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**STATE BOARD OF EQUALIZATION**  
916-445-6450

December 27, 1985

REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in reply to your November 15, 1985 letter regarding the State Board of Equalization's interpretation of section 6703, Revenue and Taxation Code, as amended by Statutes of 1984, Chapter 1480. As amended, section 6703 generally provides that the Board may issue a Notice of Levy of a continuing nature to persons who have certain property of tax debtors.

You asked for clarification of the Board's position as to whether levies under section 6703 are continuing or whether they reach only the funds on deposit at the time and date the Notice of Levy is served on a bank.

We believe that the wording of the statute is awkward concerning the continuing nature of the Notice of Levy upon a deposit account. Subdivision (d) of the section provides that the term "payments" does not include earnings as defined in the Code of Civil Procedure or funds in a deposit account as defined in section 9105 of the Commercial Code. The subdivision goes on to define what the term "payments" does include. We first note that we believe that it is clear that deposit accounts are at least subject to the Notice of Levy; otherwise, subdivision (d) would exclude such accounts from "credits or other personal property" as that term is used in subdivision (a). Although the term "payments" does not appear in subdivision (a) of the section, the singular term "payment" appears at subdivision (c) where section 6703 provides that the recipient of the levy is required to withhold the lesser of (1) the amount stated on the notice or (2) the amount of each payment due or becoming due to the retailer or other person liable during the period of the levy.

However, the legislature must have had a reason for excluding deposit accounts from the same treatment as:

"(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the retailer or other person liable for the tax.

(3) Any other payments or credits due or becoming due the retailer or other person liable as the result of written oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise."

Since such amounts would clearly be subject to the continuing levy, the inference we have drawn from the exclusion of earnings (which are separately provided for by Earnings Withholding Order for Taxes) and deposit accounts is that the legislature did not intend that such earnings and deposit accounts be subject to the continuing nature of the levy.

Therefore, it is our opinion that, when the Board of Equalization serves a Notice of Levy on a bank in order to levy upon monies in a "deposit account" as defined in section 9105 of the Commercial Code, the bank need only consider the levy as applicable to funds on deposit with the bank at the time the bank receives the Notice of Levy.

Enclosed is a copy of the revised Notice of Levy. Please note the highlighted portion on the back of the form which excludes deposit accounts from the information regarding the continuing levy.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

R. L. Dick  
Tax Counsel

RLD:hb  
Enclosures

bc: San Francisco District Office