniform level of property tax assessment between counties. Over time, the legislature expanded the BOE's responsibilities to include many tax and fee programs, which it administered until the legislature reassigned many of its functions in 2017. The BOE now only performs the duties assigned to it by the state Constitution. The BOE is the oldest board in existence in California and is the only elected board in California State Government. The BOE is comprised of five elected members; one from each of the four equalization districts, and the fifth member is the State Controller.

The CDTFA is housed within the California 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 the BOE through an interagency agreement. The CDTFA is responsible for the remaining statutory taxes and fees previously collected by the BOE. The OTA conducts appeals hearings between tax/feepayers and the CDTFA and the Franchise Tax Board.

ORGANIZATION**105.020**

The Director is the chief administrative officer of the CDTFA. The Director is assisted by the Deputy Directors and Chiefs throughout the department as indicated on CDTFA's organizational chart. The organizational chart can be found on the CDTFA's website directory and in publication 327, *California Department of Tax and Fee Administration Directory*. In addition to collecting sales and use tax on behalf of the state, the CDTFA contracts with counties and cities to collect the tax due under the Bradley-Burns Uniform Local Sales and Use Tax Law. The CDTFA also contracts to collect tax for various districts authorized by law to impose transactions and use (district) taxes. The CDTFA also contracts with, or is required to collect, special taxes or fees for the following agencies:

1. Department of Resources Recycling and Recovery to collect the Integrated Waste Management Fee, the California Tire Fee, and the Electronic Waste Recycling Fee.
2. Air Resources Board to collect a portion of the California Tire Fee.
3. State Lands Commission to collect the Marine Invasive Species Fee.
4. Department of Public Health to collect the Childhood Lead and Occupational Lead Poisoning Prevention Fees.
5. Department of Toxic Substances Control to collect the Hazardous Waste Fees, Environmental Fee and Lead-Acid Battery Fees.
6. California Energy Commission for the collection of the Energy Resources Surcharge.
7. California Public Utilities Commission to collect the Natural Gas Surcharge and a portion of the Prepaid Mobile Telephony Services Surcharge.
8. State Water Resources Control Board to collect the Underground Storage Tank Maintenance Fee and the Water Rights Fee.
9. Office of Emergency Services to collect the Emergency Telephone Users Surcharge and a portion of the Prepaid Mobile Telephony Services Surcharge.
10. Department of Fish and Wildlife to collect the Oil Spill Response, Prevention and Administration Fees and the Lead-Acid Battery Fees.
11. Board of Equalization to collect the Alcoholic Beverage Tax and the Tax on Insurers.

See CPPM Section 110.000 for a description of the tax programs administered by the CDTFA.

BUSINESS TAXES AND FEES**105.030**

Business taxes and fees are administered by both the Business Tax and Fee Division (BTFD) and the Field Operations Division (FOD). To enhance the public convenience and efficient administration of tax and fee programs, there are offices located around California and in several locations outside California, each under the direction of an Administrator who reports directly to the Deputy Director of the FOD.

Offices in New York City, Chicago and Houston service accounts that conduct business in California or incur tax liability in this state, but are headquartered outside California (see CPPM 105.032).

GENERAL

BUSINESS TAXES

(CONT.) 105.030

The Motor Carrier Office (MCO) has staff that inspects motor carriers at California border stations throughout the state.

The duties of BTFD and FOD include both compliance and audit functions. The function of the auditing staff is to audit the records of tax/feepayers to determine the accuracy of self-assessed taxes and fees and recommend, when necessary, amounts to be assessed or refunded. The compliance function is detailed in CPPM 120.000.

BTFD and FOD are assisted with collection activities by the Legal Division through the Investigations and Special Operations Bureau headquartered in Sacramento.

OFFICE LOCATIONS AND GEOGRAPHIC DESIGNATORS

105.032

Office locations and addresses are listed on the CDTFA website at www.cdtfa.ca.gov/office-locations.htm. Offices have different geographic designators that are listed on the CDTFA's intranet site.

BUSINESS TAX LAWS ADMINISTERED 110.000

BUSINESS TAX LAWS 110.005

This section of the manual outlines the fundamentals of the tax laws administered by Business Tax and Fee Division (BTFD). Only the basics of each law are mentioned. Refer to the Business Taxes Law Guide or contact the appropriate sales and use tax or special taxes section or unit for specific applications of tax or fees.

All future references to the terms “tax(es)” and “taxpayer(s)” should be interpreted to include “fee(s)” and “surcharge(s)” and “feepayer(s)” and “surcharge payer(s)” where applicable.

SALES AND USE TAX 110.010

The sales tax is imposed on retailers for the privilege of selling tangible personal property in California at retail. Sales tax is measured by gross receipts from retail sales (Revenue and Taxation Code (RTC) section 6012). The use tax is imposed upon the purchaser for the storage, use or other consumption in this state of tangible personal property purchased from a retailer. The use tax is measured by the sales (purchase) price of the property, see RTC section 6011. The sales tax and the use tax are complementary taxes and the tax rates are identical for both.

The use tax is not imposed when the sale of the property to the consumer is subject to the sales tax. Generally, the use tax, rather than the sales tax, applies when the property purchased is delivered to the purchaser at a point outside this state for use in California or is shipped or delivered into this state to a California consumer from an out-of-state point.

BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAX LAW 110.015

This law authorizes counties to impose a sales and use tax at the rate of one and one-quarter percent of the selling price of tangible personal property sold at retail in the county, or purchased outside the county for use within the county, unless the sale is subject to a local tax under a Uniform Local Sales and Use Tax Law ordinance in the county of purchase. Each county desiring to impose a local tax must contract with the CDTFA for administration of the tax. The provisions of the ordinance required to be adopted by the county must conform to the provisions of the state Sales and Use Tax Law. There are a few additional exemptions in the local tax law that do not apply to the state sales and use tax law.

This law authorizes each city in a county, which adopts an ordinance under the Bradley Burns Law, to levy a state-administered city tax with the same base and a rate of one percent or less to be credited against the county tax.

This law also authorizes a redevelopment agency of any city to levy a state-administered redevelopment agency tax at a rate of one percent or less to be credited against the city tax, provided the city ordinance includes a provision for the credit. No new redevelopment agencies may be implemented after January 1, 1994.

COUNTY PUBLIC TRANSPORTATION FUND 110.020

The one and one-quarter percent local tax includes one-quarter percent that is directly deposited to each county’s Public Transportation Fund.

TRANSACTIONS AND USE TAX**110.025**

This law authorizes districts, with voter approval, to adopt an ordinance(s) imposing a transactions and use tax or taxes. "District" means any city, county, city and county, or other governmental entity authorized to impose transactions and use taxes pursuant to Part 1.6, Division 2 of the RTC. Each district desiring to have a transactions and use tax must contract with the CDTFA to administer the Transactions and Use Tax Law.

Unless the principal act of the district provides for a different rate, the rates of the transactions and use taxes are fixed at one-quarter, one-half, or three-quarters of one percent of the selling price of tangible personal property sold at retail in the district, or purchased outside the district for use in the district (unless the sale is subject to a transactions and use tax at the place of purchase). The combined rate of all transactions and use taxes imposed in any county shall not exceed two percent.

While many districts are encompassed by county boundaries, there are two districts that encompass multiple county jurisdictions: BART (Bay Area) and SMART (Sonoma/Marin). Retailers operating in either of these multi-jurisdictional districts must collect the district tax for all the participating counties. For example, a retailer that operates only a single location in Alameda county and who does not have a physical presence in San Francisco, Contra Costa or San Mateo counties, must collect the BART district tax when the retailer has merchandise delivered to a purchaser in any of those counties. The retailer is not required to collect any other district tax(es) imposed within those counties, if the retailer is not engaged in business there.

THE MOTOR VEHICLE FUEL TAX**110.030**

The Motor Vehicle Fuel Tax is imposed upon suppliers, refiners, position holders, enterers and blenders. The tax applies to the removal of motor vehicle fuel (gasoline) from a terminal or refinery (at the rack), the entry of motor vehicle fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender.

Persons who have paid the motor vehicle fuel tax, either directly or to a vendor shall be reimbursed the amount of the tax paid if the gasoline was used in an exempt manner under RTC sections 8101 through 8101.7. To receive this reimbursement, the claimant must file a claim with the State Controller.

Aircraft jet fuel dealers who make taxable sales or taxable use of aircraft jet fuel must be registered and remit tax for each gallon of aircraft jet fuel sold or used. For more information on exempt sales or use, refer to Motor Vehicle Fuel Tax Law, Chapter 2.5, Aircraft Jet Fuel Tax, sections 7385 to 7398.

DIESEL FUEL TAX**110.033**

The Diesel Fuel Tax is imposed upon suppliers (refiners, position holders, enterers and blenders). The tax applies to the removal of diesel fuel from a terminal or a refinery at the rack, the entry of diesel fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender.

Diesel fuel is any liquid that is suitable for use in a diesel-powered vehicle and, pursuant to RTC section 60023, also includes biodiesel, biomass-based diesel, virgin and used vegetable oils, and animal fats.

Diesel fuel used for purposes other than operating a diesel-powered motor vehicle upon public highways in California is not subject to application of the diesel fuel tax. In addition, a partial exemption applies to diesel fuel used in certain bus operations described in Diesel Fuel Tax Law section 60039. Fuel usage that qualifies for the partial exemption is subject to a tax of one cent per gallon. Diesel fuel is colored with red dye for off-highway and other exempt uses.

DIESEL FUEL TAX

(CONT. 1) 110.033

The Interstate Users Tax (Component b) is imposed on persons who use diesel fuel in the operation of a qualified motor vehicle in this state and who operate the vehicle within and without this state or the United States. Interstate users must obtain a fuel trip permit or an International Fuel Tax Agreement (IFTA) license to assure the proper payment of diesel fuel tax for gallons of diesel fuel used on the public highways of California.

Note on Diesel Fuel Tax – Component b: RTC section 60116 establishes the interstate user component of the Diesel Fuel Tax. The rate of Component b may vary from year-to-year. The rate is established each year on January 1 and is based on the average retail sales price per gallon of diesel in California multiplied by a percentage equal to the combined state and local sales tax rate.

USE FUEL TAX

110.035

An excise tax is imposed on alternative fuels (liquefied petroleum gases (LPG), liquid natural gas (LNG), compressed natural gas (CNG), alcohol fuels, kerosene, and distillate) used to propel a motor vehicle on highways except fuel that is subject to the tax imposed by Part 2 or Part 31 of the Revenue and Taxation Code (gasoline or diesel tax). The tax is imposed upon the user of the fuel. Any vendor who sells and delivers the fuel into a vehicle's fuel tank shall, at the time of sale, collect the tax from the user. The vendor then becomes liable for the tax.

The user must file a return and account for his or her fuel sales and usage even though he or she has paid all of the tax to the vendor and has no liability. A user of fuel cannot claim a deduction for tax paid to a vendor unless he or she has actually paid the bill.

Users of fuel who own or operate vehicles propelled by LPG, LNG or CNG have the option of paying the applicable use fuel tax directly to the vendor, or to the state if the user has bulk storage, or paying an annual flat rate fuel tax to the CDTFA. Payment of the annual flat rate tax entitles the user to purchase LPG, LNG or CNG without payment of the use fuel tax to the vendor or state, regardless of the type of conversion system installed on the vehicle.

The full and partial exemptions under the Use Fuel Tax Law are the same as for the Diesel Fuel Tax Law. Additionally, some users are exempt from obtaining permits and filing returns. Interstate users of use fuel may obtain a fuel trip permit.

FUEL TAX ENFORCEMENT

110.036

The CDTFA's Motor Carrier Office maintains a staff presence at various CHP and agricultural inspection facilities on the major California interstate highways. Staff at these locations monitors vehicles passing through the facilities to ensure that interstate users of fuel are properly licensed for fuel tax reporting purpose or have valid California fuel tax trip permits. Tax and penalties are assessed to interstate users who do not have proper licenses or permits. Outstanding tax liabilities, penalties, and any tax returns that are due from revoked California-based accounts are collected before the truck is permitted to proceed to its destination. Trucks may be seized, impounded, and sold if compliance is not obtained.

In addition to fuel tax enforcement, staff identifies loads and inspects bills of lading for cargo that may be subject to California use tax or, in the case of Christmas trees, is destined for sale by California retailers. Trucks carrying petroleum products are occasionally stopped to confirm that untaxed fuel is not entering California. Leads are developed for these and other CDTFA-administered programs.

CDTFA staff is not authorized to take fuel samples from fuel tanks. To prevent the use of dyed diesel fuel on California highways, the CDTFA contracts with the Air Resources Board to conduct random roadside inspections. Those users found to be in violation of the Diesel Fuel Tax Law are assessed diesel fuel tax and penalty.

GENERAL

SPECIAL TAXES AND FEES RATES **110.037**

The special tax or fee rate and the year it was introduced or changed is provided on the CDTFA's website at <https://www.cdtfa.ca.gov/taxes-and-fees/tax-rates-stfd.htm>

TAX ON INSURERS **110.038**

The insurance tax is levied against insurance companies in lieu of all other taxes except license fees and real estate taxes. The tax is based on the gross amount of premiums for insurance sold in California or, in the case of ocean marine insurance, on underwriting profits.

CIGARETTE AND TOBACCO PRODUCTS TAX **110.040**

Two types of excise taxes are collected on cigarettes and tobacco products distributed in California: 1) the cigarette tax, and 2) the cigarette and tobacco products surtax. A cigarette distributor is a person who sells cigarettes upon which the tax liability has not yet accrued. Cigarette distributors are subject to both taxes, which they pay by purchasing tax stamps from the CDTFA and affixing them to each package of cigarettes before distribution.

Tobacco products, not including cigarettes, are subject only to the cigarette and tobacco products surtax. Tobacco products include all forms of cigars, smoking tobacco, chewing tobacco, and snuff, as well as other products containing at least 50 percent tobacco. The surtax rate is determined annually by the CDTFA.

CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003 **110.042**

The Cigarette and Tobacco Products Licensing Act imposed licensing requirements upon all retailers, wholesalers, distributors, manufacturers, and importers of cigarette and tobacco products. The Act, intended to decrease tax evasion on the sale of cigarettes and tobacco products in California, also included provisions for new record keeping requirements, inspection and seizure of any untaxed cigarettes and/or tobacco products, and imposed civil and criminal penalties for violations.

ALCOHOLIC BEVERAGE TAX **110.045**

The tax imposed upon beer, wine, and distilled spirits varies with the type of beverage and alcoholic content. Issuance of a license to any manufacturer, wine grower, distilled spirits manufacturer's agent, rectifier, wine blender, wholesaler, importer, customs broker, on-sale general brew pub, or industrial alcohol dealer by the Department of Alcoholic Beverage Control (ABC) constitutes registration with the CDTFA insofar as the Alcoholic Beverage Tax Law requirements are concerned.

When a liquor license has been applied for that requires a supporting surety bond, ABC notifies the CDTFA. The Registration and Licensing Section then requests a bond or other acceptable security in the required amount. The ABC also notifies the CDTFA of alcoholic beverage license surrenders or transfers.

ENERGY RESOURCES SURCHARGE **110.046**

The Energy Resources Surcharge is imposed on the consumption of electrical energy. The surcharge is collected by the electric utilities from the consumers or paid directly by public institutions, water districts and irrigation districts that have purchased electrical energy from the federal government.

EMERGENCY TELEPHONE USERS SURCHARGE **110.047**

The Emergency Telephone (9-1-1) Users Surcharge is imposed on the charges for intrastate telecommunication services. The surcharge is collected by the telephone service supplier from the service user with the bill for telephone service.

HAZARDOUS WASTE AND ENVIRONMENTAL FEES**110.050****Disposal Fee**

The Disposal Fee is imposed on persons who dispose of or submit for disposal hazardous waste in California. The fee is collected by the operator of the disposal facility where the waste is submitted for disposal. The facility operator reports and pays the fees on a monthly basis, based upon tons of waste disposed.

Generator Fee

The Generator Fee is imposed upon persons who generate hazardous waste in California and it applies to persons who generate certain types of hazardous waste outside this state if the waste is shipped into California. The Generator Fee is a site-specific fee based upon the amount of waste generated at a specific generating site and is reported on a yearly basis. Accounts meeting certain criteria may be required to file prepayment returns.

Facility Fee

The Facility Fee is imposed on persons who have been issued a Hazardous Waste Facility Permit or who have been granted interim status to operate a hazardous waste facility. Facility permits, issued by the California Department of Toxic Substance Control (DTSC) are required of persons who treat, store, or dispose of hazardous waste on-site. The fee is assessed on an annual basis, with two prepayments of 50% each.

Activity Fee

Activity Fees are imposed on persons who have filed various applications with the DTSC, including applications for permits and variances. These fees are billed based upon information provided to the CDTFA by the DTSC.

Environmental Fee

The Environmental Fee is a fee imposed upon all businesses and organizations in industry groups that use, generate, or store hazardous materials or that conduct activities related to those materials. The fee applies to corporations, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and sole proprietorships that have 50 or more employees who are employed more than 500 hours in California during a calendar year. DTSC has determined that all of these organizations are subject to the fee unless specifically exempt. The fee is based on the number of qualifying employees and is assessed on an annual basis.

In addition to the above fees, the Occupational Lead Poisoning Prevention and the Childhood Lead Poisoning Prevention fees are administered under provisions of the Hazardous Substances Tax Law, but are separately imposed.

OCCUPATIONAL LEAD POISONING PREVENTION FEE**110.052**

The Occupational Lead Poisoning Prevention Fee is imposed on persons who operate in industries identified as having a potential for causing occupational lead poisoning. The fee is assessed on an annual basis.

CHILDHOOD LEAD POISONING PREVENTION FEE**110.053**

The Childhood Lead Poisoning Prevention Fee is imposed on distributors of motor vehicle fuel, distributors of architectural coatings, and on facilities releasing lead into the ambient air. The fees are assessed annually.

GENERAL

UNDERGROUND STORAGE TANK MAINTENANCE FEE **110.054**

The Underground Storage Tank Maintenance Fee is imposed upon underground storage tank owners. The fee is reported on a quarterly basis and imposed upon each gallon of fuel placed into the underground tank is.

INTEGRATED WASTE MANAGEMENT FEE **110.055**

A fee is imposed upon solid waste disposal facility operators such as municipal and private landfill operators. The fee is based on tons of solid waste disposed and is reported on a quarterly basis

CALIFORNIA TIRE FEE **110.065**

The Tire Fee is imposed upon every person who purchases a new tire, including new tires provided as part of the sale or lease of a new or used motor vehicle, new or used construction equipment, or new or used farm equipment. The seller is required to collect the fee and remit it on a quarterly basis. The seller is allowed to retain 1.5 percent of the fee for reimbursement of related collection costs.

OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES **110.070**

Oil Spill Response Fee

Every operator of a refinery must pay a fee for each barrel of crude oil received at a refinery within the state. Every owner of petroleum products must pay a fee for each barrel of petroleum products received at a marine terminal from outside this state. The fee is collected by the marine terminal operator from the owner of the petroleum products. Every operator of a pipeline must pay a fee for each barrel of petroleum products transported into this state by means of a pipeline operating across, under or through marine waters of this state. The size of this fund is to be maintained at a specified level. Any amount over this level will be refunded to the fee-payers. Collection of the fee is suspended whenever sufficient funding exists.

Oil Spill Prevention And Administration Fee

Every owner of crude oil or petroleum products must pay a fee for each barrel of crude oil received at a marine terminal from within or outside the state and for every barrel of petroleum products received from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum products. Every operator of a pipeline shall pay a fee for each barrel of crude oil originating from a production facility in marine waters and transported in this state by means of a pipeline operating across, under or through marine waters of this state.

MARINE INVASIVE SPECIES FEE **110.075**

The Marine Invasive Species Fee Collection Law imposes a fee upon the owner or operator of any vessel that enters a California port with ballast water loaded from outside the Exclusive Economic Zone (EEZ). The fee, also known as the Ballast Water Management Fee, is imposed for each voyage and is billed based on information provided to the CDTFA by the Marine Exchanges and other sources.

NATURAL GAS SURCHARGE **110.080**

The Natural Gas Surcharge Program imposes a surcharge on all natural gas consumed in California. The surcharge applies to all consumption, except natural gas used to generate power for sale, resold to end users, used for oil recovery, utilized in co-generation technology, or produced in California and transported on a proprietary pipeline. All public utility gas corporations operating in this state, and all persons consuming natural gas in this state, where the natural gas has been transported by an interstate pipeline must register for this program. Returns are due quarterly.

ELECTRONIC WASTE RECYCLING FEE**110.090**

The Electronic Waste Recycling (eWaste) Fee is imposed on the retail sale or lease of certain electronic products that have been identified by the Department of Toxic Substances Control (DTSC) as covered electronic devices (CEDs). Products covered by the fee include a variety of video display devices. To remit the fee, a retailer of CEDs must register with the BOE. A retailer may retain 3 percent of the eWaste fee it collects as reimbursement for costs associated with the collection of the fee.

WATER RIGHTS FEE**110.100**

The Water Rights Fee applies to owners of water rights and is collected annually. The fee is based upon a schedule of fees adopted by the State Water Resources Control Board.

FIRE PREVENTION FEE**110.110**

The Fire Prevention Fee (FPF) is assessed on habitable structures located within State Responsibility Areas (SRA). Property owners will be assessed an amount on each habitable structure located within the SRA. The Department of Forestry and Fire Protection (CALFIRE) is responsible for providing the CDTFA with a list of persons who are liable for the FPF and the amount of the fee(s) to be assessed. The FPF is assessed annually and the amount is subject to annual adjustment using prescribed methods.

LUMBER PRODUCTS ASSESSMENT**110.120**

Beginning January 1, 2013, purchases of lumber products and engineered wood products for use in California are subject to a one percent (1%) assessment based on the selling price of the product. Retailers must separately state the amount of the assessment on a sales receipt provided to the purchaser. In addition to retailers, the law affects purchasers, including construction contractors, who use these products in California.

Effective January 1, 2015, retailers selling less than \$25,000 of qualifying lumber products during the previous calendar year are not required to register and collect the assessment from their customers. However, they may choose to do so voluntarily. If they do not voluntarily collect the assessment, they are still required to track their annual sales to determine whether or not they will be required to collect the assessment during the following year. Retailers who do not collect the assessment are also required to notify purchasers that the purchasers must pay the assessment directly to the California Department of Tax and Fee Administration (CDTFA).

Retailers may retain up to \$250 of the amount of assessments collected from customers for each business location registered under the retailer's seller's permit as of January 1, 2013, as reimbursement for start-up costs per Lumber Products Assessment (LPA) Regulation 2000, *Retailer Reimbursement Retention*. Beginning January 1, 2014, retailers eligible to retain reimbursement for start-up costs may retain an additional \$485 per business location as reimbursement for start-up costs as outlined in LPA Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*.

The lumber products assessment funds various agencies including the Department of Forestry and Fire Protection to reduce the costs of wildland fire suppression, reduce greenhouse gas emissions, promote adaptation of forested landscapes to changing climate, improve forest health, and protect homes and communities. The CDTFA is responsible for administering this assessment pursuant to the Fee Collection Procedure Law. The Lumber Products Assessment industry guide provides detailed information and resources and is available to the public on the CDTFA's website.

PREPAID MOBILE TELEPHONY SERVICES SURCHARGE**110.130**

Effective January 1, 2016, a Prepaid Mobile Telephony Services (MTS) Surcharge is imposed on consumers of prepaid wireless services and products (e.g., prepaid wireless plans, prepaid wireless airtime cards) purchased in a retail transaction in California. Sellers of prepaid wireless services and products are required to charge and collect the surcharge at the time of the sale.

Under the law, a seller is defined as a person who sells prepaid MTS to another person in a retail transaction. This includes 1) indirect sellers, such as third-party retailers, and 2) direct sellers. A direct seller includes a telecommunication service supplier who sells prepaid MTS directly to consumers. Prepaid MTS sellers other than direct sellers who sell prepaid MTS to consumers are typically referred to as “indirect sellers.” Registration, filing, and reporting requirements for indirect sellers are different than those for direct sellers.

Prepaid MTS sellers (other than direct sellers) may retain 2% of the prepaid MTS surcharge collected as reimbursement for their costs of collecting the surcharge.

Small Seller Exemption

Effective January 1, 2017, **indirect** sellers with less than \$15,000 of sales of prepaid MTS in the previous calendar year are not required to collect the prepaid MTS surcharge from their customers. However, they are required to maintain adequate records of their prepaid MTS sales to establish that they qualify for the small seller exemption. The \$15,000 threshold is subject to adjustment annually.

Lifeline Exemption

Purchases from direct sellers by certain consumers of prepaid MTS, either alone or in combination with mobile data or other services, may be exempt under the state or federal lifeline program. To qualify, the prepaid consumer must be certified as eligible for the state or federal lifeline program, and the seller must be authorized to provide lifeline service under the state or federal lifeline program. The exemption is applied only to the amount paid for the portion of the prepaid mobile telephony service that the lifeline program specifies is exempt from the surcharges and fees that comprise the prepaid MTS surcharge.

Prepaid MTS Surcharge Rate

The California Department of Tax and Fee Administration (CDTFA) is required to calculate the prepaid MTS surcharge rate annually, and will post the combined total of the prepaid MTS surcharge rate and local rate(s) for each jurisdiction by December 1 of each year, to be effective the following January 1. Any new local charges and adjustments to existing local charges will be posted to the CDTFA’s website by March 1 and will be effective on April 1. A detailed breakdown of the current individual rates for the prepaid 911 surcharge, California Public Utilities Commission surcharges, and a separate listing of local charges are available on the CDTFA’s website.

The term “prepaid MTS surcharge” refers to all three components of the surcharge: amounts for the emergency telephone users (prepaid 911) surcharge, the California Public Utilities Commission reimbursement fee and universal service surcharges, and any local charges imposed on prepaid MTS.

There is additional information in the Prepaid Mobile Telephony Services (MTS) Surcharge guide on the CDTFA’s website.

LEAD-ACID BATTERY FEE**110.140**

The Lead-Acid Battery Recycling Act of 2016 imposes a \$1.00 California battery fee on consumers, and a \$1.00 manufacturer battery fee on manufacturers of lead-acid batteries. Both fees apply to batteries typically designed for use in vehicles, watercraft, aircraft or equipment that are purchased or sold in California. The California battery fee will increase to \$2.00 on April 1, 2022, and the manufacturer battery fee will end on March 31, 2022.

Dealers of replacement lead-acid batteries are required to charge and collect the California battery fee from consumers at the time of the sale. A dealer is a person who sells replacement lead-acid batteries at retail in California, including sales made online in California.

Manufacturers of lead-acid batteries are required to collect the manufacturer battery fee at the time of sale. Only one person is considered the manufacturer and liable for the manufacturer battery fee. A manufacturer is generally the person who manufactures the battery and who sells, offers for sale, or distributes the lead-acid battery in California. However, an importer (i.e., retailer, wholesaler, other person who imports the lead-acid battery into California for sale or distribution) is responsible for the manufacturer battery fee if the manufacturer is not subject to jurisdiction in California.

The California Department of Tax and Fee Administration (CDTFA) is responsible for the administration of the lead-acid battery fees in cooperation with the Department of Toxic Substances Control. Additional information about these fees is available in the *Tax Guide for Lead-Acid Battery Fees*, which is available on the CDTFA website.

CANNABIS TAXES**110.150**

Effective January 1, 2018, two new taxes were imposed that apply to cannabis and cannabis products. The first is a cultivation tax imposed on cultivators of cannabis, and the second is an excise tax imposed upon purchasers of cannabis and cannabis products sold at retail. The registration, reporting, and remittance requirements are imposed on the cannabis distributor.

Please note that *sellors* of cannabis and cannabis products are subject to the registration, reporting, and remittance requirements for the sales and use taxes, which are separate from the cannabis taxes. In addition, there is an exemption from sales and use tax on the sales of medicinal cannabis and cannabis products when the purchaser provides a valid Medical Marijuana Identification Card (MMIC) issued by the California Department of Public Health and a valid government issued identification card (see CPPM section 255.065).

Cultivation Tax

The cultivation tax is imposed upon cultivators and applies to all harvested cannabis that enters the commercial market. Cannabis has “entered the commercial market” when the cannabis or cannabis products, except for immature cannabis plants and seeds, have completed and comply with a quality assurance review and testing. The current rates are posted on the CDTFA website.

Excise Tax

The excise tax is imposed on purchasers of all cannabis and cannabis products at a rate of fifteen percent (15%) of the average market price of any retail sale by a cannabis retailer of cannabis or cannabis products, including medicinal and adult-use cannabis. The average market price is determined by the type of transaction that occurred when the cannabis or cannabis product was sold to the retailer. There are two types of transactions that can take place; either an “arm’s length transaction,” or a “non-arm’s length transaction.”

An arm’s length transaction is a sale that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. In an arm’s length transaction, the average market price means the average retail price determined by the wholesale cost of the cannabis or cannabis products sold or transferred to a cannabis retailer, plus a mark-up. The mark-up is to be determined by the CDTFA every six months. The mark-up rates are available on the CDTFA website. Cannabis businesses will be notified by special notice when the mark-up rate changes. In a non-arm’s length transaction, the average market price refers to the cannabis retailer’s gross receipts from the retail sale of the cannabis or cannabis products.

Additional information is available in the *Tax Guide for Cannabis Businesses*, available on the CDTFA website.

COMPLIANCE RESPONSIBILITIES AND FUNCTIONS 120.000

COMPLIANCE RESPONSIBILITIES 120.010

The compliance staff is responsible for equitably and uniformly enforcing the provisions of the various business tax laws and regulations administered by the California Department of Tax and Fee Administration (CDTFA). Staff must ensure that persons engaged in business in this state comply with the laws and must inform them of any violations. Staff will license those persons required to report and pay business taxes; and assist taxpayers to report and pay timely the correct amount of tax. Staff must also promote voluntary compliance through education of the taxpayer and ensure that follow-up actions on any unfiled returns or unpaid liabilities are taken promptly and timely.

COMPLIANCE FUNCTIONS 120.020

In executing its delegated responsibilities, the compliance staff may perform the following functions:

1. **REGISTRATION:** Registration identifies the correct legal ownership required to report and pay any business taxes to the CDTFA. Most accounts are self-registered online, and staff may be assigned tasks related to accounts trying to register. There is a standard procedure for registering accounts manually if needed, and maintaining an accurate record for each active account. See CPPM Chapter 2, Registration, for information about registration.
2. **SECURITY DEPOSITS:** In some cases, the compliance staff must determine whether a tax/feepayer must post a security deposit. If security is needed, staff must ascertain the appropriate amount of a security deposit which may depend on the size and scope of the business, the manner in which it will operate and the financial stability and integrity of those persons responsible for the operation. Staff must follow standard procedures for obtaining deposits in proper form; making adjustments of security when warranted; recommending refunds of security deposits; appropriately applying security deposits to clear tax/fee liability; and establishing and maintaining security deposit files. See CPPM Chapter 4, Security, for more information about security deposits.
3. **3. RETURNS:** The compliance staff advises and educates tax/feepayers to ensure that tax/fee returns are filed properly. Staff must be able to recognize and investigate irregularities in reporting and maintain adequate delinquency controls. See CPPM Chapter 5, Returns, for more information about returns.
4. **CLOSE-OUTS:** The compliance staff examines the books, records, and returns of any account that is closing in order to determine whether the following actions should be taken: :
 - a. Recommendation of an audit by the CDTFA’s audit staff.
 - b. Creation of an estimated liability to establish additional tax/fee liability disclosed by investigation, when an audit is not warranted.
 - c. Close the account without any further action. In conjunction with closing an account, the compliance staff also clears delinquencies, makes demand on escrow, prepares escrow withholds, and issues escrow clearances and highway tax clearances on motor vehicles subject to the use fuel tax. See CPPM Chapter 6, Close Outs and Clearances, for more information about closeouts.
5. **REVOCATIONS:** The compliance staff enforces the provisions of the business tax laws pertaining to revoked accounts; reinstates licenses or permits of taxpayers who have complied with the laws; obtains evidence and prepares cases for prosecution of taxpayers who continue to operate after revocation; and seizes and impounds vehicles operated in violation of the law. For more information about revocations, see CPPM Chapter 5, Returns, Chapter 7, Collections.

GENERAL

COMPLIANCE FUNCTIONS

(CONT.) 120.020

6. **COLLECTIONS:** In collecting delinquent taxes and fees, the compliance staff maintains adequate controls of accounts receivable for their assigned accounts; prepares and serves withhold notices; initiates and prepares warrants; requests recordation of certificates of lien; requests releases, partial releases and subordination of liens; seizes and sells motor vehicles under the Use Fuel and Diesel Fuel Tax Laws; seizes and sells liquor licenses to clear delinquent sales and use taxes; locates assets, including real property, on which to levy; and makes recommendations for revocation of licenses or permits for failure to pay delinquent tax liability. See CPPM Chapter 7, Collections, and Publication No. 54, Tax Collection Procedures, for more information about collection actions.
7. **ADVISORY SERVICES AND PUBLIC RELATIONS:** A principal objective of the Business Tax and Fee Division (BTFD) and the Field Operations Division (FOD) is to ensure that tax/feepayers voluntarily report and pay the correct amount of tax/fee. The compliance staff assists tax/feepayers in preparing returns and advises them of the correct application of the laws and regulations. A sincere and helpful attitude by each member of the compliance staff is of paramount importance in maintaining good public relations.

RELEASE OF TAX INFORMATION TO THE PUBLIC

120.025

Information contained in the files and records of the BOE relating to taxpayers is confidential as provided in Government Code section 15619 (all Board tax records) and [RTC section 7056](#).

Overlying the above confidentiality sections of law, which prohibit the disclosure of confidential taxpayer information, are two other acts, the Information Practices Act and the Public Records Act. The Information Practices Act (IPA) is a “private access” statute that provides individuals wishing to access their personal information, as maintained in the files and records of any state agency, to have such access. The IPA also restricts disclosing personal information about an individual to the public. The Public Records Act (PRA) provides “public access” to any records maintained by a state agency that are not otherwise exempt from disclosure.

The Government Code provides that “public records” include any writing that contains information relating to the conduct of the public business and that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided. Government Code section 6254(k) does not permit a state agency to withhold disclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as taxpayer’s names or account numbers, must be redacted and the redacted document should then be released.

Requirement to Disclose “Working Law”

Under the PRA, documents that disclose the BOE’s practices in applying its regulations to the cases coming before it are “working law” and are subject to disclosure upon request. Upon receipt of a request for working law document(s), all confidential taxpayer information must be redacted prior to releasing the document(s) to the requesting party. Examples of working law are:

1. A memorandum written by the legal staff to other departments of the BOE, which those departments can rely upon to make determinations about the applicability of statutes or regulations to certain tax situations.
2. An opinion letter written by a staff attorney to a taxpayer.

Documents That May Be Withheld

In contrast to the working law of the agency, there are legal opinions and internal correspondence addressed to or from attorneys in the Legal Department that bear confidential status by virtue of the attorney-client privilege or the attorney work-product rule. Memoranda falling within the following listed categories are often labeled “Confidential: Attorney-Client Privilege” or “Confidential: Privileged Document,” and should not be released to the public without the approval of the author or the Legal Department:

1. Memoranda to a Board Member or Members or the Executive Director prepared for the signature of the Chief Counsel, except contribution disclosure opinions.
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda between the Legal Department and the Attorney General’s office when the Attorney General is acting as the BOE’s attorney.
4. Intra-Legal Department memoranda which reflect an attorney’s impressions, conclusions, opinions or legal research or theories, except briefs filed by SUTD or PSTD with the Appeals Division in accordance with the direction of the Board.
5. Memoranda between the Legal Department and program staff that evaluate the strengths or weaknesses of the agency’s position regarding the interpretation of statutory or regulatory provisions. This includes memoranda having to do with requests for reconsideration of reports issued by the Appeals Division.
6. Memoranda analyzing new or proposed statutes or regulations affecting programs administered by the BOE.

Note that if the holder of the attorney-client privilege, without coercion and in a non-confidential context, discloses a significant part of the communication or consents to such disclosure by anyone, this constitutes a waiver of the privilege.

In addition to documents exempt from public disclosure under the attorney-client privilege or the attorney work-product rule, any documents relating to confidential audit or compliance techniques are not to be released to the general public. Consult the Legal Department if there is any question about whether a particular document is confidential or not.

Advice To Potential Public Records Act Requesters

Any person interested in obtaining BOE information under the PRA should be advised to submit a written request to the attention of the BOE's Disclosure Officer. Requests should be as specific as possible in identifying the desired records. At a minimum, the request must identify the subject matter of interest, e.g., Regulation 1501, RTC section 6596, sales by Indians, etc. If the requester is seeking records from a specific office, that office should be identified.

Many general subject files are divided into specific topics. For example, Regulation 1591 contains a subdivision on orthotic and prosthetic devices, among others. If a requestor asks for information on a specific topic contained within a general subject file, the general subject file may be indexed and the index provided to the requestor. From the index, the requestor can then identify and request, in writing, copies of specific documents.

Procedures for Handling Requests under the Public Records Act (PRA) Acknowledgment of Requests

Immediately route requests for documents falling under the PRA to the Disclosure Officer in the Legal Department. The Disclosure Officer has ten working days to timely acknowledge receipt of the request. After acknowledging the request, the Disclosure Officer will forward a copy of the request to the appropriate BOE section for handling. The Disclosure Officer will route requests for district office information to the Tax Policy Division, which will coordinate preparation of the requested records for release. These requests may ask for document indices and/or copies of documents.

PRA requests that incorrectly refer to the IPA are addressed under the guidelines for PRA requests. Likewise, IPA requests that incorrectly refer to the PRA are addressed under the guidelines for IPA requests.

Requested Documents

As stated earlier, a request may ask for documents addressing a specific type of property or transaction, or a request may be made for documents in a broader category, such as a regulation or code section. When handling these requests, either for document indexing or redacting and releasing documents, staff should adhere to the requested subject matter as closely as possible without being excessively restrictive. It is not always necessary to index entire files and not all documents contained within these files need to be redacted and released.

Document Indexing

An index should clearly identify the source of the material and include the following information for each document, preferably on a spreadsheet:

1. Name of Addressee (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
2. Name of the Author (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
3. A short description of the subject of the document.
4. Document date.
5. Number of pages.

An additional column may be reserved for eventual use in identifying confidential documents not allowed to be released.

RELEASE OF TAX INFORMATION TO THE PUBLIC

(CONT. 3) 120.025

Each document should also be numbered as a reference to assist in locating documents at a later date. To allow continuous numbering, documents should be numbered sequentially from the oldest document forward. The original index should be maintained conspicuously within the file indexed to avoid duplicate effort in the event a subsequent request is received. As subsequent requests are received, the index should be updated before it is photocopied and released.

Document Preparation and Approval for Release

The integrity of the original documents should be maintained as much as possible. If a requested document only exists as an unredacted hard copy, make a photocopy of the original document, redact all necessary information and, after receiving approval from the Disclosure Officer to release the document, provide the redacted photocopy to the requestor. To avoid duplication of effort if a subsequent request for the same document is received, make a photocopy of the redacted document to provide to the requestor and retain the original redacted photocopy in the file.

The quality of hard copy documents often degrades over time. In order to provide a legible copy that has adequate contrast for reproduction purposes, it may be necessary to touch up the document. Once the photocopy is suitable for reproduction, the redaction should be done using a black felt tip pen, correction tape, or similar masking material that prevents exposure of confidential information.

If the document exists electronically, it should be saved and identified with a new document name. Redact the information from the newly saved document and convert it to portable document format (.pdf) before providing it to the requestor.

Information subject to redaction includes:

1. Taxpayer names.
2. Addresses.
3. Signatures.
4. Account numbers.
5. Telephone numbers.
6. Trade secrets.
7. Products or processes that can be used to identify the taxpayer.
8. Logos.
9. Letterhead on incoming correspondence.
10. Author's initials.
11. File names.
12. Any other information that can be used to identify the taxpayer. This includes handwritten notes as well as typed information contained in the formal correspondence. Care should be taken during the redacting process to ensure that confidential information is completely and adequately masked so that it is not revealed upon reproduction.

Documents recommended for release, including documents with redacted information, should be organized in sequential order. Documents recommended to be withheld from public release should be separated from the release copies and an index should be prepared to identify these documents and the basis for withholding them from public release.

GENERAL

RELEASE OF TAX INFORMATION TO THE PUBLIC

(CONT. 4) 120.025

All of the documents, including the index of documents to be withheld from public release, should be submitted to the Disclosure Officer in the Legal Department for review by an attorney and approval for release or withhold. The Disclosure Officer should initial, date, and indicate "PRA review" in the lower right hand corner of each document.

After review of the documents, the Disclosure Officer will return the documents, with corrections noted, to the unit working the request. The unit will incorporate the corrections and make the photocopies of the documents to be released. These photocopies should contain a disclaimer on each document indicating that the information contained within may be outdated. One effective means of transferring the disclaimer statement to each release copy is by using a transparency sheet containing a copy of the disclaimer as an overlay during the photocopy process.

Release of Documents

After the relevant documents are photocopied, the photocopies, the number of photocopied pages for release, and a copy of the index of withheld documents are mailed to the requestor by the Disclosure Officer. The Legal Department is responsible for providing the related charges to the Accounting Section for appropriate billing to the requestor. In general, the cost for this service is ten cents (10¢) per page provided.

The law provides that copies of documents should be furnished within a reasonable amount of time. Generally, it is BOE practice to provide documents within 30 days of receipt of the request. If preparing the documents for release will take more than 30 days, the Disclosure Officer should be contacted so that the requestor can be appropriately informed of the possible delay.

Storage of Redacted Copies of Documents

Staff handling PRA requests should organize the documents for each request in chronological order or, if indexed, in sequential order. In addition, the documents should be properly identified as to their source and subject. If an index is prepared, a copy should also be included as well as a copy of the index of the documents not subject to disclosure. Upon completing these tasks, the information should be stored on location for use in responding to subsequent requests.

Procedures For Handling Requests Under The Information Practices Act (IPA)

Document Preparation and Release

All personal information maintained in a taxpayer's file must be made available to the taxpayer or his/her authorized representative upon request. However, certain documents retained in a file, such as memoranda with reference to taxpayers other than the taxpayer whose file information is being requested, should be redacted to remove confidential information before the document is photocopied and released. Copies of redacted documents should be attached to the original file document and retained in the taxpayer's file for future use. In addition, any information contained in a file, which is of a confidential nature under the attorney-client privilege or attorney work-product rule, is not subject to disclosure.

Requests for copies of information from a taxpayer's own file should be handled by the district office that maintains the file. This includes providing photocopies of tax returns, applications, or other business related material at no charge. Requests for copies of file information maintained in headquarters should generally be handled by the section that receives the request or the appropriate section that handles the type of information requested, e.g., requests for refund information should be handled by the Audit Determination and Refund Section, requests for petition information should be handled by the Petitions Section, etc. For records maintained electronically such as ACMS notes and audit workpapers, the district office or headquarters unit primarily responsible for creating those documents will also be responsible for processing the request.

RELEASE OF TAX INFORMATION TO THE PUBLIC

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Acknowledgment of a request for documents is not required by the IPA. However, acknowledging a request is a good practice to follow, especially if the preparation of documents is anticipated to require an extended period of time to complete. Copies of documents should be furnished to the authorized requester within 30 days of receipt of the request. An additional 30 days is allowed in the event the records are geographically dispersed or are inactive and in central storage.

Charges for these services and copies of documents should be made in accordance with established guidelines. Generally, an agency may charge no more than ten cents (10¢) per page. (See Board of Equalization Administrative Manual (BEAM) Section 7223.1).

For more information regarding the IPA, refer to the pamphlet, "Information Security at the Board of Equalization", and BEAM, beginning with section 7223.

ADVICE TO TAX/FEEPAYERS

120.030

The importance of giving complete and correct advice to tax/feepayers cannot be over emphasized. Incomplete information or misinformation given to a tax/feepayer by a CDTFA employee may have serious consequences for the tax/feepayer and a negative impact upon the CDTFA's public relations.

In order for staff to be sure that all answers given to the public are correct, staff must carefully examine all relevant facts before a conclusion is reached. In addition, it is not appropriate for a CDTFA employee to offer any legal advice, other than interpretation of the tax laws administered by the CDTFA. Tax/feepayers who verbally request tax/fee information are to be advised that, although information is being provided, the tax/feepayers may also wish to put such requests in writing to receive from the CDTFA a written response that may serve as basis for relief under the appropriate authorizing statutes (see CPPM section 150.015 and Exhibit 2, Table 1).

Any officially published regulation, publication, or informational release of the CDTFA intended for public distribution may be furnished to the tax/feepayer (see CPPM 135.075). Operations Memos that do not have a "confidential" status notation under the title, "OPERATIONS MEMO," are available on the CDTFA's website. Operations memos that have a confidential status notation must have all confidential information redacted before being released to the public.

ANNOTATIONS

Annotations should not be used as the basis for advice given to taxpayers, as they do not have the force and effect of law. Annotations are synopses of past advice provided by the CDTFA's legal staff and may be revised at any time. For research purposes, it can be helpful to review the backup letter summarized by the annotation. Both the annotations and the backup letters are available on the CDTFA's website. If a copy of an annotation is provided to any person, it must be accompanied by the following statement:

"Annotations are summaries of the conclusions reached in selected legal rulings of counsel. Annotations are intended to provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance. Annotations do not have the force or effect of law and may be revised at any time. Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty except: (1) when the advice was written in direct response to a request for advice from the specific taxpayer seeking to rely on the advice; or (2) the annotation or legal ruling of counsel is provided to the taxpayer within the body of a written communication in direct response to a written inquiry from that taxpayer and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel."

Questions pertaining to other agencies or to the laws they administer should be referred to that agency.

WRITTEN ADVICE

Written advice by the CDTFA to a taxpayer in response to a taxpayer's specific written inquiry or an inquiry from the taxpayer's representative seeking clarification on the application of the tax or fee to a specific transaction may constitute written advice that the taxpayer can rely on for relief from liability under the appropriate authorizing statutes. Written advice subject to these relief statutes may be in the form of e-mail correspondence, as well as prior audit working papers. For detailed information regarding preparing correspondence that may be relied upon for relief from liability, see CPPM section 150.000 et seq.

VERBAL INQUIRIES

For verbal inquiries, if there is any doubt as to the correct answer, the person should be requested to present the problem in writing stating all of the facts, or the matter should be referred to the next level of supervision. Furthermore, CDTFA staff is to encourage taxpayers to write regarding specific tax questions. Taxpayers who verbally request tax information are to be advised that, although an answer to their question is being provided, they may also wish to put their question in writing so that they may receive a written response for their records (see CPPM 150.000).

Staff should consider whether the caller would benefit from receiving additional information, such as Tax Information Bulletins or CDTFA publications. If so, staff should refer callers to the CDTFA's website at www.cdtfa.ca.gov, where they can download forms and publications.

When providing tax advice over the telephone to an identified tax/feepayer, staff should enter appropriate comments in the system. The report of the telephone call should state the question(s) asked by the taxpayer, the answer(s) given, and any regulations or other documents furnished to the caller.

Administrators and supervisors are requested to establish a review mechanism to review the staff responses for completeness and accuracy. If a response is incorrect or incomplete, the tax/feepayer must be contacted immediately and given correct information and a note made in the system of the follow up contact.

STORAGE OF TAXPAYER RECORDS**120.040**

The following guidelines have been developed to help staff determine which tax or fee payer documents are to be scanned into Documentum. Sales and Use Tax documents are sent to Taxpayer Records Unit. Special Taxes and Fees documents are sent to the Return Processing Branch. The account number should be displayed on the front of the document and the documents should be separated by account number.

When determining which documents to send for scanning, please consider if the information needs to be saved. There will be exceptions to the guidelines below and, when there are exceptions, staff should consult with their supervisor to determine if a document should be sent to be scanned. Smaller sized documents must be taped to an 8.5" x 11" sheet of paper (preferably at least 2 inches from edge).

Items that should not be sent to be scanned:

1. IRIS screen printouts-Staff should make comments directly in IRIS recording the action taken at the time. However, those screen prints considered highly necessary to the claim packet by the Audit Determination and Refund Section (ADRS) or Appeals and Data Analysis Branch (ADAB) for proof, or support of the claim should continue to be retained and sent for scanning. In addition, the Legal Department may consider certain IRIS screen prints necessary to support our bankruptcy proofs of claim, or support legal arguments filed in cases in which the BOE is a party. If multiple screen prints are required, staff should use the multiple screen print function to fit up to four screen prints per page. These printouts should be clearly marked by stamping "ADRS-Do Not Discard" or "Legal-Do Not Discard."
2. Dishonored Remittance Report/List
3. Unbilled Difference Report/List
4. Waiting to Match Report
5. Return Analysis Follow Ups - regardless if the billing is off the follow up
6. Copies of checks and Payment Vouchers, including on-line Audit payment stubs (unless they have taxpayer comments or a questionable overpayment)
7. Tax Filing Due Date Reminders (BOE-245-R)
8. Remittance documents that were originally sent by BOE to the taxpayer and now accompany their payments. This includes: Billing and Refund Notice (BOE-1210), Demands for Immediate Payment, Semi Annual Statements, Notices of Determination, Notice of Amount Due (BOE-1489-A), Final Notice (BOE-1491), Sales and Use Tax Prepayment Form (BOE-1150B), and Audit Payment Information (BOE-1). *Note: if the taxpayer has written other information, such as a change of address, on the remittance document it must be processed.*
9. E-file Prepayment Forms
10. Duplicate items of any kind
11. Any document that otherwise is captured by IRIS or comments on IRIS
12. Extension of lien work release orders
13. Offset fax transmittal receipts
14. Cover sheets to SOS liens
15. All ACMS letters created in ACMS, including 200s
16. Pre-Prosecution Packages
17. CAS Approval Prints
18. Bankruptcy notices that are available on PACER

STORAGE OF TAXPAYER RECORDS

(CONT.) 120.040

19. Fire Fee Petition for Redetermination (tracked by ADAB)
20. Envelopes

Items that staff should continue to send to be scanned:

1. All original returns and documents that have additional information from the taxpayers such as; address changes, amended figures, etc.
2. Route slips that are considered necessary or relevant to the account and have information that cannot otherwise be recorded in IRIS
3. Petition for Redetermination (except Fire Fee)
4. Payment Plan Agreement (BOE-407)
5. Authorization for Electronic Transmission of Data (BOE-82)
6. Power of Attorney designations
7. Copies of recorded liens and recorded lien releases

STANDARDS OF CONDUCT 130.000**CONDUCT ON THE JOB 130.010**

Every BOE employee must remember that he or she represents the State of California and the BOE and that they should conduct themselves in a professional manner at all times. More information regarding the BOE's policies on employee conduct is provided in the pamphlet, *Ethics: Guidelines for Professional Conduct*.

While it is rare, there have been occasions where BOE compliance representatives have been offered or have solicited bribes. Allegations or suspicions of bribery by either the taxpayer or BOE representatives should be immediately reported to the appropriate supervisor and the BOE's Internal Affairs Section (IAS). Detailed information about reporting such attempts is found in the BOE pamphlet, *Bribery – A Guide to Recognition and Prosecution*.

Some specific rules of conduct regarding the nature of the compliance function itself are set forth below.

USE OF BUSINESS CARDS 130.020

Business cards are issued to compliance representatives for their convenience and to help introduce the representatives to the public in a businesslike manner.

Business cards do not replace, nor should they be used as a substitute for the identification card, which has a photograph and the authorized signature of the representative.

IDENTIFICATION CARDS 130.025

The identification card will verify that the representative is authorized to conduct the business of the CDTF. The identification card must be kept in a secure manner so as to prevent loss and possible misuse by an unauthorized person. See BEAM Sections 5051-5052 for procedures to follow when an identification card is damaged or lost, or when an employee who has been issued an identification card is separated from the service.

STATE ISSUED CELLULAR TELEPHONES 130.027

This section provides guidelines for the use of state issued cellular telephones (cell phones) which includes CDTF issued smart phones. 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.

CDTF 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 e-mail or a direct download to the compliance representative's computer and then moved to the LAN. Pictures of tax/feepayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. If a situation arises where tax/feepayer records must be taken from the premises, staff must issue a properly completed CDTF-945, *Receipt for Books and Records of Account*.
- The state-issued cell phone is to be used for CDTF email only. Staff must not place personal email accounts on the device.

GENERAL

STATE ISSUED CELLULAR TELEPHONES

130.027

- 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.

CONFIDENTIAL BOE RECORDS

130.030

The Government Code, Civil Code, and most of the business tax laws contain provisions making it illegal to divulge to any unauthorized persons information regarding a taxpayer's affairs obtained through investigation or from returns or reports. Such information must be treated in strict confidence. The Governor may, by general or special order, authorize the examination of records maintained by the BOE by other state officers, tax officers of another state, by the Federal Government if reciprocal agreement exists, or by any other person.

The Underground Storage Tank Law, under RTC subdivision 50159(c), authorizes the BOE to give confidential information regarding the lessee and the lessee's suppliers to the tank owner to the extent necessary for assessment, administration and verification of the fee.

If directly affected, successors, receivers, trustees, executors, administrators, assignees and guarantors may be given information regarding unpaid tax liability of a taxpayer. Rules for releasing information to the taxpayer are covered in the discussion of the Information Practices Act in CPPM 135.074.

REPORTING BREACHES OF CONFIDENTIAL INFORMATION

130.035

In accordance with the Information Practices Act (Civil Code section 1798 et seq.) and Board of Equalization 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, IRIS 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 Department's Settlement and Administration 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**130.036**

The BOE collects and stores confidential taxpayer or feepayer (taxpayer) information and has a responsibility to protect this information from unauthorized access, use, and disclosure. BOE employees with a business need to transmit confidential information or personal information electronically outside the BOE may not do so without protection of that information (i.e., encryption). However, the taxpayer may consent to the electronic transmission of confidential or personal information without encryption by providing a BOE-82, *Authorization for Electronic Transmission of Data* (BOE-82). The form must be completed and signed by the taxpayer or an authorized representative who holds a power of attorney before any confidential information is transmitted. The completed BOE-82 must be maintained in the taxpayer's file, and is in effect until rescinded in writing for the current assignment only and not for future or prior assignments.

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

Confidential information of the California State Board of Equalization (BOE) – unauthorized use or disclosure is strictly prohibited by law. If you receive this email in error, please immediately notify the BOE by return email 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.

If a BOE-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer. However, BOE staff must not encrypt files before transmitting via e-mail if the taxpayer's internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, BOE employees must either obtain the BOE-82 or provide the data to the taxpayer in hard copy.

Additionally, BOE staff, taxpayers and/or their representatives can transfer large amounts of data (e.g., audit data, statistical sample data, sales data, payables data) using Secure File Transfer (SFT). SFT is a way to share documents with someone inside or outside the BOE 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 at <http://eboe/eboe3/sutd/training/sft.cfm> and an information sheet.

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

RELEASE OF REGISTRATION INFORMATION TO THE PUBLIC**130.040****Sales Tax**

RTC section 7056 excludes the information appearing on sales and use tax permits from provisions prohibiting the BOE and its employees from divulging information about sales and use tax accounts. However, the BOE is prohibited from releasing the names and addresses of individuals who are registered with, or hold licenses or permits issued by the BOE (sole proprietorships and husband and wife co-ownerships designated with a code M), except to verify resale certificates, administer the tax and fee provisions of the RTC, or to provide information to federal or state agencies or local governments as authorized by law (Civil Code Section 1798.69). (See also CPPM Chapter 9, Miscellaneous, regarding Resolutions of Local Taxing Jurisdictions or Special Taxing Jurisdictions).

Sales tax permits do not show all of the information contained in the registration record. The content of permit forms is set forth in CPPM Chapter 2, Registration, which gives procedural instructions rather than regulatory or statutory requirements. The entries are governed principally by practical limitations of form design, processing time, etc., and not by restrictions on the type of information displayed in the permit. The BOE does, however, provide requestors from the private sector with certain additional information (see CPPM 135.074).

The closeout status and date of an account are not considered as confidential information.

Special Taxes

The provisions governing the release of taxpayer information vary among the special tax programs and in some cases are much more restrictive. For example, under the Hazardous Substances Tax Law, the BOE cannot disclose whether or not a person is registered. Therefore, requests for the release of special taxes tax and fee-payer information should be referred to the appropriate division in the PSTD.

VERIFICATION OF RESALE CERTIFICATES AND PERMITS**130.041**

The BOE has an obligation to assist taxpayers in verifying the validity of resale certificates. Although responsibility for answering these inquiries is primarily that of the district office staff, taxpayers may also use the BOE's website to verify the account number written on a resale certificate. The website address is www.boe.ca.gov and taxpayers may click on the [Verify a Permit/License](#) hyperlink. Staff must be aware of the restrictions, detailed in CPPM 135.074, on providing certain information about individuals.

Sellers seeking to verify resale certificates in person or by phone should provide BOE staff with the *name of the business, its location, and the purchaser's seller's permit account number*. With this information, staff can verify the account status and inform the seller whether the account is active or closed out.

INTRADEPARTMENT COOPERATION**130.050**

All compliance employees, regardless of where they may be located, are working for the same organization. Therefore, it is immaterial where an assignment originates or in what area a tax/feepayer incurred a tax or fee liability. Staff has responsibility for doing a conscientious job in the way the case is worked and in the amount of effort expended on an assignment.

LEGAL CASES — EMPLOYEE RESPONSIBILITY 135.000

SIGNATURE OF EMPLOYEE ON DOCUMENTS 135.010

Employees will not sign stipulations, agreements or other documents authorized or supplied by the taxpayer or his or her representatives. CDTFA forms, or facsimiles of forms, will be used.

CONFLICT OF INTEREST — SHERIFF’S OR MARSHAL’S SALES 135.020

To avoid any question of a conflict of interest, no CDTFA employee, member of the employee’s family or any other relative should purchase or attempt to purchase any asset being offered for sale pursuant to a marshal’s or sheriff’s seizure and sale held to satisfy delinquent taxes or fees administered by the CDTFA. Likewise, no individual should bid on behalf of a CDTFA employee or his or her family. The above does not prohibit a designated employee entering a protective bid on a motor vehicle on behalf of the Attorney General’s Office as provided for in CPPM chapter 7, *Collections*.

CONTACT BY TAX/FEEPAYERS IN ATTORNEY GENERAL CASES 135.030

If a tax/feepayer (or his or her representative) involved in a court case in which the CDTFA is a party asks a CDTFA employee for information regarding the case, the tax/feepayer or representative should be advised to contact the Deputy Attorney General representing the CDTFA in the litigation. To avoid the possibility of adversely affecting the outcome of the litigation, no information should be given unless authorized by the Deputy Attorney General involved.

SERVICE OF LEGAL PROCESS 135.040

Summons and Complaints, Restraining Orders, Orders to Show Cause, and similar legal process directed to the CDTFA.

Authorized Methods of Service.

1. A summons and complaint in an action against the CDTFA may be served by:
 - a. Personal delivery of a copy to the Director, or Acting Director. Service is complete at the time of delivery..
 - b. Mailing a copy to the Director, or Acting Director, by first class mail, postage prepaid, together with two copies of a notice and acknowledgement form and a return envelope, postage prepaid, addressed to the sender. Service is complete on the date the acknowledgement of receipt is executed by the Director, or Acting Director. If the acknowledgement form is not completed and returned within 20 days after the copy of the summons and complaint is mailed, the party to whom it was mailed is liable for reasonable expense thereafter incurred in serving or attempting to serve by another authorized method.
 - c. Leaving a copy at the reception area in the headquarters building for the Director, or Acting Director. The copy must be left during usual office hours with “a person who is apparently in charge of the office.” This will include a secretary of the person to be served. Thereafter, a copy must be mailed to the person to be served. Service is complete on the 10th day after such mailing.
2. A restraining order, an order to show cause, etc., directed to the CDTFA may be served by personal delivery of a copy to the Director, or Acting Director, or the CDTFA attorney of record in the action.

Procedure When Served

Whenever a copy of a summons and complaint, restraining order, order to show cause, etc., directed against the CDTFA is served by personal delivery or by mail, properly or improperly, it should be hand carried immediately to the Chief Counsel, unless it is improperly served by personal delivery and returned to the server as specified below. No written acknowledgement should be made to the server prior to review by the Chief Counsel. When it is not possible to hand carry documents to the Chief Counsel, documents should be forwarded by overnight mail. No written acknowledgement should be given to the process server prior to Chief Counsel review. When service is by mail, the notice and acknowledgement of receipt must be returned within 20 days of the date of mailing.

If an attempt is made to personally serve a person other than the Director, or Acting Director, with a copy of a summons and complaint, restraining order to show cause, etc., directed against the CDTFA, the server should be told that the Director must be served. The copy should be returned to the server unless he or she insists on leaving it. If the server has left the documents despite being advised that the CDTFA would not accept service in that manner, the documents should be forwarded immediately to the Chief Counsel. If the person served is individually named as defendant, he or she must accept service insofar as he or she personally is concerned, but this service is not binding on the CDTFA. Under these circumstances, however, he or she or his or her supervisor should send the copy served to the Chief Counsel immediately. For more information about service of summons and complaints, see BEAM 7701.

Subpoenas and Subpoenas Duces Tecum

Authorized Methods of Service.

The service of a subpoena is made by showing the original and delivering a copy to the witness personally including, in the case of a subpoena duces tecum, a copy of the affidavit upon which the subpoena was issued. The service must be made so as to allow the witness a reasonable time for preparation or travel to the place of attendance.

A subpoena duces tecum, to be effective in requiring production of CDTFA records, should be directed to and served upon the Director or Acting Director.

Procedure When Served.

If a subpoena is directed to the CDTFA or the Director and is served on an employee, the person so served is not required to appear in obedience to the subpoena. The service is of no effect inasmuch as the subpoena is not directed to him/her. The employee should so inform the server.

If the subpoena is directed to a particular employee of the CDTFA and he or she is served, the employee is required to appear in obedience to the subpoena but is not authorized or required to produce any CDTFA records even though it may be a subpoena duces tecum. The employee should inform the server that to require production of CDTFA records, a subpoena duces tecum should be directed to and served upon the Director as the custodian of the records.

CDTFA employees are authorized to testify under specified circumstances concerning their own knowledge of tax records when served with a subpoena directed to the employee personally. When a subpoena has been served upon an employee or when an attempt has been made to serve the employee with a subpoena directed to the Director, the employee or his or her supervisor should immediately advise the Chief Counsel, forwarding information as to the nature of the proceeding, the name of the attorney, and the party on whose behalf the subpoena was issued. Further instructions as to procedure will be issued by the Chief Counsel. The Deputy Director of the Field Operations Division should be advised in all cases. For more information about subpoenas, see BEAM 7702.

SMALL CLAIMS COURT ACTIONS**135.045**

Occasionally, the CDTFA is named as a defendant in action filed in small claims court (a division of a municipal or justice court). Jurisdiction to resolve tax questions rests with the superior courts. The following procedures should be followed by field offices and headquarters units that receive communications from a small claims court concerning an action brought against the CDTFA with respect to sales and use or use fuel taxes.

If the action involves the validity of a determination, auditing errors, claims for refund, etc., the following action should be taken:

1. Notify the Audit Determination and Refund Section (ADRS) *immediately* by telephone.
2. The *original* correspondence received from the court should be forwarded to ADRS after a copy has been made for the office or unit file.
3. ADRS will provide a letter to the court which documents the CDTFA's jurisdictional objections to the action.
4. If this letter is not accepted in lieu of a formal appearance on behalf of the CDTFA, ADRS will advise the administrator or the unit supervisor, who will make arrangements to have someone appear for the CDTFA, since attorneys are not allowed in small claims court actions.
5. ADRS will provide the person making the appearance with a letter detailing the legal basis for the jurisdictional objections to the action. The letter should be read to the presiding judge.
6. The person representing the CDTFA should also be prepared to explain the provisions of the tax law applicable to the case at hand.

If the action involves a matter other than those shown above (e.g., reimbursement for accounting fees, claim for damages, etc.) the Special Operations Branch (SOB) should be substituted for ADRS in steps a. through f. shown above.

All actions involving special taxes programs should immediately be referred to the appropriate section or unit, which will perform similar functions to those referenced above.

AUTHORITY FOR EXAMINING RECORDS**135.050**

Government Code section 15618 confers the authority upon the members of the staff of the CDTFA to examine tax/feepayer records. The CDTFA, individually, or through its staff, may examine the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report.

Should the authority of the representative to examine records of taxpayers be challenged, the challenger should be referred to the above Government Code section or to the appropriate code section in Exhibit 2, Table 2 - *Authority for Examining Taxpayer Records*.

For procedures to obtain a subpoena to produce records (subpoena duces tecum), see CPPM 135.073 and 774.000.

CLAIMS AGAINST PUBLIC EMPLOYEES**135.060**

Section 860.2 of the Government Code provides:

“Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- (b) An act or omission in the interpretation or application of any law relating to a tax.”

The Legislative Committee Comment to Section 860 states that:

“This chapter confers immunity upon public employees and public entities for their discretionary acts in the administration of tax laws. It is likely that the courts would confer an immunity for these acts under the general provisions of Section 820.2; but it appears desirable to make the immunity explicit in order to obviate the necessity for test cases to determine whether the discretionary immunity extends this far.”

Section 820.2, referred to in the Legislative Committee Comment, provides as follows:

“Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.”

In one court case against a public employee, a discretionary act was defined as one that requires the exercise of judgment or choice. Good judgment is a prerequisite of a successful compliance person. Any employee who is acting in the course and scope of his or her employment when he or she is engaged in work he or she was employed to perform, or when an act is an incident to this duty and was performed for the benefit of his or her employer and not to serve his or her own purposes or convenience, will be protected from personal liability for acts performed in tax collection.

RIGHT TO FINANCIAL PRIVACY ACT**135.070**

The California Department of Tax and Fee Administration (CDTFA) must comply with the provisions of law pertaining to governmental access to financial records commencing with Government Code section 7460, the *California Right to Financial Privacy Act* (FPA), when obtaining financial information from banks and other financial institutions.

The FPA protects the confidentiality of records for customers of financial institutions. As defined, “financial institutions” include state and national banks, state and federal savings associations, trust companies, industrial loan companies¹, and state and federal credit unions. The FPA covers all phases of a financial institution’s operations; therefore, the records of customers of a financial institution’s escrow and leasing departments are protected. However, for escrow and leasing companies, the FPA does not protect the confidentiality of a customer’s records, since escrow and leasing companies are not “financial institutions.”

In general, the FPA prohibits state or local government employees or agents from requesting or receiving copies of a customer’s financial records, or information from those records. However, government employees or agents may obtain this information if the records are described “with particularity,” are consistent with the scope and requirements of the investigation for which the records are requested, and the disclosure is in response to:

1. A customer authorization (see Government Code section 7473).
2. An administrative subpoena or summons (see Government Code section 7474).
3. A search warrant (see Government Code section 7475).
4. A judicial subpoena or subpoena duces tecum (see Government Code section 7476 and CPPM 774.000, et. seq.).

¹ *Industrial loan companies are FDIC-supervised, state-chartered entities with the distinct feature that they can be owned by commercial firms. In general, industrial loan companies offer loan services that tend to directly support the products of their parent companies or are narrowly focused on a product line or customer type. Examples include, but are not limited to, auto industry lenders, such as Ford Motor Credit and Capital One Auto Finance.*

RIGHT TO FINANCIAL PRIVACY ACT

(CONT.) 135.070

Staff should **not** request financial records from financial institutions using *Demand to Furnish Information* letters. There is no comprehensive database to identify all types of financial institutions; however, if the institution in question appears to be a financial/financing type of institution, letters demanding to furnish information should not be used.

However, Government Code subdivision 7480(e)(1) permits CDTFA staff to inquire as to whether a person has an account(s) at a particular office or branch of a financial institution, and, if so, the identifying numbers of such account(s). In addition, Government Code subdivision 7480(h) specifically provides that the following information can be disclosed to the CDTFA:

1. The information required by those sections of the Revenue and Taxation Code (RTC) that pertain to the *Notice to Withhold* and *Notice of Levy*. The specific code sections of the RTC are shown in Exhibit 2, Table 3, titled Authorization To Issue A Notice of Withhold And A Notice of Levy, at the end of this chapter.
2. The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the RTC.
3. The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

Note: When serving a Notice of Levy on a financial institution, CDTFA-425-LA is used. A CDTFA-465 is used to serve a *Notice of Withhold*. If the financial institution is the employer of the taxpayer, a CDTFA-425-E, *Earnings Withholding Order for Taxes*, is used (see CPPM 752.070, 753.010, and 755.000).

OBTAINING RELEASE OF FINANCIAL INFORMATION**135.071**

Except as noted in CPPM 135.070, the FPA generally prohibits CDTFA employees from requesting or receiving information from a financial institution's customer records. There are two methods for obtaining such financial information that may be used by CDTFA staff:

1. Obtaining proper authorization from the customer (Government Code section 7473), or
2. Issuing a subpoena duces tecum (Government Code section 7476).

For both methods, the specific financial records to be reviewed must be described and be consistent with the scope and requirements of the investigation (Government Code section 7473). In addition, before requesting information from a financial institution, CDTFA staff must first try to obtain from the taxpayer any data or documents which should have been retained in accordance with RTC section 7053, or similar requirements, under the tax programs administered by the CDTFA. If all other available avenues of information have been exhausted and approval of the district administrator has been obtained, CDTFA staff may request the information directly from the financial institution by obtaining the taxpayer's authorization or issuing a subpoena duces tecum. To obtain the taxpayer's authorization, staff should use CDTFA-869, *Release of Financial Information*, to secure access to the information. This section briefly discusses the procedures for using this form. It should be noted that obtaining authorization is rarely successful and a subpoena duces tecum is usually used to obtain financial information. Obtaining taxpayer authorization is covered in the following section (CPPM 135.072); issuance of a subpoena duces tecum is discussed in CPPM 135.073 and CPPM 774.000.

Whichever method is used to obtain financial information, staff should attempt to examine and extract the data directly from the available records at the institution. Direct examination avoids the expense of making copies or using some other method of delivering the information to the CDTFA. In addition, the code section providing for taxpayer authorization does not legally bind an institution to providing the requested information. Consequently, if the needed information will be costly and time consuming to produce, the institution may condition its production of the data on the CDTFA's payment of the related expenses.

OBTAINING RELEASE OF FINANCIAL INFORMATION

(CONT.) 135.071

If obtaining the data is deemed necessary and unavoidable and in the CDTFA's best interests, reasonable charges will be paid by the CDTFA to secure the required information or documents, even though the CDTFA is not legally bound to pay any such charges. These charges must be borne by the CDTFA since there is no statutory authority for passing them on to the taxpayer. The administrator has the responsibility for approving any charges that the financial institutions may make for the requested information and/or documents.

The financial institution must maintain a record of all examinations and disclosures of the financial records of a customer including the identity of the person examining the financial records, the department represented, and a copy of the customer's authorization, subpoena, etc., providing for such examination (Government Code section 7473).

It is imperative that the procedures for obtaining financial information be strictly followed to ensure compliance with the FPA. The FPA provides that:

“Any person, who, with the intent to violate, knowingly participates in a violation of this chapter is guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than one year, or fined not more than five thousand dollars (\$5,000), or both.”

Any problems or questions which arise as a result of the FPA, and which staff cannot resolve should be referred to the Supervisor of the Special Operations Branch (SOB).

OBTAINING TAXPAYER AUTHORIZATION (CDTFA-869)

135.072

Preparation of the CDTFA-869 is self-explanatory, but it must be fully completed and properly executed by all parties involved. The expiration of the authorization normally should be dated no more than 60 days from the date of request of the authorization. The expiration date may exceed 60 days from the date of request of the authorization only when it is felt that more time is needed to examine the financial institution's records.

After completing the examination of the records, the bottom receipt portion must be signed by an official of the financial institution to acknowledge return of the records. A copy will be retained by the financial institution, and one copy will be retained in the office file of the account. Within 30 days of the examination, the tax/feepayer must be notified, in writing, that the examination has been completed and that the reason for such examination will be furnished upon written request. An acknowledgment letter (CDTFA-869-A) must be used by the office of control for this purpose and a copy retained in the office file of the account. (Government Code section 7473).

Since the expiration of the authorization normally occurs 60 days from the date of request, priority must be given to the completion of the examination of the records provided by the financial institution. Should the tax/feepayer refuse to authorize the release of information requested, the Administrator will follow the standard CDTFA procedures for an administrative subpoena or summons, search warrant or subpoena duces tecum (see CPPM 135.073).

SERVICE OF SUBPOENAS

135.073

Under Government Code section 7474, when an administrative subpoena is served on a financial institution, a copy must also be served on its customer under the provisions in the Code of Civil Procedure (CCP), commencing with section 413.10 (see CPPM 774.020). After being served with a subpoena, the customer must be allowed 10 days to move to quash (void) the subpoena, if he or she wishes.

CDTFA staff may use any of the following methods to serve a copy of the subpoena on the customer, however, either the first or second method below is the preferred method for serving a subpoena:

1. Personal service (see CCP section 415.10).
2. Leaving a copy at the customer's office in the presence of an adult apparently in charge or at the customer's home in the presence of a competent adult member of the household, and then mailing a copy to the customer at the address of the office or home where the copy was left. Service is complete 10 days after mailing (see CCP section 415.20).
3. Mailing a copy with a form for acknowledgment. Service is complete when acknowledged. If not acknowledged, the customer may be held liable for cost of personal service (see CCP section 415.30).
4. If the person is outside the state, a copy may be sent by first class mail requiring a return receipt. Service is complete 10 days after mailing (see CCP section 415.40).
5. If no other service is feasible, service by publication in a newspaper may be used. This requires a court order, and it must be shown that the customer has an interest in property in this state or that certain other requirements are met (see CCP section 415.50).

INFORMATION PRACTICES ACT

135.074

Under Civil Code section 1798, et. seq., the Information Practices Act of 1977 (IPA) is a "private access" statute. That is, the IPA provides that individuals are to be allowed access to any personal information about them which is maintained in the files and records of any state agency. It also restricts the disclosure of such personal information to members of the public-at-large. The IPA places strict requirements on state agencies in the collection, use, maintenance, and dissemination of information relating to individuals. Since an individual is defined as a natural person, the act applies to sole proprietorships and husband and wife co-ownerships with a code M, but does not apply to partnerships (including formal husband and wife partnerships assigned a code P) or corporations.

The term "personal information" includes, but is not limited to, the individual's name, social security number, home address, home telephone number, financial matters, and statements made by, or attributed to, the individual.

The IPA prohibits the distribution of individuals' names and addresses for commercial purposes (for purpose of financial gain). Civil Code section 1798.69 provides that the BOE may not release the names and addresses of individuals (sole proprietorships) who are registered with, or are holding licenses or permits issued by, the BOE. The BOE also includes in this restriction married taxpayers who jointly operate a business without a formal partnership agreement (code M).

An exception to this general restriction is information needed to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code. The BOE may also provide names and addresses to any federal or state agency or local government if the release of the information is authorized by law.

INFORMATION PRACTICES ACT

(CONT.) 135.074

The BOE may disclose other personal information about “individual” taxpayers under the conditions shown in Civil Code Section 1798.24. These include:

1. To the individual to whom the information pertains (with proof of identity).
2. With written, voluntary consent of the subject individual, if consent was obtained not more than 30 days prior to disclosure, or in the time limit agreed to by the individual in the written consent.
3. To a person or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected. (Disclosure or accounting requirements as specified in the act must be met.)
4. To another person or governmental organization to the extent necessary to obtain information required for the BOE’s investigation of failure to comply with a specific law which the BOE is responsible for enforcing.

Civil Code section 1798.67 also provides for the disclosure of information relating to the identity of a person against whom a lien or encumbrance on real property has been recorded in order to distinguish the person from another with the same or similar name.

The BOE must maintain the source of information collected and, when requested, provide it unless the source is exempt from disclosure. Some of the programs administered by PSTD do not allow disclosure of registration information. Please refer to the appropriate division for guidance before making any disclosure.

The IPA provides penalties for persons who intentionally violate its provisions. The penalties apply to those who furnish or obtain information improperly. Questions concerning policies and procedures related to the IPA should be referred to the BOE’s Disclosure Officer.

PUBLIC RECORDS ACT

135.075

In contrast to the IPA, the Public Records Act (PRA) (Government Code section 6250, et.seq.) provides that “public records” include any writing containing information relating to the conduct of the public business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided.

The BOE is prohibited from withholding “working law.” Records that disclose the BOE’s practices in applying its regulations to the cases coming before the Board are working law. This is a matter of interest to the public and to persons coming before the Board regardless of the precedential effect of the records.

State Board of Equalization v. Superior Court (1992) 10 Cal. App. 4th 1177 holds that memoranda between the legal staff and other departments of the BOE that are relied on by those departments to make determinations about the applicability of statutes or regulations to certain tax situations are working law and must be disclosed to the public. The BOE’s past practice of asserting attorney-client privilege to withhold release of internal legal memoranda does not apply to these documents. Once confidential taxpayer information has been redacted, advice letters to taxpayers must also be released upon request.

Regulations 8000-8016 set forth the procedures to be followed to obtain copies of BOE public records. A copy of these regulations is available from BOE offices free of charge or through the BOE’s website at www.boe.ca.gov.

“Public records” subject to disclosure include:

1. Annotations and their backup opinions, with confidential taxpayer information redacted.
2. Staff memoranda and letters, including policy memoranda issued to Districts with confidential taxpayer information redacted.
3. Business Taxes law guides, regulations, Current Legal Digests, and Business Taxes General Bulletins.
4. Decision and recommendations (D&Rs) resulting from appeals conferences with confidential taxpayer information redacted.
5. Manuals and guidelines with the exception of those the disclosure of which would compromise the BOE’s administration of tax programs.
6. Memorandum Opinions.
7. Newsletters and pamphlets.
8. Operations Memoranda with the exception of confidential information contained in the memoranda.
9. Rule making files.
10. Public records of settlement agreements with a reduction of tax in excess of \$500.
11. Training materials.

The PRA does not allow nondisclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as a taxpayer’s name, account number, and other identifying information should be redacted and the remainder of the document should then be released.

However, if the requestor discloses that he or she knows the name of the taxpayer for whom the requested D&R or opinion has been prepared, the information may not be released, even if the document has been properly redacted. An exception to this rule exists where the requestor provides a written document signed by the taxpayer that designates the requestor as the taxpayer’s authorized representative, which grants him or her power of attorney to act on behalf of the taxpayer.

In general, requests for public records should be in writing and should be addressed to the BOE’s Executive Director or Disclosure Officer. Requests should be as specific as possible in identifying the specific records. If the requestor is seeking records from a specific office, that office should be identified. Copies of law sections, regulations, annotations, non-confidential operations memoranda, or other publicly available materials such as pamphlets or newsletters may be requested orally or may be available on the BOE’s website. Requests may be made in person at BOE offices or may be made by telephone using the BOE’s Customer Service number, 1-800-400-7115.

Requests received by District offices or headquarters sections must be forwarded to the BOE’s Disclosure Officer for review and processing. By law, all requests must be acknowledged within 10 working days of receipt of the request.

Additional information about the PRA may be found in the Board of Equalization Administrative Manual sections 7223 and 7223.1.

GUIDELINES FOR RELEASE OF AN INFORMANT'S NAME**135.076**

Periodically, members of the public (informants) will contact the CDTFA with information regarding a tax/feepayer's alleged fraudulent activity. In some cases, the information is verbal, while in others, copies of documents might be provided. Some informants choose to remain anonymous, while others identify themselves or can be identified from the information provided.

The IPA, Civil Code section 1798, et seq., requires the disclosure of all information found in an individual tax/feepayer's files when the individual so requests. Some exceptions to the disclosure rule include situations where the information:

1. "Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, ..." (Civil Code section 1798.40(b)).
2. "Is maintained for the purpose of an investigation of ... a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Civil Code section 1798.38." (Civil Code section 1798.40(d)).

Under Civil Code sections 1798.38 and 1798.40 (d), an agency may withhold the identity of an informant if there has been a promise of confidentiality and the information is withheld because it led to civil investigation of the individual involved. However, even though the identity of the informant may be withheld, the agency is still required to:

"... fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material." (Civil Code Section 1798.38).

The promise of confidentiality is a requirement if the CDTFA is to withhold an informant's name. It is essential that any promise of confidentiality to an informant be documented and clearly noted on or attached to any information that divulges the identity of the informant. This should prevent improper release of the informant's name.

Information obtained from an informant is to be withheld pending completion of an investigation (audit or other inquiry) if disclosure will compromise the investigation or a related investigation. At the conclusion of the investigation, the identity of the informant will be withheld if a promise of confidentiality has been made. The information provided by the informant, however, must be provided if the tax/feepayer requests it.

In response to such a request, the Civil Code provides that either a copy of the information with the identification of the informant properly deleted, or a comprehensive summary of the substance of the material, will be furnished to the requestor. Providing a comprehensive summary of the information is the preferable approach if there are any physical characteristics of the information (handwriting, spelling or grammar, identifying marks, unique details) which would result in the identification of the informant.

Whichever method is used, the CDTFA shall ensure that full disclosure is made to the individual of any personal information that could reflect or convey anything detrimental, disparaging, or threatening to the individual's reputation, rights, benefits, privileges, or qualifications.

Finally, the IPA is not the only law that impacts the CDTFA's actions in withholding information revealed by informants. Occasionally, circumstances involving discovery proceedings in active court cases or a defendant's right to face his or her accuser may require the disclosure of specific information, including the informant's name. These situations would result from court proceedings, and the CDTFA's records would be subpoenaed. Should this circumstance arise, the matter must be referred to the CDTFA's legal staff and/or the Deputy Attorney General assigned to the matter for decision and response.

GENERAL

EXCHANGES OF CONFIDENTIAL INFORMATION **140.000**

GENERAL **140.010**

It is extremely important that only authorized parties release and receive confidential information. For complete details, refer to BEAM section 7200, et seq. Any questions regarding the exchange of information should be directed to the CDTFA's Disclosure Officer.

AUTHORIZED AGENCIES **140.020**

Arrangements have been made for the exchange of "confidential" information by the CDTFA and other state agencies and the Federal Government. See BEAM section 7200, et seq. for authorized agencies in California, other states, and the federal government, the tax programs the agreements relate to, authorized personnel, and other provisions of authorization. All reciprocal agreements provide that information may only be given after proper identification. Therefore, officers or employees of other agencies and of the CDTFA must present their credentials when making a personal request for information.

FILE DOCUMENTATION **140.030**

Disclosures made pursuant to exchange agreements require an accurate accounting of the date, nature, and purpose of each disclosure made. This accounting is done by completing a CDTFA-755, *Authorized Examination of Department Records*, and sending to the Disclosure Officer, and should be recorded as comments in the system.

ACCOUNTS CLASSIFIED CONFIDENTIAL

145.000

CONFIDENTIAL INDICATOR

145.010

Some accounts have a confidential indicator because the tax/feepayer is concerned that the release of his or her address will compromise the tax/feepayer's personal safety. Sufficient justification to add a confidential indicator must be provided by the tax/feepayer to the CDTFA's Disclosure Officer. When providing resale certificate verification on a confidential account, the CDTFA will only verify the name on the account, the account number, and the status of the account. The address will not be disclosed.

CALIFORNIA SAFE AT HOME CONFIDENTIAL ADDRESS PROGRAM

145.020

Under California Government Code section 6205, the Safe at Home Confidential Address Program addresses confidentiality for victims of domestic violence, stalking, sexual assault, and others, such as reproductive healthcare doctors, nurses, volunteers, and patients. The program is administered by the Secretary of State's (SOS) office. Participants in the program designate the SOS as agent for service of process and receipt of mail. SOS provides the participant an identification card certifying participation.

Participants in the program require special administrative procedures as detailed in CPPM section 203.200. For accounts registered to participants in the program, there will be a banner at the top of the screen in the system indicating an account is confidential.

CORRESPONDENCE**150.000****ACKNOWLEDGEMENT****150.005**

All incoming correspondence not subject to the Public Records Act (PRA) must be either responded to or acknowledged within 12 days of receipt. PRA requests must be responded to or acknowledged within 10 days, as required by law (See CPPM section 135.075). These guidelines also apply to incoming email. BEAM sections 7600-7660 provide uniform guidelines for correspondence acknowledgement. Any custom letter (i.e. not a CDTFA pre-formatted letter) must be reviewed by a supervisor or designee before it is sent to a tax/feepayer. For letters requesting tax advice, see CPPM section 150.015.

FORMAT AND CONTENTS**150.010**

Letters to tax/feepayers, organizations and the general public will be on CDTFA letterhead and will contain the signature, typewritten name, and working title of the authorized signer. The interoffice memorandum form should not be used.

Government Code section 7525 requires state agencies to place telephone numbers on official stationary used in communications with the public. This requirement includes printed forms, letters and emails. Therefore, the Document Intake and Management Unit (MIC 58) should be notified by sending an email to docmgmt@boe.ca.gov whenever changes are made to field office telephone numbers or addresses. The notices should be given as soon as firm information is available and should include the effective date of the change so preprinted forms, envelopes, and phone listings may be corrected.

All CDTFA correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. When staff responds to tax/fee question(s) from a tax/feepayer, all letters to the tax/feepayer written subsequent to receipt of the tax/feepayer's letter will be referenced in the response.

GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE ON CDTFA WRITTEN TAX OR FEE ADVICE**150.015**

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 statutory authority for the CDTFA to relieve tax/feepayers of any tax/fee, penalty, and interest 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. (Authorizing statutes also provided in Exhibit 2, Table 1, *Reliance on Written Advice*.) The BTFD Deputy Director or his/her designee, may relieve tax/feepayers of any tax or fee, including any interest and penalty added thereto, imposed 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 recommend 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*, available on the CDTFA website).

Relief is provided only where there has been written advice by the CDTFA in response to a written request from a specifically identified tax/feepayer or the tax/feepayer's representative, that fully describes the specific facts and circumstances of the activity or transaction for which advice was requested. Emails sent in response to tax/feepayer inquiries received by email qualify as written tax or fee advice, and must therefore follow the guidelines of this section.

GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE ON CDTFA WRITTEN TAX OR FEE ADVICE
(CONT. 1) 150.015

In addition, Regulation 1705, *Relief from Liability*, (for sales and use taxes) and Regulation 4902, *Relief from Liability*, (for special taxes and fees) provide that a prior audit report of a person requesting relief will be considered written advice from the CDTFA if the issue in question was addressed in the audit report. For more information regarding tax/fee advice provided in a prior audit, see Audit Manual section 0105.04, *Qualified Written Advice*.

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. Additionally, if certain conditions are met, a prior audit may be relied upon by a person with shared accounting and common ownership with the audited tax/feepayer (see Regulation 1705(c) and Regulation 4902(c)). 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 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.

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 tax/fee advice may serve 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].”

GENERAL

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

(CONT. 2) 150.015

If the tax/feepayer does not identify itself, then any advice provided by CDTFA staff cannot be relied upon for purposes of obtaining relief under the authorizing statutes. When responding to accountants, attorneys, or other tax/feepayer's representatives where the name of the tax/feepayer is not divulged, 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, and 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 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 questions 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 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.

Whenever staff conducts classes or seminars for the public, they must provide information regarding written tax/fee advice, and must emphasize that tax/feepayers can obtain written advice with respect to the questions they have regarding the application of a tax/fee to a particular type of transaction. Handouts provided to participants must include a copy of CDTFA-8, *Get it in Writing*, or reference a link to the publication on the CDTFA website.

REVIEW OF WRITTEN TAX OR FEE ADVICE

150.020

Sales and Use Tax Program

Field Operations Division (FOD) Administrators and Section/Branch Supervisors review all letters involving tax questions to ensure that the information is correct and in the proper format before the letters are mailed. Copies of all BTFD and FOD written responses confirming transactions are not subject to tax, along with the tax/feepayer's original written inquiry and any subsequent modification/rescission letters, will be forwarded to the Audit and Information Section (AIS) (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 advising that a transaction is taxable should not be forwarded to AIS.

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.

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 forward 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 not subject to a tax or fee or are subject to a tax or fee, should be filed in accordance with existing policy.

MODIFICATION/RESCISSION OF PRIOR ADVICE**150.025**

When an office determines that written advice was provided 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 staff 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 the 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 or the 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 statutory 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 CDTFB's earlier written advice no longer valid.

DISPOSITION OF CORRESPONDENCE**150.030**

All written responses, regardless of whether the written advice provides that the transactions are not subject to a tax/fee or are subject to a tax/fee, should be filed in accordance with existing policy. In addition, FOD Administrators and Section/Branch Supervisors must report the number of written inquiries received and responded to using the SharePoint program. This information must be reported by the 7th of the month following the end of each quarter. For example, written inquiries received and responded to in 4th quarter 2015, must be reported by January 7, 2016.

Special Tax and Fee Programs Bureau Chiefs are responsible for maintaining a file of all original written requests regarding transactions/activities that are not subject to a tax or fee. They are also responsible for ensuring all written responses are accurate. Additionally, all written responses confirming exemptions, along with any subsequent modifications/rescissions should be maintained as well.

The authorizing statutes only apply when the tax/feepayer reasonably relied on 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 the tax is inapplicable to the transactions at issue.

The tax/feepayer will be required to demonstrate that all of the conditions set forth in the authorizing statutes have been met. Only the person making the original tax/fee inquiry or a legal or statutory successor to that person is entitled to rely on the written advice received from the CDTFA. However, written advice received during a prior audit may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons. If the tax/feepayer is making the claim based on an audit report, the report must be provided along with appropriate supporting audit working papers. Documentation furnished should also include a statement under penalty of perjury, setting forth the facts on which the claim for relief is based. (See Regulation 1705(e) or Regulation 4902(e) regarding reliance by franchisees or members of a trade or industry association on written advice provided by the CDTFA, when requested by trade associations or franchisors who specifically identify the franchisees or members in the request for advice.) If any of these conditions are not met, the tax/feepayer should be informed that his or her request cannot be accepted as a valid claim/petition under the appropriate RTC section. Tax/feepayers whose claims/petitions are not accepted should be informed of the CDTFA's appeals procedures.

Petitions for redetermination, administrative protests, or claims for refund received citing relief under the authorizing statutes should be forwarded to the appropriate headquarters unit. While staff is not authorized to make adjustments or credits under the authorizing statutes, field personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by tax/feepayers.

DIGITAL SIGNATURES**150.050**

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 the following requirements. As long as the requirements 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.

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 the document.

For example:

A taxpayer emailed form CDTFA-101, Claim for Refund or Credit, to staff 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. Staff has verified the signer is authorized to sign the document and the email address is valid. Staff also followed-up with a phone call and recorded the contact in the system. Therefore, staff may accept the CDTFA-101 with a valid digital signature.

TAXPAYERS' RIGHTS

155.000

THE TAXPAYERS' BILL OF RIGHTS

155.005

The Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes, property taxes, and the special taxes and fees administered by the CDTFA. As the CDTFA accepts responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program.

TAXPAYERS' BILL OF RIGHTS LAW SECTIONS

155.010

The following is an explanation of the active and applicable Taxpayers' Bill of Rights law sections pertaining to the Sales and Use Tax Law. Although this section focuses on the Sales and Use Tax Law, comparable provisions for special taxes and fees and for property taxes are noted in the chart in Publication 70, *Understanding Your Rights as a California Taxpayer*. In general, most Taxpayers' Rights provisions that apply to the sales and use tax also apply to the other business taxes administered by the CDTFA.

The following sections provide both a summary of the statutory language and an overview of specific actions performed by staff for Sales and Use Tax Law accounts. Staff performs similar actions for the taxpayers' rights provisions that apply to the other tax programs administered by the CDTFA.

SECTION 7083, TAXPAYERS' RIGHTS ADVOCATE

155.011

RTC section 7083 establishes the position of Taxpayers' Rights Advocate (TRA) for the purpose of:

Facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by CDTFA employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions.

If actions, such as payment of a determination, are stayed, the statute of limitations is suspended pending the outcome of the action recommended by the TRA. The accrual of penalties and interest are not affected by the stay.

The TRA reports directly to the Director. The TRA, or his or her designee:

1. Investigates and resolves taxpayer complaints and problems, including complaints regarding unsatisfactory treatment by employees.
2. Institutes staying actions and/or orders the release of levies when failure to take such action would result in irreparable loss or threaten the health or welfare of the taxpayer.
3. Oversees the CDTFA's programs to evaluate employees' performance with respect to public contacts.
4. Recommends changes in statutes, regulations, policies, and procedures to improve service to taxpayers, ensure protection of taxpayers' rights, and facilitate taxpayer compliance.
5. Monitors compliance with all provisions of the Taxpayers' Bill of Rights.
6. Carries out various other duties related to the Taxpayers' Bill of Rights.

SECTION 7084, EDUCATION AND INFORMATION PROGRAM

155.012

RTC section 7084 requires the CDTFA to develop and implement a taxpayer education and information program. Special efforts must be made to address the needs of newly registered taxpayers, specific groups of taxpayers identified by the staff as having problems complying with the law, as well as CDTFA audit and compliance personnel. Some methods used to fulfill this mandated program include:

1. Special mailings to targeted industry groups.
2. Classes for newly registered taxpayers explaining their duties and responsibilities and the most common areas of noncompliance.
3. Active participation in business seminars.
4. Revision of CDTFA publications to make them easier to understand.
5. Continuing education programs for CDTFA staff covering new legislation and areas of noncompliance.

**SECTION 7085, IDENTIFICATION OF TAXPAYER
NONCOMPLIANCE BY CDTFA**

155.013

Under RTC section 7085, the CDTFA must identify annually the most common areas of recurring taxpayer noncompliance with the Sales and Use Tax Law. A procedure is in place to gather such information from the audit process. This data is used as a foundation for developing educational programs and making changes that will improve both taxpayer compliance and uniform administration of the law. This information also must be included in the CDTFA's Annual Report.

The CDTFA is also required to conduct an annual hearing where industry representatives and individual taxpayers can make suggestions for simplification, improvement, or clarification of business tax and fee laws, regulations, policies, and practices.

SECTION 7086, PREPARATION OF STATEMENTS BY CDTFA

155.014

RTC section 7086 requires the CDTFA to publish brief, but comprehensive, statements in simple language which explain procedures, remedies, rights, and obligations of taxpayers and the CDTFA. These statements must be provided on the initial notice of audit, other substantive notices, and in annual Tax Information Bulletins.

SECTION 7087, LIMIT ON REVENUE COLLECTED OR ASSESSED

155.015

RTC section 7087 prohibits the CDTFA from using audit, assessment, or collection statistics to evaluate employees' performance. In addition, the CDTFA may not impose or suggest production quotas or goals. Accordingly, headquarters preparation of individual auditor statistical reports has been discontinued, and all supervisors are reminded that the recording of audited or collected taxes on an individual employee basis is a violation of the law.

The CDTFA must certify in its Annual Report that it is not the policy of the CDTFA to measure the performance of an employee based on the amount of taxes assessed or collected. Accordingly, each appointing power is required to certify annually that the amount of revenue collected or assessed under the Sales and Use Tax and Special Taxes and Fees Law has not been used personally or by those under their direction to evaluate individual employees or to impose or suggest production quotas or goals. Each Administrator must submit an annual certification to the Deputy Director of the Field Operations Division by September 1. Each headquarters manager with audit and/or compliance staff must submit an annual certification to their Deputy Director by September 15. The annual certifications are forwarded to the Taxpayers' Rights Advocate.

GENERAL

SECTION 7088, EVALUATION OF EMPLOYEE'S CONTACT WITH TAXPAYERS

155.016

RTC section 7088 requires the CDTFA to implement a program to evaluate individual employee performance with respect to contacts with taxpayers. Procedures, including taxpayer surveys, have been developed for field offices and for each headquarters unit that has significant public contacts. In addition, all probationary reports and performance appraisals must contain comments on the employee's public contact skills under the Relationships with People factor on these reports and appraisals. Evaluations may include active solicitation of feedback by observation, review of correspondence, participation in meetings or conferences with the public and through any other available methods. (See BEAM Sections 1655 and 1664).

SECTION 7089, PLAN TO TIMELY RESOLVE CLAIMS AND PETITIONS

155.017

Under RTC section 7089, the CDTFA, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, and other interested taxpayer-oriented groups, developed a plan to reduce the time required to resolve petitions for redetermination and claims for refund. The CDTFA's plan includes standard time frames and requires a review of cases that exceed the established standard.

SECTION 7090, PROCEDURES RELATING TO APPEALS CONFERENCES

155.018

For conferences before appeals staff, RTC section 7090 requires the CDTFA to:

1. Hold the conferences at a reasonable time at a CDTFA office which is convenient to the taxpayer.
2. Provide the taxpayer prior notice that the hearing will be recorded and the taxpayer is entitled to receive a copy of the recording.

Inform the taxpayer prior to any hearing that the taxpayer has the right to have an attorney, accountant or other designated agent present. The CDTFA has implemented the following policies with respect to Appeals Bureau conferences:

1. Taxpayers must be informed before the conference that they are entitled to representation.
2. The conference will be held at a reasonable time at a CDTFA office that is convenient to the taxpayer.
3. The CDTFA has elected not to record conferences. However, taxpayers may record the conference if they give prior notice to the CDTFA. The taxpayer must provide a copy of the recording to the CDTFA, whether by electronic means or by court reporter.

When a taxpayer requests an appeals conference, the Appeals Bureau will mail a Notice of Appeals Conference to the taxpayer to confirm their request for a conference. The taxpayer must return the response form within 15 days of the letter date and indicate whether a conference is desired and, if so, specifying a location where the conference is to be conducted. The information required by RTC section 7090 will be included.

Additional information about appeals conferences is also provided in Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*.

SECTION 7091, REIMBURSEMENT TO TAXPAYER

155.019

Under RTC section 7091, taxpayers are entitled to reimbursement of fees and expenses related to a hearing if all the following conditions are met:

1. The taxpayer files a claim with the CDTFA for the fees and expenses within one year of the date after the hearing decision becomes final.
2. The CDTFA, in its sole discretion, finds that the action taken by its staff was unreasonable.
3. The CDTFA decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing in an amount determined by the CDTFA in its sole discretion.

To determine whether the CDTFA staff has been unreasonable, the CDTFA shall consider whether staff has established that its position is substantially justified. Reimbursement of costs will be limited to fees and expenses incurred after the filing date of the petition for redetermination or the claim for refund.

If the CDTFA finds that the staff was unreasonable with respect to some of the issues involved but not others, reimbursement will be limited to expenses related to the issues with respect to which the staff was unreasonable. The rate at which a taxpayer may be reimbursed is set by RTC section 7156.

**SECTION 7092, INVESTIGATIONS FOR
NON-TAX ADMINISTRATION PURPOSES**

155.020

Under RTC section 7092, CDTFA employees who knowingly authorize or conduct an investigation of any person for non-tax purposes are subject to disciplinary action under the State Civil Service Act, including discharge from employment. This provision, however, does not apply to any lawful investigation concerning organized crime activities, and is not intended to prevent the exchange of information where multiple violations, including tax or fee program violations, are being investigated.

SECTION 7093.5, SETTLEMENT AUTHORITY

155.021

The Director is authorized to approve a settlement of any civil tax, fee or surcharge matter in dispute under the following RTC sections¹:

- Sales and Use Tax Law - 7093.5
- Cigarette and Tobacco Tax Law - 30459.1
- Diesel Fuel Tax Law - 60636
- Emergency Telephone Users Surcharge Law - 41171
- Energy Resources Surcharge Law - 40211
- Fee Collections Procedures Law - 55332
- Hazardous Substances Tax Law - 43522
- Integrated waste Management Fee Law - 45867
- Oil Spill Response, Prevention and Administration Fee Law - 46628
- Underground Storage Tank Maintenance Fee Law - 50156.11
- Use Fuel Tax Law - 9271

Settlements that reduce tax, fee or surcharge amounts or penalties by \$5,000 or less (small case authority) may be approved first by the Chief Counsel, and then by the Director. For settlements where reductions of tax, fee or surcharge amounts or penalties exceed \$5,000, the Attorney General must first comment on the reasonableness of the settlement before the settlement is submitted to the Director for approval.

The CDTFAs settlement program does not presently apply to jet fuel taxes, motor vehicle fuel taxes, tax on insurers, timber yield tax, or fire prevention fees. Additionally, the settlement program for some taxes imposed by the Hazardous Substances Tax Law is administered by the Department of Toxic Substances Control.

If the Director does not take any action on the proposed settlement agreement within 45 days of its submission, the recommendation to settle the case is deemed approved.

A public record of a settlement with a reduction of tax, fee, or surcharge amounts or penalties in excess of \$500 is filed in the office of the Director for at least one year. It should be noted that the settlement procedure is administered by the Settlement and Taxpayer Services Bureau within the CDTFAs Legal Division.

¹Under Alcoholic Beverage Tax Law 32471, the Board of Equalization must be notified of all settlements. Settlements that reduce the tax or penalties by more than \$5,000 must be approved by the Board of Equalization, and those over \$500 must be made available as a public record.

SECTION 7094, RELEASE OF LEVY

155.022

Under RTC section 7094 and equivalent Special Taxes and Fees statutes, the Taxpayers' Rights Advocate may order the release of a levy or notice to withhold, or order the return of levied funds up to \$2,300 received within the last 90 days, upon finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or their spouse and dependents or family. The section is recognized as an extension of the existing summary collection action review procedures and will be utilized when disagreements between the staff and the taxpayer exist. Under these circumstances, the taxpayer should be advised of provisions of RTC section 7094.

Current compliance policy (CPPM Section 753.000 et seq.) states that when a notice of levy is issued, the taxpayer is entitled to be informed of the exemptions provided in the Code of Civil Procedure. The CDTFA-425, *Exemptions from the Enforcement of Judgements*, CDTFA-425-L3, *Notice of Levy – Information Sheet*, and CDTFA-403-E, *Individual Financial Statement* are sent to the taxpayer with a copy of the Notice of Levy. To comply with RTC subdivision 7094(b), the person signing the levy should ensure these forms are included with the taxpayer's copy. A notice to withhold can have the same effect on health and welfare issues as a notice of levy; therefore, it will be treated in the same manner as a notice of levy.

When a request for relief under RTC section 7094 is received in headquarters, it will be forwarded to the Compliance Principal in the office responsible for the account with a copy to the TRA. When such a request is received in field office, a copy should be forwarded immediately to the TRA and the original assigned to the person responsible for the case.

The person responsible for the case will contact the party holding the seized or levied property and advise them that an appeal under RTC section 7094 has been filed. They will request the financial institution's or other party's cooperation by requesting that the property be held pending outcome of the appeal. This will be followed by a letter of confirmation from the office responsible for the account to the party holding the seized or levied property, with a copy to the TRA Office, advising that they will be contacted regarding a final disposition for the funds within fifteen (15) working days.

If the financial institution or other party remits the funds, a CDTFA-487-C, Cash/Liquid Security Deposit Advice, should be utilized to accept the payment, with notation at the top in bold type: "APPEAL UNDER SECTION 7094".

In order to minimize hardship, early resolution of each situation is the goal. The office responsible for the account has the authority to determine if a hardship exists or will occur and, if so, every effort should be made to take the necessary steps to quickly release all or part of the levied property. Hardship may be defined as the inability of the taxpayer to provide necessities of life. The responsible office will gather and evaluate financial information to determine if seizure of property or funds will cause irreparable hardship to the taxpayer and/or his or her family. The review will focus on health and welfare issues, i.e. the necessities of life and the means to provide them, such as shelter, food, medical care, etc. Each case will be reviewed and judged independently on the specific facts and circumstances involved. Every effort will be made to resolve the appeal within fifteen (15) working days from receipt of the taxpayer's request.

The taxpayer or their representative must provide reasonable documentation and disclosure of financial condition for a stay or release of levy to be considered. A financial statement, with documentation, will be completed by the taxpayer as part of the financial disclosure request. Failure of the taxpayer to verify financial statement information will result in denial of the appeal.

GENERAL

SECTION 7094, RELEASE OF LEVY

(CONT.) 155.022

Examples of such information might include, but are not be limited to:

1. Evidence of mortgage or rent payments.
2. Bank statements to demonstrate average amount of gross income.
3. Paycheck stubs to show average monthly income for comparison to above item.
4. Income tax returns, to verify item (b) and (c) and to investigate for other sources of income.
5. Check stubs or receipts to demonstrate payments for food, utilities, medical expenses or other necessities.
6. Utility bills.
7. Medical bills.
8. Prescription drug receipts.
9. For credit card expenditures, receipts to show how the balance was incurred.
10. Other specifically identified supporting information as required.

The responsible office will prepare a report on the information submitted by the taxpayer and its recommendation regarding release of the property in question. This report will be submitted to the TRA Office for a decision and recommendation. Pending a decision, the responsible office will not apply the funds to the liability. To do so will place the payment in claim for refund status and will preclude immediate release of the funds should the taxpayer prevail in the referral. At the conclusion of the matter, the TRA Office will forward a report detailing their analysis and recommendation to the responsible office with copies to other affected parties within the Business Tax and Fee Department. For time sensitive cases, receipt of the report via fax or email is acceptable.

SECTION 7094.1, RETURN OF PROPERTY

155.023

Under RTC section 7094.1, the CDTFA shall return to a taxpayer the property or the proceeds from the sale of any property levied upon if:

1. The levy was not in accordance with law.
2. The taxpayer has entered into, and is in compliance with an installment payment agreement pursuant to Section 6832.
3. The return of the property will facilitate collection or be in the best interests of the state and the taxpayer.

This provision does not apply where the CDTFA finds collection of the tax to be in jeopardy.

SECTION 7095, EXEMPTIONS FROM LEVY

155.024

RTC section 7095 provides that exemptions from levy are to be adjusted for purposes of enforcing the collection of debts to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**SECTION 7096, CLAIMS FOR REIMBURSEMENT
OF BANK AND THIRD-PARTY CHARGES**

155.025

Under RTC section 7096 and equivalent Special Taxes and Fees statutes, a taxpayer may file a claim with the CDTFA for reimbursement of bank charges and other reasonable third-party charges and fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the CDTFA. Charges subject to reimbursement include:

1. A financial institution's or third-party's customary charges for complying with the levy or notice to withhold instructions,
2. A financial institution's customary charges for overdrafts or non-sufficient funds that are a direct consequence of the CDTFA's error, and
3. Any reasonable third-party charges incurred by a taxpayer due to an error by the CDTFA. Third-party charges are fees charged by payees, such as retailers, utility companies or service providers, for returned checks or dishonored electronic payments.

The charges subject to reimbursement are those paid by the claimant and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the CDTFA.

The CDTFA will grant a claim if:

1. The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by CDTFA error;
2. Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the CDTFA and provided the CDTFA with any requested information or documentation sufficient to establish the taxpayer's position (the CDTFA may waive this provision for reasonable cause); and
3. The claim is filed in writing within 90 days from the date the bank or third-party charges were incurred by the taxpayer.

In the context of RTC section 7096 and equivalent Special Taxes and Fees statutes, "CDTFA error" can include an action taken by the CDTFA that would not (or should not) have been taken if all the facts of the case were known; that is, the error occurred due to circumstances that were beyond the control of CDTFA staff and the taxpayer, notwithstanding the taxpayer's timely and cooperative response to all contacts by the CDTFA, where such contacts were feasible. In addition, the requirements of these statutes are fulfilled if the levy causes funds to be captured that do not belong to the taxpayer and are not subject to community property laws.

Erroneous levies can occur for any number of reasons, including but not limited to: failing to follow RUPA (Revised Uniform Partnership Act) rules; taking collection action too soon (contrary to CDTFA written policy); or issuing a Notice of Levy during a bankruptcy stay.

An example of an erroneous processing or collection action would be if CDTFA staff mistakenly entered incorrect bank account information while processing a new Auto Pay authorization for a payment plan. The next payment would then be debited from the unrelated bank account, resulting in overdraft charges being incurred. The CDTFA would accept a claim for reimbursement from the account holder who incurred the bank charges due to the CDTFA's erroneous processing action.

GENERAL

**SECTION 7096, CLAIMS FOR REIMBURSEMENT
OF BANK CHARGES BY TAXPAYER**

155.025

An example of reasonable cause to waive the taxpayer's duties to respond to CDTFA contacts would be in the case of a levy that captured funds from another party's bank account. The duty to respond to CDTFA should be waived because the other party would not have received any contacts from the CDTFA.

Within 30 days from the date the claim is received, the CDTFA shall respond to the claimant. If the CDTFA denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

A procedure has been established to process these claims for reimbursement of bank or third-party charges. Field offices or headquarters units receiving claims for reimbursement should forward the following to the Taxpayers' Rights Advocate:

1. The original written claim filed by the taxpayer/claimant.
2. A copy of the notice of charge, including evidence of payment, from the taxpayer's/claimant's bank and/or from a third party.
3. A memorandum explaining the facts that led to the filing of the claim and a recommendation whether the claim should be paid. The memorandum should be written by the collector that is knowledgeable of the case and approved by his or her immediate supervisor.

Because the statute requires a response within 30 days, field offices should forward claims as soon as they are received. The Taxpayers' Rights Advocate will evaluate the claim and notify the taxpayer/claimant of its decision. If the claim is approved, it will be forwarded to the Accounting Section of the Financial Management Division for payment and the claimant will receive a check from the State Controller approximately two to four weeks later.

Since reimbursements under this section are paid out of the CDTFA's general operating fund and tax liabilities involve other government funds, offsetting transfers between these funds are not routinely possible. Therefore, payment of tax liabilities and reimbursement of bank or third-party charges must be handled separately. Requests to internally credit reimbursement of such charges toward any outstanding tax liability of the taxpayer will not be granted.

SECTION 7097, PRELIMINARY NOTICE TO TAXPAYER PRIOR TO LIEN 155.026

RTC section 7097 requires the CDTFA to mail the taxpayer a preliminary notice at least 30 days before the filing of liens. The preliminary notice must specify the statutory authority for filing the lien, show the earliest date on which the lien may be recorded, and explain the remedies available to the taxpayer to prevent the filing of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice must be sent. This notice is not required with respect to liens filed pursuant to a jeopardy determination.

The bill note printed on demand billings has been amended to satisfy this requirement. The procedure for recording liens has been changed accordingly.

If the CDTFA determines that a lien was filed in error, a release must be mailed to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days after identifying the error and receiving the lien recording information. The release must contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the CDTFA must immediately issue a release of lien to the taxpayer and the entity recording the lien. If requested by the taxpayer, a copy of the release must be mailed to major credit reporting companies in the county in which the lien was filed.

The Special Operations Branch has established a procedure to ensure the timely release of erroneous liens and to place a notice on the release that the lien was filed in error. Upon request of the taxpayer, the Special Operations Branch will send a copy of the release to major credit companies in the county where the erroneous lien was filed.

SECTION 7098, NOTICE PRELIMINARY TO SUSPENSION 155.027

As provided in RTC section 7098, a taxpayer's permit or license cannot be revoked until at least 60 days after the CDTFA has mailed a notice to the taxpayer that indicates the permit or license will be suspended on a certain date.

Accordingly, the date of revocation for each reporting period has been established at 60 days from the date of mailing of the hearing notice. The Annual Calendar of Sales Tax and Use Fuel Tax Functions reflects the dates for these programs. Accounts scheduled to be revoked for balance, security or failure to comply also must be given a 60-day notice before they are revoked or suspended.

All other business tax accounts also will be given a 60-day notice before revocation.

SECTION 7099, DISREGARD BY CDTFA EMPLOYEE OR OFFICER 155.028

RTC section 7099 provides that an action for damages may be brought against the State of California in Superior Court by a taxpayer aggrieved by the action of any employee of the CDTFA who recklessly disregards CDTFA published procedures. However, if it appears to the court that the taxpayer's case is frivolous, the court may impose a penalty up to \$10,000.

GENERAL

TAXPAYERS' RIGHTS ADVOCATE

156.000

THE TAXPAYERS' RIGHTS ADVOCATE OFFICE

156.005

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

1. Facilitates resolution of tax/feepayer complaints or problems, including complaints regarding unsatisfactory treatment by CDTFA employees.
2. Monitors various CDTFA tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of tax/feepayers.
3. Ensures tax/feepayer educational materials are clear and understandable.
4. Coordinates statutory Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the CDTFA; provides follow-up reports to the Director when requested.

The TRA Office generally assists tax/feepayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there are apparent rights violations in the audit or compliance areas. The TRA Office facilitates communication between the public and CDTFA staff to eliminate potential misunderstandings. Tax/feepayers are provided information on policies and procedures so that they can be better prepared to discuss their issues with staff and achieve a resolution.

The TRA Office functions as an independent third party and reviews the issues in each case before making a recommendation or taking action. The goal of the TRA Office is to facilitate communication and understanding between the tax/feepayer and the office responsible for the account, and to work cooperatively with both the tax/feepayer and the staff to resolve the problem.

Generally, the TRA Office will become involved in a case when any of the following events occur:

1. A tax/feepayer contacts the TRA directly,
2. CDTFA management or the program staff refers a tax/feepayer to the TRA Office,
3. The Governor's Office or a Legislator's Office refers a tax/feepayer to the TRA Office, or
4. A case requires the TRA's involvement due to statutory situations.

STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE 156.010

The procedures discussed here are intended to provide guidelines for referring tax/feepayers to the TRA. It should be stressed that it is not intended to create new procedures or rules for handling audit or compliance cases or for dealing with tax/feepayers. Staff should continue to always treat tax/feepayers in a professional and courteous manner, as intended by the Taxpayers' Bill of Rights. It must be emphasized that if the staff has dealt with the tax/feepayer in an open and objective manner, listened to the circumstances of the situation, discussed options such as appeal rights, payment agreements, or offers in compromise, and shared information with the tax/feepayer, their role as a professional has been fulfilled.

Undoubtedly, some issues will arise where differences between the tax/feepayer and the staff cannot be resolved. If appropriate, the issue(s) should be referred to a supervisor for review as the basic responsibility for settling disputes rests with the office responsible for the account and/or headquarters staff. If, after supervisory review, the tax/feepayer asks for review by the TRA Office, the case should be referred accordingly.

Problems that can be resolved via normal inquiries to headquarters should not be referred to the TRA Office. (For example: If a tax/feepayer asks for an explanation of how payments have been applied to a billing on their account, this should be handled by staff receiving the call, and if assistance is needed, staff should contact the appropriate headquarters unit.) Typical items that should be resolved by the employee responsible for the account would be the negotiation of payment plans, requests for administratively extending reasonable time limits for reinstatement on revoked accounts when circumstances warrant, and answering questions regarding legal issues or audit procedures. Referrals to the TRA Office should be primarily to facilitate solutions to issues that may be outside the staff's line authority, or issues that raise questions concerning the adequacy, equity, or fairness of established policies and/or procedures.

If the staff believes that a course of action cannot be agreed to and the issue(s) remain unresolved, or they feel the tax/feepayer does not understand the situation, they should bring it to the attention of their immediate supervisor to see if further discussion with the tax/feepayer would be beneficial. A discussion with the tax/feepayer could then be held to allow a full explanation of the staff's position and assure that the tax/feepayer's desired resolution is fully considered.

This procedure will ensure that there is ample opportunity to draw on the experience of supervisors and managers to satisfactorily resolve tax/feepayer issues and give employees direction for future encounters. An independent decision made within the office responsible for the account based on facts and policy, and taking into consideration the unique circumstances of each case is desired and encouraged. If necessary, the case should be referred through other levels of management for review and recommendation prior to referral to the TRA Office.

If the case cannot be resolved in the office responsible for the account, it should then be referred to the TRA Office. Tax/feepayers should be advised that the TRA Office will make an independent and impartial review in light of the law and established policies and procedures, and that solutions will be recommended as the circumstances and facts merit.

TAXPAYERS' RIGHTS ADVOCATE'S OFFICE PROCEDURES

156.015

The TRA facilitates resolution of tax/feepayer problems and ensures that tax/feepayers' rights, privacy and property are protected during the assessment and collection of taxes and fees. Consequently, the TRA has a responsibility to investigate all issues and requests for assistance. Some cases may be referred to the Internal Affairs Section (IAS), the Business Tax and Fee Division, the Field Operations Division, or the Legal Division when it is determined that the issue may fall under their operational responsibility.

Frequently, tax/feepayers will call the TRA Office prior to attempting to resolve the issue through normal channels. The TRA Office staff will communicate and guide the tax/feepayer back to normal channels, such as contacting the office responsible for the account to resolve any issues with the understanding that if their issue is not resolved the tax/feepayer should contact the TRA Office.

When referrals or calls from tax/feepayers are received, the TRA Office staff will generally review the tax/feepayer's master file and the CDTFA systems for information concerning the tax/feepayer's case. When contacting the office responsible for the account, the TRA Office staff will first contact the first-line supervisor and may also contact the Administrator and the appropriate Compliance Principal so they are aware of the referral and can determine the best way to handle the inquiry with their staff. For headquarters sections, the first-line supervisor will generally be the initial contact of the TRA Office staff, but the section supervisor or the Chief of the division may also be contacted.

Typical information requested by the TRA Office includes:

1. Date of discussion(s).
2. Names of all parties present during discussion.
3. Issues discussed.
4. Tax/feepayer's desired resolution.
5. Staff's position and full explanation of action taken.
6. Copies of case notes.
7. Other relevant information.

After review of all information, the TRA Office will discuss its recommendation with staff and the tax/feepayer to facilitate resolution.

Table of Exhibits

Tax Programs Administered by the Board	Exhibit 1
Authorizing Statutes	Exhibit 2

GENERAL

TAX PROGRAMS ADMINISTERED BY THE BOARD

EXHIBIT 1

Tax Program	Revenue and Tax Code Sections	Other Relevant Tax Code Sections
Sales and Use Tax	6001-7176	
Bradley-Burns Uniform Local Sales and Use Tax	7200-7212	
Transactions and Use Tax	7251-7279.6	
Motor Vehicle Fuel Tax	7301-8408	
Use Fuel Tax	8601-9355	
Insurance Tax	12000-13170	
Cigarette and Tobacco Products Tax	30001-30482	
Alcoholic Beverages Tax	32001-32556	
Energy Resources Surcharge	40001-40216	
Emergency Telephone Users Surcharge`	41001-41176	
Hazardous Substances Tax	43001-43651	Sections of the Health and Safety Code
Childhood Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197
Occupational Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197
Integrated Waste Management Fee	45001-45984	Public Resources Code 48000-48008
Oil Spill Response, Prevention, and Administration Fees	46001-46751	Government Code 8670.40-8670.48
Underground Storage Tank Maintenance Fee	50101-50162	Health and Safety Code 25299.10-25299.51
Natural Gas Surcharge	55001-55381	Public Utilities Code 890-900
Tire Recycling Fee	55001-55381	Public Resources Code 42860-42895
Marine Invasive Species Fee	55001-55381	Public Resources Code 71200-71271
Diesel Fuel Tax	60001-60708	
Electronic Waste Recycling Fee	55001-55381	Health and Safety Code 25214.9-25214.10.2
Water Rights Fee	55001-55381	Water Code 1525-1552

AUTHORIZING STATUTES

EXHIBIT 2

The following tables list those statutes of CDTFA-administered tax/fee programs that authorize the tax/feepayer to rely on written advice provided by the CDTFA, and authorize the CDTFA to examine tax/feepayer records and issue liens and withholds. These tables are intended as a reference only. Staff should read the actual code sections and regulations to ensure familiarity with the specific nature and scope of the authority provided under the law.

Table 1 - Reliance on Written Advice

TAX PROGRAM	AUTHORIZING REVENUE AND TAX CODE SECTIONS	REGULATION
Sales and Use Tax	6596	1705
Bradley-Burns Uniform Local Sales and Use Tax	6596	1705
Transactions and Use Tax	6596	1705
Motor Vehicle Fuel Tax	7657.1	1124,4902
Use Fuel Tax	8879	1335,4902
Cigarette and Tobacco Products Tax	30284	4105, 4902
Alcoholic Beverages Tax	32257	2570, 4902
Energy Resources Surcharge	40104	2303, 4902
Emergency Telephone Users Surcharge	41098	2432, 4902
Hazardous Substances Tax	43159	3021, 4902
Childhood Lead Poisoning Prevention Fee	43159	3021, 4902
Occupational Lead Poisoning Prevention Fee	43159	3021, 4902
Integrated Waste Management Fee	45157	3302, 4902
Oil Spill Response, Prevention, and Administration Fees	46158	2250, 4902
Underground Storage Tank Maintenance Fee	50112.5	1248, 4902
Natural Gas Surcharge	55045	3502, 4902
Tire Recycling Fee	55045	3502, 4902
Marine Invasive Species Fee	55045	3502, 4902
Diesel Fuel Tax	60210	1422, 4902
Electronic Waste Recycling Fee	55045	3502, 4902
Water Rights Fee	55045	3502, 4902
Timber Yield Tax Law	38454	

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

GENERAL

AUTHORIZING STATUTES

(CONT. 1) EXHIBIT 2

Table 2 — Authority for Examining Taxpayer Records

Tax Program	Authorizing Revenue and Tax Code Sections	Regulation
Sales and Use Tax	RTC 7053, 7054	1698
Bradley-Burns Uniform Local Sales and Use Tax	RTC 7053, 7054	1698
Transactions and Use Tax	RTC 7053, 7054	1698
Motor Vehicle Fuel Tax	RTC 8253 & 8301– 8304	1177–1178, 4901
Use Fuel Tax	RTC 9254	1332, 4901
Cigarette and Tobacco Products Tax	RTC 30454	4026–4028, 4901
Cigarette and Tobacco Products Licensing Act of 2003	RTC 22974 & 22980	
Alcoholic Beverages Tax	RTC 32453, 32551	2500, 4901
Energy Resources Surcharge	RTC 40172–40175	2343–2346, 4901
Emergency Telephone Users Surcharge	RTC 41058, 41073, 41129–41130	2431, 4901
Hazardous Substances Tax	RTC 43502	3020, 4901
Childhood Lead Poisoning Prevention Fee	RTC 43502	3020, 4901
Occupational Lead Poisoning Prevention Fee	RTC 43502	3020, 4091
Integrated Waste Management Fee	RTC 45852	3301, 4901
Oil Spill Response, Prevention, and Administration Fees	RTC 46603	2255, 4901
Underground Storage Tank Maintenance Fee	RTC 50153	1271, 4901
Natural Gas Surcharge	RTC 55302	3501, 4901
Tire Recycling Fee	RTC 55302	3501, 4901
Marine Invasive Species Fee	RTC 55302	3501, 4901
Diesel Fuel Tax	RTC 60604–60606	1470, 4901
Electronic Waste Recycling Fee	RTC 55302	3501, 4901
Water Rights Fee	RTC 55302	3501, 4901

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

COMPLIANCE POLICY AND PROCEDURES MANUAL

AUTHORIZING STATUTES

(CONT. 2) EXHIBIT 2

Table 3 - Authorization To Issue A Notice of Withhold And A Notice of Levy

Tax Program	Authorizing Revenue and Tax Code Sections
Sales and Use Tax	6702, 6703
Bradley-Burns Uniform Local Sales and Use Tax	6702, 6703
Transactions and Use Tax	6702, 6703
Motor Vehicle Fuel Tax ¹	7851, 7855
Use Fuel Tax	8954, 8957
Cigarette and Tobacco Products Tax	30313, 30315
Cigarette and Tobacco Products Licensing Act of 2003	55203, 55205
Alcoholic Beverages Tax	32383, 32387
Energy Resources Surcharge	40153, 40155
Emergency Telephone Users Surcharge	41122, 41123.5
Hazardous Substances Tax	43443, 43444.2
Childhood Lead Poisoning Prevention Fee	43443, 43444.2
Occupational Lead Poisoning Prevention Fee	43443, 43444.2
Integrated Waste Management Fee	45603, 45605
Oil Spill Response, Prevention, and Administration Fees	46404, 46406
Underground Storage Tank Maintenance Fee	50134, 50136
Natural Gas Surcharge	55203, 55205
Tire Recycling Fee	55203, 55205
Marine Invasive Species Fee	55203, 55205
Diesel Fuel Tax	60404, 60407
Electronic Waste Recycling Fee	55203, 55205
Water Rights Fee	55203, 55205
Lead Acid Battery Fee	55203, 55205

¹ Collections are handled by the State Controller