



# CDTFA

CALIFORNIA DEPARTMENT OF  
TAX AND FEE ADMINISTRATION



**TAXPAYERS' RIGHTS  
ADVOCATE'S**  $\frac{2018}{2019}$

# ANNUAL REPORT

BUSINESS TAXES

# MESSAGE TO DIRECTOR

Mr. Nicolas Maduros, Director  
California Department of Tax and Fee Administration

Dear Mr. Maduros,

I am pleased to present the *2018-2019 Taxpayers' Rights Advocate's Annual Report*. The report highlights the accomplishments of the Taxpayer's Rights Advocate's Office (TRAO) and provides examples of the services we provide.

The TRAO continues to focus on both educating taxpayers about their rights and responsibilities, and on making sure CDTFA team members understand the important role they have in ensuring that taxpayers rights are protected. In addition, we work in conjunction with our program areas to simplify policy and procedures to make tax compliance easier.

We are pleased to support the mission of the CDTFA by providing an independent outlet for taxpayers to contact to help resolve their issues with the CDTFA. The TRAO remains dedicated to serving the citizens of the State of California.

Respectfully submitted,



William J. Hain  
Taxpayers' Rights Advocate



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# TAXPAYERS' RIGHTS ADVOCATE OFFICE



## VISION

To be a trusted voice of reason and fairness when resolving issues between taxpayers<sup>1</sup> and the government.

## MISSION

To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes and fees.

## GOALS

- To ensure that taxpayers coming to the Taxpayers' Rights Advocate Office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed.
- To identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws; to bring those issues to the attention of the California Department of Tax and Fee Administration (CDTFA) management; and to work cooperatively on making changes to laws, policies, and procedures where necessary.
- To meet taxpayer needs by opening appropriate channels of communication, providing educational resources, and finding creative solutions to unresolved problems.
- To promote CDTFA's commitment to honor and safeguard the rights of taxpayers.

<sup>1</sup> The term "taxpayers" in this publication means payers of sales and use taxes and special taxes and fees.

## PROFILE

### ▶ Taxpayers' Bills of Rights Mandate a Taxpayers' Rights Advocate

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts, which currently include approximately one million taxpayers, are provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax and fee programs administered by the CDTFA, currently affecting approximately 239,000 taxpayers in more than 37 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees. In addition, each Taxpayers' Bill of Rights provides for a Taxpayers' Rights Advocate (Advocate).



## ▶ Legal Responsibilities of the Taxpayers' Rights Advocate

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

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by the CDTFA;
- Monitors all tax and fee programs administered by the CDTFA for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policies to ensure fair and equitable treatment of taxpayers;
- Works with CDTFA to ensure that taxpayer educational materials are clear and understandable; and
- Conducts Taxpayers' Bill of Rights meetings to give the public an opportunity to express their concerns, suggestions, and comments.

## ▶ How the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

### **Facilitates resolution of taxpayer complaints or problems**

The Taxpayers' Rights Advocate (TRA) Office generally assists taxpayers who:

- Have been unable to resolve a matter through normal channels;
- Want information regarding CDTFA procedures;
- Claim their rights were not upheld in the assessment or collection of tax; or
- Seek confirmation that CDTFA's actions are lawful and consistent with approved policies.

The TRA Office assists taxpayers and CDTFA by facilitating better communication between these parties, which helps eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures, so they can better prepare to discuss and resolve their issues with CDTFA.

Occasionally a taxpayer contacts the TRA Office complaining about discrimination or inappropriate interactions. The TRA Office works with appropriate CDTFA management to resolve these complaints. Discrimination, harassment, or wrongful behavior of any kind toward CDTFA team members or taxpayers is not tolerated and is immediately addressed.

The Advocate oversees the Tax Appeals Assistance Program, which allows taxpayers who meet certain criteria and filed an appeal with the CDTFA, the opportunity to seek free legal assistance. For more information, see the [Tax Appeals Assistance Program](#) chapter.

## **Monitors programs and recommends policy or procedural changes**

In cases where the law, policy, or procedures do not currently allow any change to the team member's actions, but a change to the law, policy, or procedure appears warranted, the TRA Office works toward clarification or modification. Several of the past recommendations for policy or procedural changes, suggestions for enhancements to training materials, and proposals for legislative change have been a result of taxpayer suggestions.

The TRA Office routinely brings the perspective of the taxpayer to all areas of the Department. We take part in policy discussions, interested party meetings, and division chiefs' meetings; conducting focused discussions on policy issues with management; and take part in working groups charged with policy change recommendations.

## **Ensures information and guidance provided is easy to understand**

The TRA Office suggests ideas for new legislation, participates in task forces and committees responsible for procedure and regulation revisions. We routinely review proposed revisions to taxpayer educational materials to ensure they are easy to understand. The TRA Office provides information to the public through participation in public forums, business fairs, and conferences.

## **Conducts Taxpayers' Bill of Rights Meetings**

The TRA Office is responsible for conducting yearly business taxes meetings. These meetings invite the public to present ideas, discuss issues, express concerns, and share recommendations regarding legislation, and other items related to the CDTFA's administration of its tax and fee programs. After the meetings, the TRA Office works with appropriate areas of the CDTFA to address issues and concerns conveyed by taxpayers. The TRA Office then follows up with presenters outlining how their issues were addressed and posts those responses on the CDTFA [website](#).

## Collaboration with other Government Agency Taxpayer Advocates

The CDTFA Advocate meets quarterly with Taxpayer Advocates from the Franchise Tax Board (FTB), the State Board of Equalization (BOE), the Employment Development Department (EDD), and the Internal Revenue Service (IRS), as well as the Small Business Advocate in the Governor's Office of Business and Economic Development (GO-Biz). The group discusses common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, allows all the tax agencies serving California taxpayers to share their understanding of taxpayer issues. California taxpayers also benefit from the TRA Office's ongoing relationships with other Advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the Advocates.

## Implementation of the Business Taxpayers' Bill of Rights

The CDTFA is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Director has administrative control over these functions and the team members carrying them out. The Advocate reports directly to the CDTFA's Director and is independent of all CDTFA divisions. When complaints relating to the CDTFA's business tax programs are received in the TRA Office, the office has direct access to all pertinent CDTFA information and team members involved in the taxpayers' issues.

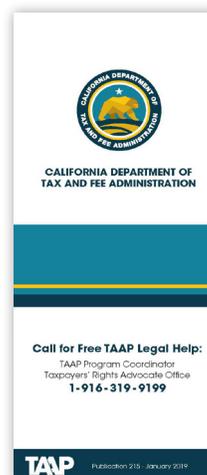
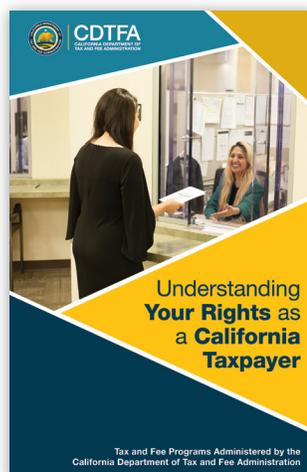
The TRA Office will sometimes act as a liaison between taxpayers and the CDTFA in resolving issues. If the Advocate disagrees with actions taken by the CDTFA and is unable to resolve the situation with program management, the issue may be brought to the Director for resolution. In addition, the Advocate has the authority under the Taxpayers' Bill of Rights to take certain actions to protect taxpayers from irreparable harm, such as issuing a stay of collection action, releasing levies, or ordering the return of levied funds. The Advocate may also make the decision to release or subordinate a lien when that action will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer. Examples of how taxpayers' complaints are resolved are included in the [Business Taxes Issues](#) chapter.

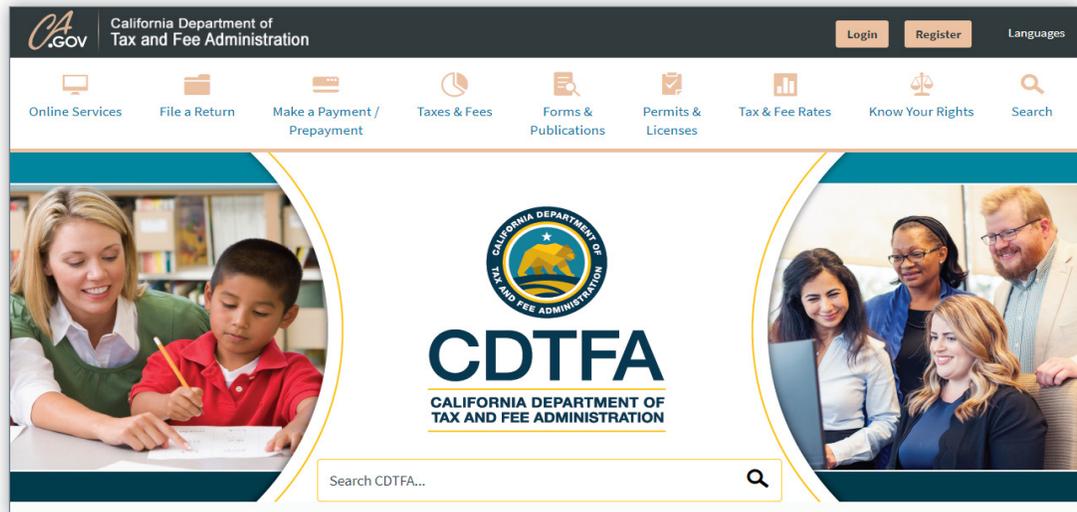
## PUBLIC OUTREACH

The public becomes aware of the services offered by the TRA Office in a number of ways. For example, information is included about the TRA Office in many CDTFA publications, is accessible on Internet sites, and is provided by the TRA Office in presentations at public events.

### ► Publications with Taxpayers' Rights Advocate Office Information

- **Publication 70**, *Understanding Your Rights as a California Taxpayer*, contains information about specific taxpayer rights under the law and the Advocate's role in protecting those rights, and is available in all CDTFA offices and on the CDTFA's website.
- **Publication 468**, *California Taxpayers' Bills of Rights Statutes*, contains all the Taxpayers' Bill of Rights statutes administered by the CDTFA. It is available on the CDTFA's website.
- **Publication 215**, *Tax Appeals Assistance Program*, explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the Advocate (see the *Tax Appeals Assistance Program* chapter of this report). It is available on the CDTFA's website.
- **Publication 145**, *California Taxpayer Advocates (CDTFA, BOE, EDD, FTB, IRS, OTA)*. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov).
- Many CDTFA publications prepared for permit or license holders reference the TRA Office's toll-free telephone number, 1-888-324-2798.
- The TRA Office's toll-free number, 1-888-324-2798, is printed on all CDTFA-issued permits and licenses.
- Articles reminding taxpayers about their rights and referencing publication 70 are published each year in CDTFA newsletters.
- Contact information for key TRA Office personnel can be found at the [back](#) of this Annual Report.





## ► Internet and Telephone

- The California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov), contains links to all California Taxpayer Advocates' webpages and the publication 145 brochure via the *Your Rights* option under the *Contact Us* tab.
- The TRA Office's webpage, [www.cdtfa.ca.gov/tra](http://www.cdtfa.ca.gov/tra), can be accessed from any page of the CDTFA's website. The webpage provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free number, 1-888-324-2798, is available as an option on many field offices' phone lines.
- The TRA Office's toll-free number is now included in the AT&T white pages in major areas of California.

## ► Public Events

The TRA Office ensures that the public is aware of its services through the following types of events:

- CDTFA-sponsored events: The Advocate or designee attends small business and nonprofit fairs and seminars throughout the state.
- Non CDTFA-sponsored events: Direct contacts with the public and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the IRS Nationwide Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, and the California Small Business Day in Sacramento.

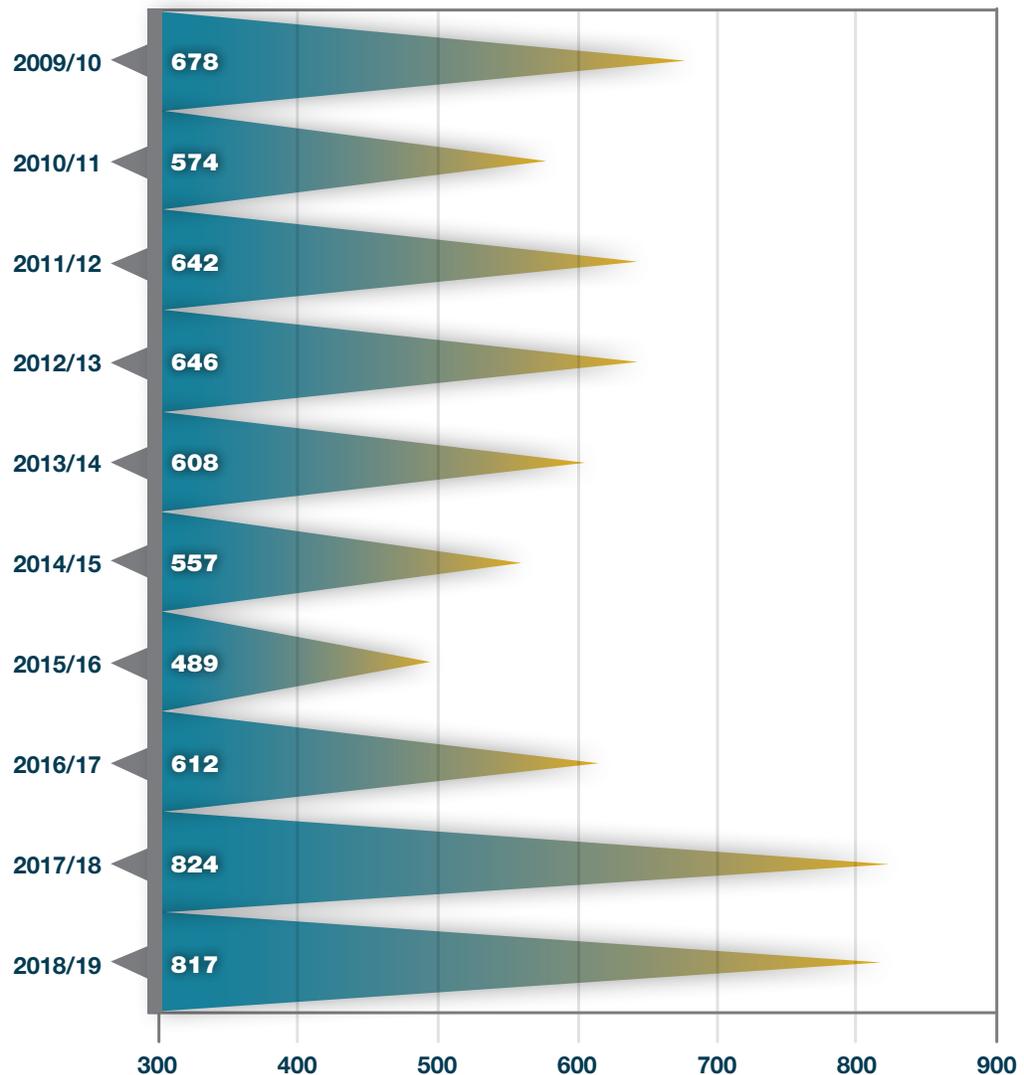
# FISCAL YEAR 2018-2019

## By the Numbers

### ▶ Cases

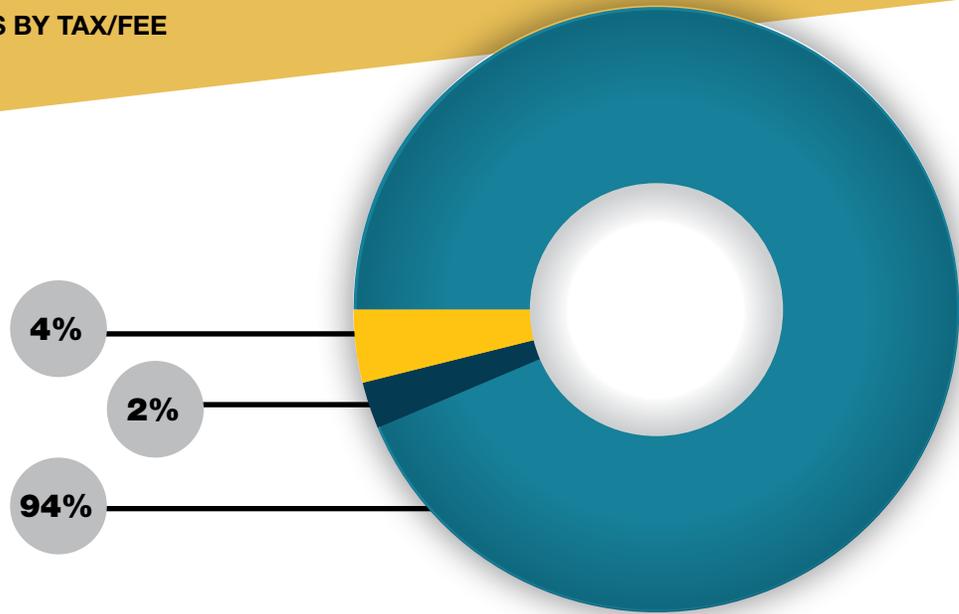
The TRA Office recorded 817 new business taxes cases in fiscal year 2018-2019.<sup>2</sup> Of the 817 cases, 94 percent were sales and use taxes issues while 4 percent were special tax and fee issues. The remaining 2 percent were not CDTFA-related.

#### CASES SET UP PER YEAR



<sup>2</sup> As of 2018, cases increased due to an increase in outreach events, the transition to CROS, and cases referred from the Board of Equalization Board Members.

**PERCENTAGE OF  
CASES BY TAX/FEE**

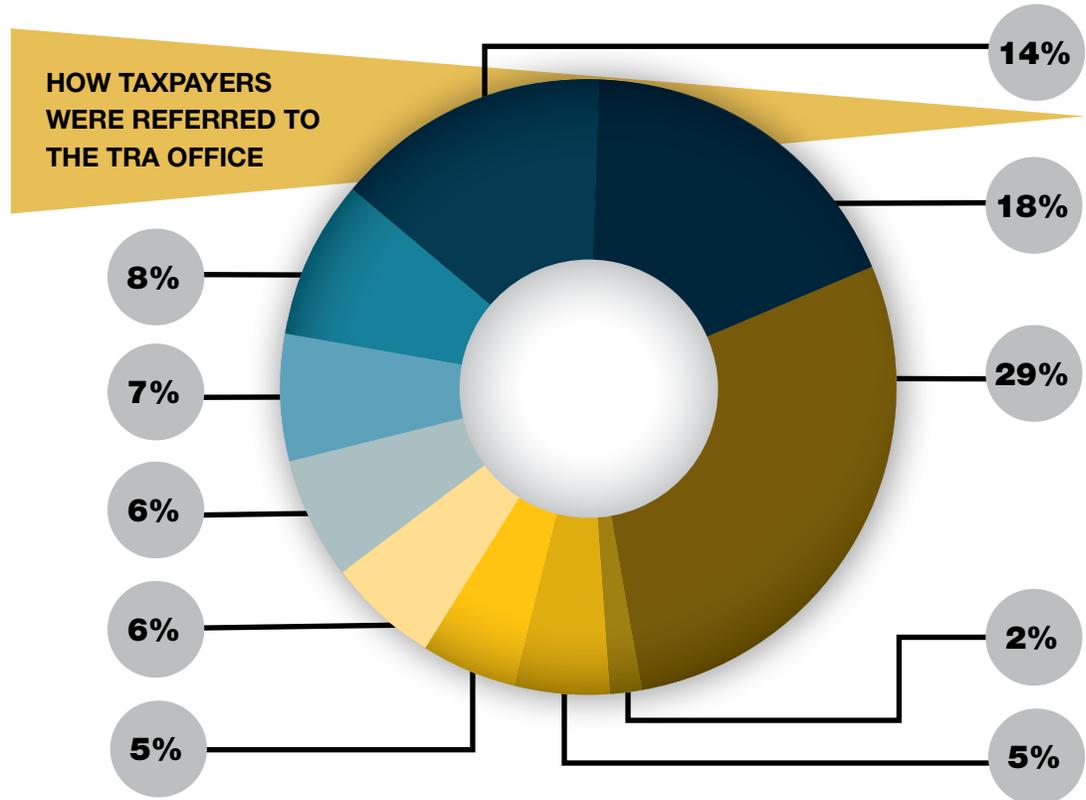


ACCOUNT TYPE	RECORD COUNT	PERCENT
Not CDTFA Related	20	2%
Special Taxes & Fees *	33	4%
Sales & Use Tax	764	94%
<b>TOTAL</b>	<b>817</b>	<b>100%</b>

\*These items were combined in Special Taxes & Fees: Alcoholic Beverage Tax, California Battery Fee or Manufacturer Battery Fee, California Tire Fee, Cannabis Taxes, Childhood Lead Poisoning Prevention Fee, Cigarette & Tobacco, Electronic Waste Recycling Fee, Environmental Fee, Fire Prevention Fee, Hazardous Waste Activity/Disposal/Facility Fee, International Fuel Tax Agreement, Interstate User Diesel Fuel Tax, Motor Vehicle Fuel Tax, Occupational Lead Poisoning Prevention Fee, Prepaid Mobile Telephony Services Surcharge, Timber Yield Tax, Underground Storage Tank Maintenance Fee, Water Rights Fee.

## ▶ Referrals

In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. The CDTFA website and CDTFA publications accounted for the largest source of referrals.<sup>3</sup>



TYPE	COUNT	PERCENT
CDTFA Website/Internet	233	29%
Publications/Notices	148	18%
Board Members	118	14%
Headquarters Staff	69	8%
Legislators	55	7%
Recontacts	51	6%
Field Office Staff	48	6%
Other	41	5%
Knows of TRA Office	40	5%
Undisclosed/Unknown	14	2%
<b>TOTAL</b>	<b>817</b>	<b>100%</b>

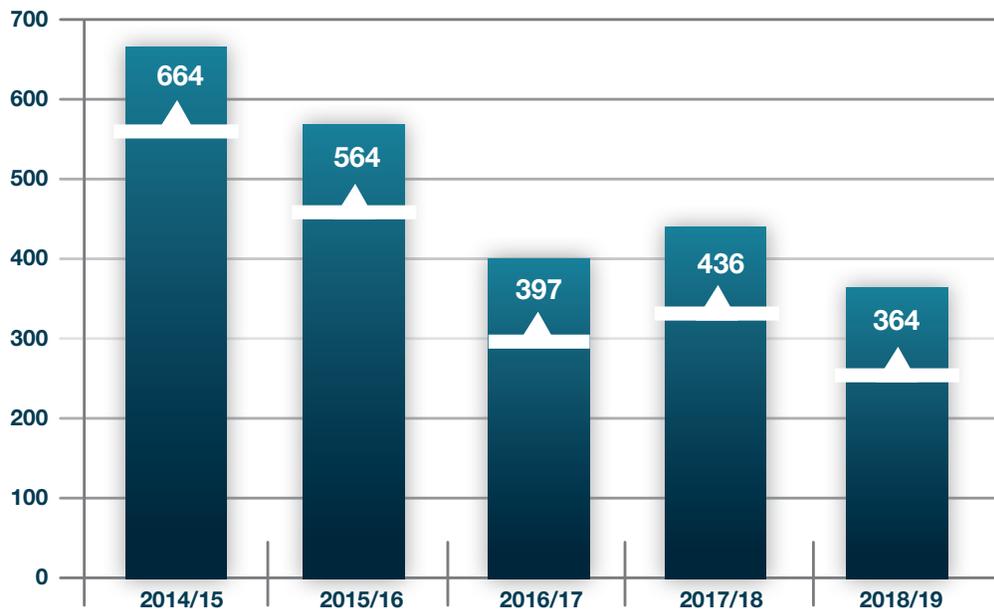
<sup>3</sup> The "Other" category consists of various types of referrals, each comprising less than two percent of the total, including other agencies, customer service center, friends and colleagues, taxpayers' representatives, outreach events, and TRA Office information printed on permits.

## ▶ Telephone Calls

The TRA Office received an average of 364 calls per month in the fiscal year 2018-2019. Seven percent of the calls resulted in new cases. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the TRA Office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their various issues with the CDTFA through normal channels.

Some callers have questions or concerns that need to be addressed by another state agency such as the Franchise Tax Board. The TRA Office directs the caller to the appropriate department, CDTFA section, individual, and provides information on resources such as the CDTFA website. The TRA Office always invites the caller to call back should they not reach the area they need, or if they required additional information.

### AVERAGE TELEPHONE CALLS PER MONTH





# BUSINESS TAXES ISSUES

## CASE RESOLUTION

The TRA Office's cases consist of businesses and individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the CDTFA. All these tax and fee programs are collectively referred to in this publication as "business taxes." A primary goal of the TRA Office is to ensure that taxpayers contacting the office with issues that have not been resolved through normal channels have their concerns promptly and fairly addressed.

The Advocate and advocate office team members have extensive knowledge of the CDTFA's programs, policies, and procedures. Therefore, the team is able to advise taxpayers of their rights and obligations, explain the tax law and CDTFA's policies, and seek out creative and appropriate solutions that are acceptable to taxpayers and the CDTFA. The TRA Office's independent status allows it to focus on assisting taxpayers within the framework of the law along with the support and guidance of CDTFA experts.

The following is information regarding the business taxes cases the TRA Office worked on this year, and some examples of cases that illustrate the services the office offers its customers.

### ▶ About the Business Taxes Case Statistics

During fiscal year 2018-2019, the TRA Office recorded 817 new business taxes cases.

### Outcome of Business Taxes Cases

[Appendix 1](#) provides important information about the business taxes cases categorized by location. A specific CDTFA field or headquarters office or other government agency was designated as the location for a case, if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "Other" was normally designated as the location in cases where individuals wanted general information; or cases where the office was not disclosed. The TRA Office tracked broad case types and critical outcomes of the cases.

**Customer Service Concerns.** The TRA Office closely monitors the number and type of customer service concerns raised by taxpayers. The TRA Office and the CDTFA work collaboratively, as part of the CDTFA's strategic plan, to prioritize customer service as a primary principle and goal. The way people are treated, and the quality of service are key components of the Taxpayers' Bill of Rights. Accordingly, complaints from taxpayers regarding customer service are brought to the attention of the administrator or headquarters section manager with a request to investigate the taxpayer's allegations and inform the TRA Office of the findings. If the TRA Office notes a trend or pattern in either the types of complaints or regarding a specific CDTFA office, the matter is brought to the attention of the Deputy Director, Field Operations Division.

Customer service concerns are categorized as:

- *Communication*: Providing misinformation, not acknowledging a taxpayer's concerns, not referring the taxpayer to a supervisor when requested, failing to answer specific taxpayer questions, or not providing information or a notice;
- *CDTFA Delay*: Slow response to an inquiry, delay in issuing a refund, or resolving the taxpayer's case;
- *Staff Courtesy*: Lack of common and kind courtesy or disrespect shown to a taxpayer indicated by demeanor, manner of handling the taxpayer's case, or comments made by team members; and/or
- *Education*: Lack of information provided regarding tax law, CDTFA policy, procedures, or training issues.

Three percent of all cases this year expressed concerns related to customer service. The customer service statistics were based on taxpayers' statements. Therefore, these statistics do not necessarily indicate verified problems, but do convey the taxpayer's perception. Please see [Appendix 1](#) and [Appendix 2](#) for more information.

**Case Handling Concerns.** After investigating a taxpayer's concerns, the TRA Office is often able to ascertain the nature of the issue and where the problem lies. In many cases, CDTFA's handling of the situation is consistent with legal, regulatory, and procedural mandates, but other issues or circumstances need to be addressed. As a result, the TRA Office may recommend a different approach to produce a result that is satisfactory to both the CDTFA and the taxpayer.

Occasionally, the TRA Office will disagree with CDTFA's handling of a case and request that the Department review how the case had been managed. These instances typically comprise a small percentage of the business taxes cases – less than one percent in fiscal year 2018-2019 (see [Appendix 1](#)). A case is recorded as “disagreed with case handling” only when the TRA Office finds that the CDTFA:

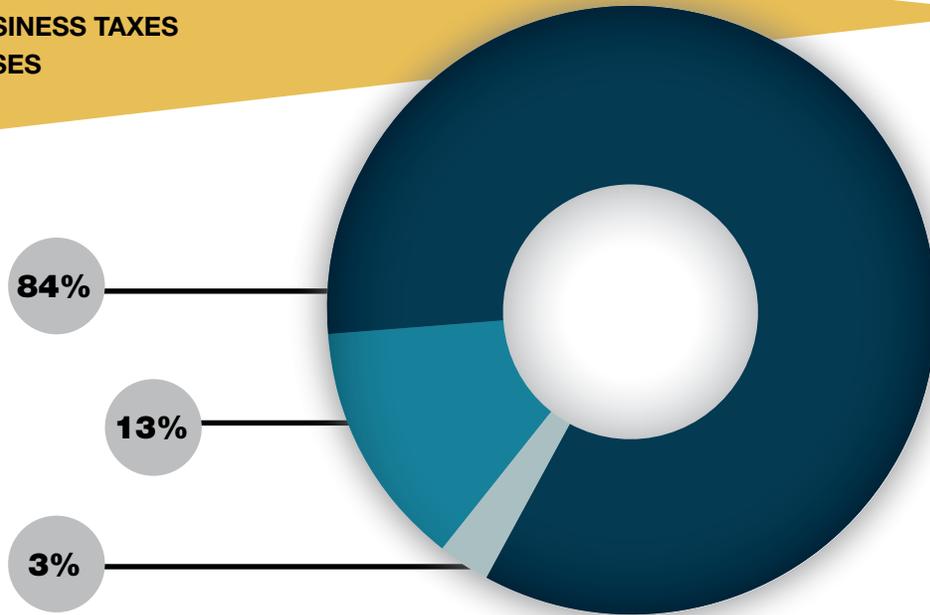
- Did not adhere to the law or approved policies or procedures;
- Acted contrary to what the taxpayer was told by the CDTFA;
- Caused unreasonable delays; or
- Violated the taxpayer's rights.

To facilitate training, the Advocate provides a quarterly report to the appropriate division chief containing the details of these cases, which provides management the opportunity to address specific training needs.

## Taxpayer inquiries cover a wide range of issues

**Types of Cases.** Business taxes cases are sorted broadly into “compliance,” “audit,” or “other” categories. The “other” category represents customer concerns and/or complaints, general information requests, and many of the matters involving other government agencies.

**TYPES OF BUSINESS TAXES CASES**



TYPES OF CASES	AMOUNT	PERCENT
Compliance	688	84%
Audit	108	13%
Other	21	3%
<b>TOTAL</b>	<b>817</b>	<b>100%</b>

**Specific Issues Leading to TRA Office Contacts.** Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 2](#).

Not surprisingly, many of the business taxes cases include the need for general information and guidance. Taxpayers often seek information on a procedure, process, or to determine if an action taken by the CDTFA was necessary and/or in compliance with the law and CDTFA policy.

**▶ Examples of Business Taxes Cases**

The following cases illustrate how taxpayers' issues are given a fresh look and often resolved by the TRA Office with the cooperation of the CDTFA.

## Offer in Compromise reconsidered

**Issue:** A taxpayer submitted an Offer in Compromise (OIC) and the offer was declined. Subsequently, he contacted the TRA Office because he believed his offer was unjustly denied.

An OIC is a proposal to pay CDTF A an amount that is less than the full tax or fee liability due. The OIC program is for those taxpayers that do not have, and will not have in the foreseeable future, the ability to pay their liability in full. CDTFA evaluates an offer based on the facts and circumstances of the taxpayer's liability and financial situation. The following factors are considered:

- The taxpayer's ability to pay
- The amount of equity in the taxpayer's assets
- The taxpayer's present and future income
- The taxpayer's present and future expenses
- Whether the liability was result of tax evasion or fraud

**Resolution:** The TRA Office conducted an independent review of the taxpayer's offer which indicated the taxpayer may qualify for an OIC due to his age, health issues, lack of assets, and income. Additionally, the TRA Office concluded it was not likely that the taxpayer's circumstances would improve. The TRA Office assisted the taxpayer in gathering additional documentation requested by the OIC, after which the taxpayer's offer was reevaluated and accepted.

**Summary.** The TRA Office can play a vital role in resolving taxpayer issues. In this case, the TRA Office's review and discussion with the OIC Section prompted a reconsideration of the taxpayer's OIC. The TRA Office stayed involved by providing guidance to the taxpayer. As a result, the taxpayer's OIC was accepted.

## Liability adjustment

**Issue:** A taxpayer was issued an estimated billing in 2016 for failing to file returns for the first and second quarter of 2016. Because the taxpayer did not pay the billing, the collector sent three levies, which collected most of the liability. At the same time collection was taking place, the taxpayer was working with an auditor from the field office to provide additional information because he believed the billing was incorrect.

After a preliminary review, the auditor requested that the collector cease levying because it appeared that the taxpayer may be entitled to a refund and not need a permit. After the review, it was determined the taxpayer should receive an adjustment to the billing of over \$57,000 for both quarters. Rather than adjusting the billing, the collector requested that the taxpayer file returns. In addition, although the collector already collected more than the amount determined to be due by the auditor, the collector continued to send levies, collecting over \$22,000.

**Resolution:** The TRA Office requested a stay of collection while the account was reviewed and requested the remaining levy be released. Once the review was completed, the TRA Office worked with the compliance supervisor and the auditor to adjust the taxpayer's assessment without the returns being filed. The taxpayer's previous claim for refund was accepted, and he was refunded over \$95,000.

**Summary:** R&TC section 7081 of the Taxpayers' Bill of Rights provides that the purpose of any tax proceeding between the CDTFA and a taxpayer is the determination of the taxpayer's correct amount of tax liability. In this case, the TRA Office took an active role to get the taxpayer's liability adjusted by working with the taxpayer, the compliance supervisor, and the auditor.



### **Taxpayer incorrectly reported district tax resulting in a billing**

**Issue:** A taxpayer was issued a billing because district taxes were not properly reported. The taxpayer's representative contacted the local CDTFA field office and spoke with a collector. The representative contended that all taxes were correctly reported and paid. The collector informed the representative that the district taxes were not reported and insisted the taxpayer would need to pay the billing. The taxpayer's representative contacted the Taxpayers' Rights Advocate Office for advice.

**Resolution:** The TRA Office listened to the taxpayer's representative and reviewed the contentions regarding the sales and use tax returns. The review revealed that the amount the taxpayer was billed was the same amount the taxpayer reported as excess tax reimbursement collected. The TRA Office spoke with the representative and concluded that the taxpayer incorrectly reported the district taxes as excess tax. The TRA Office contacted the Local Revenue Branch who corrected the return and canceled the billing.

**Summary:** The TRA Office is committed to helping taxpayers resolve issues. In this case, because the TRA's technical advisor listened and reviewed the taxpayer's sales and use tax return, he was able to conclude the taxpayer incorrectly reported the correct amount of tax due. Due to the TRA Office's involvement, the billing was cancelled.

## ▶ Accomplishments – TRA Impact

The following are the concrete examples of TRA's impact on business tax laws, policies, procedures, and improvements to the training and education provided to the CDTFA and the public that were accomplished this past year.

### **Whenever possible, CDTFA collectors must speak to the taxpayer before employing active collection procedures.**

**Background:** Collection actions will be taken if taxpayers do not pay the amount due on time or do not make other arrangements to pay the debt—such as applying for a payment plan or an OIC. Specifically, the CDTFA may:

- Place a lien on property
- Levy property
- Garnish salary or wages
- Issue a till-tap or keeper warrant
- Revoke (suspend) a seller's permit and/or suspend other business licenses (for example, DMV dealer's license)

However, before taking any collection action, the collector should attempt to contact the taxpayer. This will allow the taxpayer to voluntarily comply.

CPPM 702.010 provides in part:

*Active collection actions are actions imposed upon the taxpayer such as levying bank accounts, filing liens, etc. In most cases, it is preferable to begin working a collection case by utilizing passive collection efforts first. Whenever possible, staff must speak to the taxpayer before employing active collection procedures.*

**Issue:** The TRA Office has been working with taxpayers where collection actions such as levies or wage garnishments have commenced prior to attempting contact with the taxpayer. These situations include cases where the taxpayer was contacted but significant time had passed, or the taxpayer had attempted other means to resolve the liability such as filing an appeal, submitting an OIC, or filing bankruptcy, which had removed them from active collection. Many times, after the taxpayer's alternative arrangements are unsuccessful, the collector immediately sends levies. The TRA Office contends if the contact was not recent, the collector should contact or attempt to contact the taxpayer before taking any collections.

**Resolution:** It is important for taxpayers to have every opportunity to pay their taxes and fees voluntarily. The CDTFA's policy is to contact the taxpayer, or document attempts to do so, prior to taking enforced collection action. Since policy had not been followed in many cases, the TRA Office brought this to the attention of the Business Tax and Fee Division (BTFD) and

the Field Operations Division (FOD). A reminder was sent to the collection team members to contact taxpayers prior to taking collection actions. The TRA Office will continue to bring up systemic issues with CDTFA management when policy has not been followed.

## Amendments to R&TC section 7094 et al to restore the Advocate's authority

**Background:** The CDTFA is authorized to issue levies to collect delinquent amounts. Prior to January 1, 2016, Sales and Use Tax Law (R&TC section 7094) and most of the special taxes and fees laws authorized the Advocate to release a levy or notice to withhold (levy) or order the return of up to \$1,500 to the taxpayer within 90 days of receiving levied funds, if the levy threatens the health or welfare of the taxpayer or their family. The provision allowing the return of levied funds up to \$1,500 was added to these laws in 1995.

In early 2015, the Advocate identified the issue that the \$1,500 limit the Advocate is authorized to return to the taxpayer to help cover basic living expenses had not been adjusted in 20 years, regardless of inflation. The Advocate suggested an amendment to R&TC section 7094 and equivalent special taxes statutes to address this issue. Working closely together, the Advocate and CDTFA's Legislative Bureau aided with the Legislature in its consideration of Assembly Bill (AB) 1277. AB 1277 provided for an increase in the amount of levied funds the Advocate is permitted to return to a taxpayer upon a finding of a health or welfare threat from \$1,500 to \$2,300.

**Issue:** AB 1277 inadvertently limited the Advocate's authority to release the full amount of a levy or notice of withhold. Under the new law the Advocate's authority to *release* a levy was limited to \$2,300 when the only purpose to amend the statute was to increase the amount the Advocate was allowed to *return* in hardship cases. Since 1992, with the enactment of the Katz-Harris California Taxpayers' Bill of Rights, the Advocate has had authority to release without limit a levy that threatens the health or welfare of the taxpayer or the taxpayer's family. The Advocate, in collaboration with CDTFA's Legislative Bureau suggested legislation to amend R&TC section 7094 and equivalent special taxes statutes to restore the Advocate's authority to release a levy in its entirety, while maintaining language that limits a levy return to \$2,300.



**Resolution:** As of January 1, 2019, R&TC section 7094 was amended to reflect the Advocate's authority to release the levy in its entirety, providing flexibility to address taxpayer hardship without relieving the taxpayer of their liability.

## Policy clarifies when a lien is filed in error

**Background:** A lien is a legal right or interest that a creditor has in another's property. A lien is valid for 10 years from the date it is filed and can be renewed twice for a total of 30 years. Once the taxpayer has paid the debt in full, the CDTFA will release the lien. However, the lien, although released, may continue to affect a taxpayer, such as:

- **Employment** - It may affect a taxpayer's ability to gain and retain employment.
- **Credit** - It may prohibit a taxpayer's ability to purchase, sell, refinance, or transfer real property, along with securing loans for other assets or debts.

**Issue:** Free releases of liens should be issued to taxpayers when the lien was issued in error, including situations in which the original underlying liability was billed in error. However, the CDTFA's Special Operations Branch only issued free releases of liens when the actual filing of the lien was in error. In other words, if a lien was filed after the liability was paid in full or after a liability was adjusted to zero, then the taxpayer would be issued a free release of lien.

The TRA Office contended that anytime the underlying liability is found to be in error, a free release of a lien should be issued, although at the time the liability appeared to be legally due. Taxpayers, through no fault of their own, should not be penalized because of an erroneous billing made by the CDTFA. A free release allows the taxpayer to have the lien removed and carries a certification that the lien was recorded in error. Additionally, the taxpayer may request a copy be mailed to the major credit reporting companies in the county where the lien was filed.

**Resolution:** The TRA Office brought this concern to BTFD and FOD management. As a result, CDTFA's policy was amended with respect to regarding when to issue a free release of lien. The policy specifies a lien is filed in error when any of the following occur:

- The recording took place after payment in full was received for all affected periods, with all payments effective prior to the recording date.
- All periods or bill items on the recorded lien were subsequently adjusted to zero due to the determination that there was no filing requirement or there was no tax due during the originally assessed period.
- The recording was filed using an incorrect name, entity name, FEIN, SSN, corporation number, or LLC number.
- The underlying liability secured by the lien was determined to have been billed in error.
- The recording was filed contrary to the restrictions described in CPPM 757.060.

Once the lien has been considered to have been recorded in error, a free release must be mailed to the taxpayer and the entity recording the lien as soon as possible, along with a statement that the lien was filed in error. The taxpayer may request a copy of the lien release be mailed to the major credit reporting companies.



# TAX APPEALS ASSISTANCE PROGRAM

The Tax Appeals Assistance Program (TAAP) was created by the Taxpayers' Rights Advocate to provide low-income and underrepresented taxpayers who have filed an appeal with the CDTFA, the opportunity to seek free legal assistance. TAAP provides assistance through the appeals process up to and including a hearing before the Office of Tax Appeals (OTA). Supervised by CDTFA tax attorneys, law students advise qualifying individuals with appeals under \$30,000.<sup>4</sup>

Seven law schools participate in the program:

- Loyola Law School Los Angeles
- Chapman University School of Law
- Golden Gate University School of Law
- University of San Diego School of Law
- Lincoln Law School of Sacramento
- University of San Francisco School of Law
- Western State College of Law

## BUSINESS TAXES APPEALS

TAAP is available to assist individuals and businesses who have filed appeals under \$30,000 with the CDTFA in the following tax and fee programs:

- Use tax billings;
- Cigarette and Tobacco Products Licensing Act violations;
- Dual determinations;
- Cigarette Internet purchases;
- Underground Storage Tank Maintenance Fee;
- Environmental Fee;
- Generator Fee;
- Successor liability; or
- Use tax billings resulting from U.S. Customs leads.

TAAP is well received by all seven law schools and the program's clients. The Advocate will continue to work with the Appeals Bureau and the BTFD to develop guidelines and parameters for adding additional business taxes appeals to the program as needed.

### ▶ Case Resolution

During fiscal year 2018-2019, 474 individuals and businesses were informed about the program, 137 new cases were accepted, and 108 cases were resolved.

TAAP makes a positive difference in the lives of its clients. This year's completed cases have fulfilled the purposes of the program, which are to:

- Educate and assist taxpayers in voluntarily complying with California's tax laws while minimizing their tax compliance burden;
- Enhance the preparation and quality of the appeals going to the OTA;
- Provide taxpayer representation that promotes and achieves more efficient and cost-effective resolution of taxpayer petitions.

<sup>4</sup> As of January 1, 2019, franchise and income tax appeals are being administered by the Franchise Tax Board's Taxpayers' Rights Advocate Office.



# APPENDIX

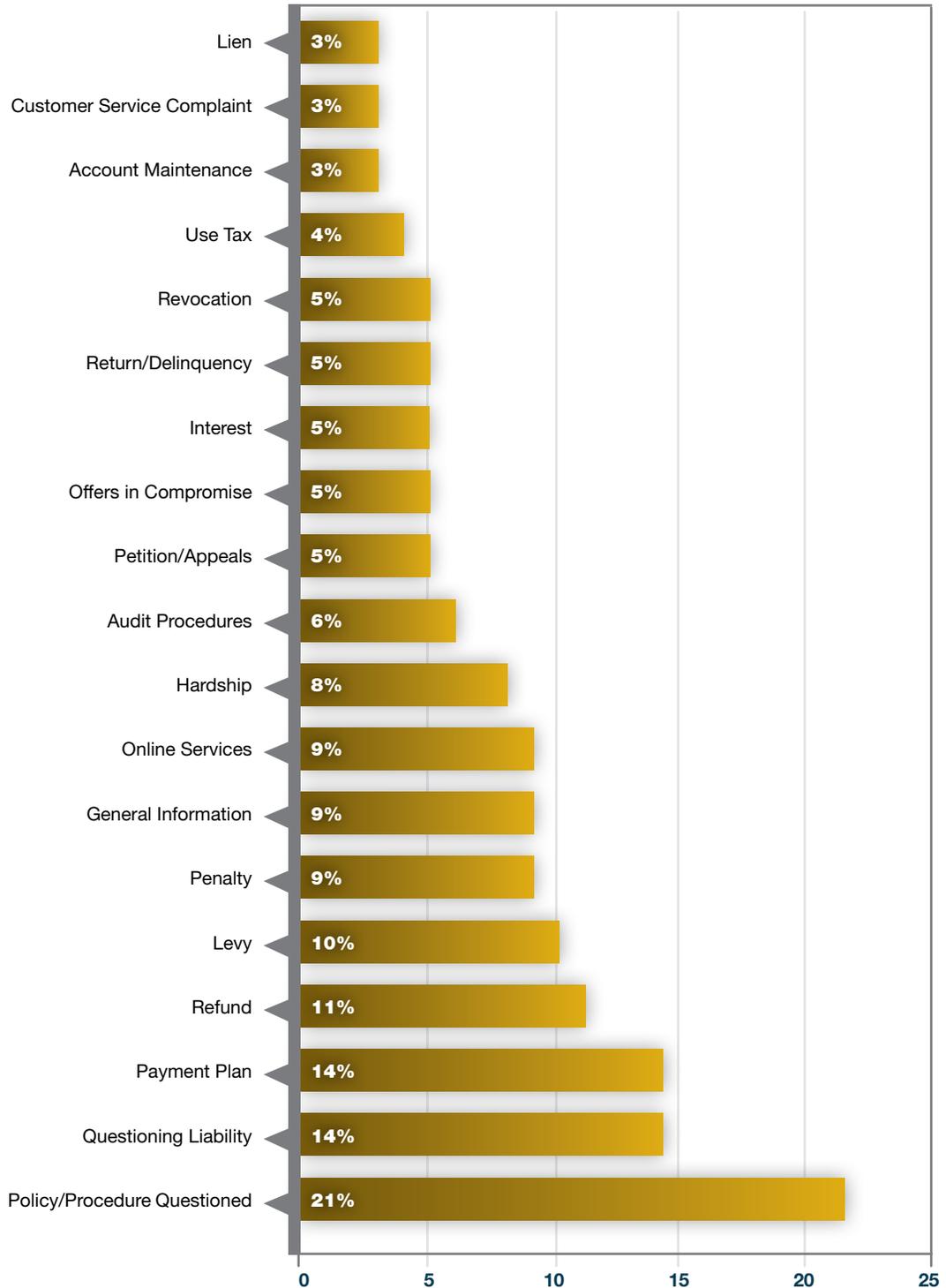
## OUTCOME OF BUSINESS TAX CASES

Location	Type of Cases			Total Cases	Customer Service Concerns	Disagreed with Case Handling (1)	Care Handling Charged (2)
	Audit	Compliance	Other				
Appeals & Data Analysis Branch	0	1	0	1	0	0	0
Appeals Bureau	1	3	0	4	0	0	0
Audit Determination and Refund Section	9	34	0	43	1	0	11
Bakersfield Office	3	8	0	11	0	0	3
Cerritos Office	0	14	0	14	1	0	1
Consumer Use Tax Section	0	8	0	8	0	0	1
Culver City Office	4	33	0	37	3	0	7
Customer Service Center	0	37	0	37	0	0	0
El Centro Office	0	0	0	0	0	0	0
Fairfield Office	1	6	0	7	1	0	0
Fresno Office	1	21	0	22	2	0	8
Glendale Office	2	17	1	20	1	0	1
Investigations (Cigarette/Tobacco)	0	1	0	1	0	0	0
Irvine Office	4	18	0	22	1	1	5
Motor Carrier Office	0	4	0	4	0	0	1
Oakland Office	3	17	0	20	0	0	6
Offer in Compromise Section	0	17	0	17	0	0	4
Other (3)	62	109	14	185	1	0	22
Other Government Agencies	0	16	5	21	0	0	0
Out-of-State Offices	2	10	0	12	0	0	1
Petitions Section	2	1	0	3	0	0	2
Program and Compliance Bureau	0	19	1	20	0	0	2
Rancho Cucamonga Office	1	9	0	10	0	0	1
Rancho Mirage Office	1	4	0	5	0	0	2
Redding Office	0	4	0	4	0	0	2
Return Analysis Unit	0	12	0	12	1	0	3
Riverside Office	1	11	0	12	0	0	3
Sacramento Office	1	41	0	42	1	1	11
Salinas Office	0	7	0	7	0	0	0
San Diego Office	1	22	0	23	2	0	5
San Francisco Office	3	17	0	20	0	0	5
San Jose Office	0	11	0	11	0	0	4
Santa Clarita Office	0	11	0	11	0	0	2
Santa Rosa Office	1	11	0	12	0	1	2
Settlement & Taxpayer Services Bureau	1	1	0	2	0	0	0
Special Operations Branch	0	12	0	12	0	0	0
Statewide Compliance and Outreach Program	0	2	0	2	1	0	0
Tax Policy Bureau	0	59	0	59	5	0	6
Use Tax Administration Section	0	38	0	38	1	0	12
Ventura Office	2	8	0	10	0	0	3
West Covina Office	2	14	0	16	1	0	4
<b>Total</b>	<b>108</b>	<b>688</b>	<b>21</b>	<b>817</b>	<b>23</b>	<b>3</b>	<b>140</b>

Notes: A number of outcomes are tracked for business taxes cases, with the three most significant outcomes displayed here.

- (1) In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate senior management and division manager detailing cases in which the TRA Office disagreed with how CDTFA staff handled the case. See the Business Taxes Issues chapter for additional information on Disagreed with Case Handling.
- (2) Involvement by the TRA Office resulted in a change to the outcome of a case. See the Business Taxes Issues chapter for additional information.
- (3) The category of "Other" under "Location" includes cases that have no particular issue of origin—for example, contacts from the public asking questions about how tax applies or requesting general information; or cases where the office was not disclosed.

**MOST COMMON  
ISSUES IN BUSINESS  
TAXES CASES**



*Note:* Individual business taxes cases may involve a variety of issues that caused the taxpayer or their representative to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.



TAXPAYERS' RIGHTS ADVOCATE OFFICE  
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**Thank you for connecting with us**

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