



**CDTFA**  
CALIFORNIA DEPARTMENT OF  
TAX AND FEE ADMINISTRATION

# CALIFORNIA TAXPAYERS' BILLS OF RIGHTS STATUTES



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# Preface

The California Department of Tax and Fee Administration (CDTFA) administers more than 30 tax and fee programs. The rights of California taxpayers and fee payers affected by each of these programs are protected by collections of statutes (law sections) each entitled “Taxpayers’ Bill of Rights” (TBOR) and contained within California’s Revenue and Taxation Code (RTC).

## History of the Taxpayers’ Bills of Rights Administered by the CDTFA<sup>1</sup>

In 1988, the *Harris-Katz California Taxpayers’ Bill of Rights* was placed into law, effective January 1989, to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller’s permits and consumer use tax accounts are provided protection under this law.

Effective January 1993, the *Special Taxes Bill of Rights* expanded the Bill of Rights statutory authority to special tax and fee programs administered by the CDTFA.

## Taxpayers’ Bills of Rights Administered by Other California State Agencies

In 1988, the *Katz-Harris California Taxpayers’ Bill of Rights* became law, codifying the rights of taxpayers under the franchise and income tax laws administered by the [California Franchise Tax Board \(FTB\)](#). These statutes and additional TBOR statutes added in 1996 and 1999 are summarized in FTB publications 4058 and 4058C.

The Morgan Property Taxpayers’ Bill of Rights was added to the RTC in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws administered by the California State Board of Equalization (BOE). Information about these TBORs can be found on the BOE’s website, [www.boe.ca.gov](http://www.boe.ca.gov).

## About this Publication

This publication is designed to be a source for all the RTC statutes making up the TBORs administered by the CDTFA. The *Contents* page guides you to the location of the TBOR statutes for each of the tax and fee programs. **On the Summary page, the statutes are listed by subject matter and tax/fee program, and page number references allow you to find the text of each statute in this publication.**

All TBOR statutes are also available to download from CDTFA’s website, [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov). You may locate the text of an individual statute by typing the statute number into the Search box. To access all TBOR statutes for a specific tax or fee program, search for *Business Taxes Law Guide* (for sales and use tax and special taxes and fees – select the tax program). The TBOR statutes are found in the “Administration” chapter.

This publication is a companion to publication 70, *Understanding Your Rights as a California Taxpayer*, where you can learn more about your rights and responsibilities and the role of our employees and the CDTFA’s Taxpayers’ Rights Advocate in protecting your rights during the assessment and collection of taxes and fees.

*Note:* This publication reproduces the text of the law in effect when the publication was written or revised, as noted on the cover. However, changes to the law may have occurred since that time. If there is a conflict between the text in this publication and the law, the law is controlling.

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<sup>1</sup> Prior to 7/1/17, the California State Board of Equalization administered laws pertaining to sales and use tax, special taxes, and property tax. Pursuant to Assembly Bill 102 (Stats. 2017, Ch. 16) effective 7/1/17, the duties, powers, and responsibilities for administering the Sales and Use Tax Law and all special taxes laws were transferred to the newly created California Department of Tax and Fee Administration. Thus, all references to “BOE” and “board” in the TBOR statutes found in this publication are deemed to apply to the CDTFA (Gov’t Code 15570.24).

**Summary of Taxpayers' Bills of Rights Statutes** **iii**

**Text of Taxpayers' Bills of Rights Statutes – Revenue and Taxation Code**

**Sales and Use Tax [7080-7099.1]** **1**

**Special Taxes and Fees**

*Alcoholic Beverage Tax [32460-32476]* **2**

*Cigarette and Tobacco Products Tax [30458-30459.15]* **3**

*Diesel Fuel Tax [60621-60637]* **4**

*Emergency Telephone Users Surcharge [41160-41176]* **5**

*Energy Resources Surcharge [40200-40216]* **6**

*Hazardous Substances Tax [43511-43527]<sup>1</sup>* **7**

*Integrated Waste Management Fee [45856-45872]* **8**

*Motor Vehicle Fuel Tax [8260-8277]<sup>2</sup>* **9**

*Oil Spill Response, Prevention, and Administrative Fees [46611-46628]* **10**

*Underground Storage Tank Fee [50156-50156.18]* **11**

*Use Fuel Tax [9260-9278]* **12**

*Fee Collection Procedures Law [55321-55337]<sup>3</sup>* **13**

**For More Information** **14**

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<sup>1</sup> Taxpayers' Bill of Rights provisions in the Hazardous Substances Tax Law also pertain to the Childhood Lead Poisoning Prevention Fee and the Occupational Lead Poisoning Prevention Fee.

<sup>2</sup> Taxpayers' Bill of Rights provisions in the Motor Vehicle Fuel Tax Law also pertain to the Aircraft Jet Fuel Tax.

<sup>3</sup> Taxpayers' Bill of Rights provisions in the Fee Collection Procedures Law pertain to: California Tire Fee, Covered Electronic Waste Recycling Fee, Lead-Acid Battery Recycling Fee, Lumber Products Assessment, Marijuana Tax, Marine Invasive Species Fee, Natural Gas Surcharge, Prepaid Mobile Telephony Services Surcharge, Regional Railroad Accident Preparedness and Immediate Response Fee, and Water Rights Fee.

## SUMMARY OF TAXPAYERS' BILLS OF RIGHTS STATUTES

The Harris-Katz California Taxpayers' Bill of Rights and the California [Special Taxes and Fees] Taxpayers' Bill of Rights  
(Revenue and Taxation Code Sections)

Description	Sales and Use Tax	Alcoholic Beverage Tax	Cigarette and Tobacco Products Tax	Diesel Fuel Tax	Emergency Telephone Users Surcharge	Energy Resources Surcharge
	7080 - 7099.1	32460 - 32476	30458 - 30459.8	60621 - 60637	41160 - 41176	40200 - 40216
<b>Administration</b>	7082 <a href="#">page 1-1</a>	32460 <a href="#">page 2-1</a>	30458 <a href="#">page 3-1</a>	60621 <a href="#">page 4-1</a>	41160 <a href="#">page 5-1</a>	40200 <a href="#">page 6-1</a>
<b>Taxpayers' Rights Advocate</b>	7083 <a href="#">page 1-1</a>	32461 <a href="#">page 2-1</a>	30458.1 <a href="#">page 3-1</a>	60622 <a href="#">page 4-1</a>	41161 <a href="#">page 5-1</a>	40201 <a href="#">page 6-1</a>
<b>Education and Information</b>	7084 <a href="#">page 1-2</a>	32462 <a href="#">page 2-1</a>	30458.2 <a href="#">page 3-1</a>	60623 <a href="#">page 4-1</a>	41162 <a href="#">page 5-1</a>	40202 <a href="#">page 6-1</a>
<b>Areas of Taxpayer Noncompliance</b>	7085 <a href="#">page 1-2</a>	N/A	N/A	N/A	N/A	N/A
<b>Annual Hearing</b>	7085 <a href="#">page 1-2</a>	32463 <a href="#">page 2-2</a>	30458.3 <a href="#">page 3-2</a>	60624 <a href="#">page 4-2</a>	41163 <a href="#">page 5-2</a>	40203 <a href="#">page 6-2</a>
<b>Statements in Simple and Clear Language</b>	7086 <a href="#">page 1-3</a>	32464 <a href="#">page 2-2</a>	30458.4 <a href="#">page 3-2</a>	60625 <a href="#">page 4-2</a>	41164 <a href="#">page 5-2</a>	40204 <a href="#">page 6-2</a>
<b>Quotas and Goals Barred</b>	7087 <a href="#">page 1-3</a>	32465 <a href="#">page 2-2</a>	30458.5 <a href="#">page 3-2</a>	60626 <a href="#">page 4-2</a>	41165 <a href="#">page 5-2</a>	40205 <a href="#">page 6-2</a>
<b>Evaluation of Staff's Public Contact</b>	7088 <a href="#">page 1-3</a>	32466 <a href="#">page 2-2</a>	30458.6 <a href="#">page 3-2</a>	60627 <a href="#">page 4-2</a>	41166 <a href="#">page 5-2</a>	40206 <a href="#">page 6-2</a>
<b>Timely Resolution of Petitions and Refunds</b>	7089 <a href="#">page 1-3</a>	32467 <a href="#">page 2-2</a>	30458.7 <a href="#">page 3-2</a>	60628 <a href="#">page 4-2</a>	41167 <a href="#">page 5-2</a>	40207 <a href="#">page 6-2</a>
<b>Hearing Procedures and Locations</b>	7090 <a href="#">page 1-4</a>	32468 <a href="#">page 2-2</a>	30458.8 <a href="#">page 3-2</a>	60629 <a href="#">page 4-2</a>	41168 <a href="#">page 5-2</a>	40208 <a href="#">page 6-2</a>
<b>Reimbursement of Hearing Expenses</b>	7091 <a href="#">page 1-4</a>	32469 <a href="#">page 2-3</a>	30458.9 <a href="#">page 3-3</a>	60630 <a href="#">page 4-3</a>	41169 <a href="#">page 5-3</a>	40209 <a href="#">page 6-3</a>
<b>Nontax Investigations Barred</b>	7092 <a href="#">page 1-4</a>	32470 <a href="#">page 2-3</a>	30459 <a href="#">page 3-3</a>	60631 <a href="#">page 4-3</a>	41170 <a href="#">page 5-3</a>	40210 <a href="#">page 6-3</a>
<b>Settlement of Disputed Liabilities</b>	7093.5 <a href="#">page 1-5</a>	32471 <a href="#">page 2-4</a>	30459.1 <a href="#">page 3-4</a>	60636 <a href="#">page 4-7</a>	41171 <a href="#">page 5-4</a>	40211 <a href="#">page 6-4</a>
<b>Offers in Compromise</b>	7093.6 <a href="#">page 1-6</a>	32471.5 <a href="#">page 2-5</a>	30459.15 <a href="#">page 3-5</a>	60637 <a href="#">page 4-8</a>	41171.5 <a href="#">page 5-5</a>	40211.5 <a href="#">page 6-5</a>
<b>Release of Levy</b>	7094 <a href="#">page 1-8</a>	32472 <a href="#">page 2-7</a>	30459.2 <a href="#">page 3-7</a>	60632 <a href="#">page 4-4</a>	41172 <a href="#">page 5-7</a>	40212 <a href="#">page 6-7</a>
<b>Return of Levied Property</b>	7094.1 <a href="#">page 1-9</a>	32472.1 <a href="#">page 2-8</a>	30459.2A <a href="#">page 3-8</a>	60632.1 <a href="#">page 4-5</a>	41172.5 <a href="#">page 5-8</a>	40212.5 <a href="#">page 6-8</a>
<b>Exemptions from Levy</b>	7095 <a href="#">page 1-9</a>	32473 <a href="#">page 2-8</a>	30459.3 <a href="#">page 3-8</a>	60633 <a href="#">page 4-5</a>	41173 <a href="#">page 5-8</a>	40213 <a href="#">page 6-8</a>
<b>Reimbursement of Bank Charges</b>	7096 <a href="#">page 1-9</a>	32474 <a href="#">page 2-8</a>	30459.4 <a href="#">page 3-9</a>	60633.1 <a href="#">page 4-5</a>	41174 <a href="#">page 5-9</a>	40214 <a href="#">page 6-8</a>
<b>Notice Prior to Filing Lien</b>	7097 <a href="#">page 1-10</a>	32475 <a href="#">page 2-9</a>	30459.5 <a href="#">page 3-9</a>	60633.2 <a href="#">page 4-6</a>	41175 <a href="#">page 5-9</a>	40215 <a href="#">page 6-9</a>
<b>Notice Prior to Suspension</b>	7098 <a href="#">page 1-10</a>	N/A	30459.6 <a href="#">page 3-10</a>	60634 <a href="#">page 4-6</a>	N/A	N/A
<b>Remedy for Staff Disregard of Procedures</b>	7099 <a href="#">page 1-10</a>	32476 <a href="#">page 2-9</a>	30459.7 <a href="#">page 3-10</a>	60635 <a href="#">page 4-6</a>	41176 <a href="#">page 5-10</a>	40216 <a href="#">page 6-9</a>
<b>Protection of Taxpayer Communications</b>	7099.1 <a href="#">page 1-11</a>	N/A	N/A	N/A	N/A	N/A
<b>Website Posting</b>	N/A	N/A	30459.8 <a href="#">page 3-10</a>	N/A	N/A	N/A

## SUMMARY OF TAXPAYERS' BILLS OF RIGHTS STATUTES (cont'd)

Description	Hazardous Substances Tax	Integrated Waste Management Fee	Motor Vehicle Fuel Tax	Oil Spill Response, Prevention, & Admin Fees	Underground Storage Tank Maintenance Fee	Use Fuel Tax	Fee Collection Procedures
	43511 - 43527	45856 - 45872	8260 - 8277	46611 - 46628	50156 - 50156.18	9260 - 9278	55321 - 55337
<b>Administration</b>	43511 <a href="#">page 7-1</a>	45856 <a href="#">page 8-1</a>	8260 <a href="#">page 9-1</a>	46611 <a href="#">page 10-1</a>	50156 <a href="#">page 11-1</a>	9260 <a href="#">page 12-1</a>	55321 <a href="#">page 13-1</a>
<b>Taxpayers' Rights Advocate</b>	43512 <a href="#">page 7-1</a>	45857 <a href="#">page 8-1</a>	8261 <a href="#">page 9-1</a>	46612 <a href="#">page 10-1</a>	50156.1 <a href="#">page 11-1</a>	9261 <a href="#">page 12-1</a>	55322 <a href="#">page 13-1</a>
<b>Education and Information</b>	43513 <a href="#">page 7-1</a>	45858 <a href="#">page 8-1</a>	8262 <a href="#">page 9-1</a>	46613 <a href="#">page 10-1</a>	50156.2 <a href="#">page 11-1</a>	9262 <a href="#">page 12-1</a>	55323 <a href="#">page 13-1</a>
<b>Areas of Taxpayer Noncompliance</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Annual Hearing</b>	43514 <a href="#">page 7-2</a>	45859 <a href="#">page 8-2</a>	8263 <a href="#">page 9-2</a>	46614 <a href="#">page 10-2</a>	50156.3 <a href="#">page 11-2</a>	9263 <a href="#">page 12-2</a>	55324 <a href="#">page 13-2</a>
<b>Statements in Simple and Clear Language</b>	43515 <a href="#">page 7-2</a>	45860 <a href="#">page 8-2</a>	8264 <a href="#">page 9-2</a>	46615 <a href="#">page 10-2</a>	50156.4 <a href="#">page 11-2</a>	9264 <a href="#">page 12-2</a>	55325 <a href="#">page 13-2</a>
<b>Quotas and Goals Barred</b>	43516 <a href="#">page 7-2</a>	45861 <a href="#">page 8-2</a>	8265 <a href="#">page 9-2</a>	46616 <a href="#">page 10-2</a>	50156.5 <a href="#">page 11-2</a>	9265 <a href="#">page 12-2</a>	55326 <a href="#">page 13-2</a>
<b>Evaluation of Staff's Public Contact</b>	43517 <a href="#">page 7-2</a>	45862 <a href="#">page 8-2</a>	8266 <a href="#">page 9-2</a>	46617 <a href="#">page 10-2</a>	50156.6 <a href="#">page 11-2</a>	9266 <a href="#">page 12-2</a>	55327 <a href="#">page 13-2</a>
<b>Timely Resolution of Petitions and Refunds</b>	43518 <a href="#">page 7-2</a>	45863 <a href="#">page 8-2</a>	8267 <a href="#">page 9-2</a>	46618 <a href="#">page 10-2</a>	50156.7 <a href="#">page 11-2</a>	9267 <a href="#">page 12-2</a>	55328 <a href="#">page 13-2</a>
<b>Hearing Procedures and Locations</b>	43519 <a href="#">page 7-2</a>	45864 <a href="#">page 8-2</a>	8268 <a href="#">page 9-2</a>	46619 <a href="#">page 10-2</a>	50156.8 <a href="#">page 11-2</a>	9268 <a href="#">page 12-2</a>	55329 <a href="#">page 13-2</a>
<b>Reimbursement of Hearing Expenses</b>	43520 <a href="#">page 7-3</a>	45865 <a href="#">page 8-3</a>	8269 <a href="#">page 9-3</a>	46620 <a href="#">page 10-3</a>	50156.9 <a href="#">page 11-3</a>	9269 <a href="#">page 12-3</a>	55330 <a href="#">page 13-3</a>
<b>Nontax Investigations Barred</b>	43521 <a href="#">page 7-3</a>	45866 <a href="#">page 8-3</a>	8270 <a href="#">page 9-3</a>	46621 <a href="#">page 10-3</a>	50156.10 <a href="#">page 11-3</a>	9270 <a href="#">page 12-3</a>	55331 <a href="#">page 13-3</a>
<b>Settlement of Disputed Liabilities</b>	43522 <a href="#">page 7-4</a>	45867 <a href="#">page 8-4</a>	N/A	46622 <a href="#">page 10-4</a>	50156.11 <a href="#">page 11-4</a>	9271 <a href="#">page 12-4</a>	55332 <a href="#">page 13-4</a>
<b>Offers in Compromise</b>	43522.5 <a href="#">page 7-5</a>	45867.5 <a href="#">page 8-5</a>	N/A	46628 <a href="#">page 10-8</a>	50156.18 <a href="#">page 11-8</a>	9278 <a href="#">page 12-8</a>	55332.5 <a href="#">page 13-5</a>
<b>Release of Levy</b>	43523 <a href="#">page 7-7</a>	45868 <a href="#">page 8-7</a>	8272 <a href="#">page 9-4</a>	46623 <a href="#">page 10-5</a>	50156.12 <a href="#">page 11-5</a>	9272 <a href="#">page 12-5</a>	55333 <a href="#">page 13-7</a>
<b>Return of Levied Property</b>	43523.5 <a href="#">page 7-8</a>	45868.5 <a href="#">page 8-8</a>	N/A	46623.5 <a href="#">page 10-6</a>	50156.17 <a href="#">page 11-8</a>	9272.1 <a href="#">page 12-6</a>	55333.5 <a href="#">page 13-8</a>
<b>Exemptions from Levy</b>	43524 <a href="#">page 7-8</a>	45869 <a href="#">page 8-8</a>	8273 <a href="#">page 9-4</a>	46624 <a href="#">page 10-6</a>	50156.13 <a href="#">page 11-6</a>	9273 <a href="#">page 12-6</a>	55334 <a href="#">page 13-8</a>
<b>Reimbursement of Bank Charges</b>	43525 <a href="#">page 7-8</a>	45870 <a href="#">page 8-8</a>	N/A	46625 <a href="#">page 10-6</a>	50156.14 <a href="#">page 11-6</a>	9274 <a href="#">page 12-6</a>	55335 <a href="#">page 13-8</a>
<b>Notice Prior to Filing Lien</b>	43526 <a href="#">page 7-9</a>	45871 <a href="#">page 8-9</a>	N/A	46626 <a href="#">page 10-7</a>	50156.15 <a href="#">page 11-6</a>	9275 <a href="#">page 12-7</a>	55336 <a href="#">page 13-9</a>
<b>Notice Prior to Suspension</b>	N/A	N/A	8276 <a href="#">page 9-4</a>	N/A	N/A	9276 <a href="#">page 12-7</a>	N/A
<b>Remedy for Staff Disregard of Procedures</b>	43527 <a href="#">page 7-9</a>	45872 <a href="#">page 8-9</a>	8277 <a href="#">page 9-4</a>	46627 <a href="#">page 10-7</a>	50156.16 <a href="#">page 11-7</a>	9277 <a href="#">page 12-7</a>	55337 <a href="#">page 13-9</a>
<b>Protection of Taxpayer Communications</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Website Posting</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A



# **SALES AND USE TAX**

The Harris-Katz California Taxpayers' Bill of Rights



# Sales and Use Tax

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## REVENUE AND TAXATION CODE

### DIVISION 2. Other Taxes [6001 - 60709]

#### PART 1. Sales and Use Tax [6001 - 7176]

#### CHAPTER 8. Administration [7051 – 7099.1]

#### ARTICLE 3. The California Taxpayers' Bill of Rights [7080 – 7099.1]

*(Article 3 added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7080. Title.** This article shall be known and may be cited as “The Harris-Katz California Taxpayers’ Bill of Rights.”

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7081. Legislature’s findings and declarations.** The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer’s correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer’s liability.

*(Amended by Stats. 2001, Ch. 670, Sec. 2. Effective January 1, 2002)*

**7082. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7083. Taxpayers’ Rights Advocate. (a)** The board shall establish the position of the Taxpayers’ Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7084. Education and information program. (a)** The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Taxpayer or industry groups identified in the annual report described in Section 7085.
- (3) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.
- (2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.
- (3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.
- (4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.
- (5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1998, Ch. 612, Sec. 6. Effective January 1, 1999.)*

**7085. Identification of taxpayer noncompliance by board. (a)** The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

**(b)** As part of the identification process described in subdivision (a), the board shall do both of the following:

- (1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:
  - (A) The statute or regulation violated by the taxpayer.
  - (B) The amount of tax involved.
  - (C) The industry or business engaged in by the taxpayer.
  - (D) The number of years covered in the audit period.
  - (E) Whether or not professional tax preparation assistance was utilized by the taxpayer.
  - (F) Whether sales and use tax returns were filed by the taxpayer.

## Sales and Use Tax

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(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

- (1) Changes in statute or board regulations.
- (2) Improvement of training of board personnel.
- (3) Improvement of taxpayer communication and education.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7086. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7087. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Amended by Stats. 1991, Ch. 402, Sec. 2.)*

**7088. Evaluation of employee's contact with taxpayers. (a)** The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7089. Plan to timely resolve claims and petitions.** No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7090. Procedures relating to protest hearings.** Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

- (a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.
- (b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.
- (c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7091. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

- (1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.
  - (2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.
  - (3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.
- (b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.
- (c) The amount of reimbursed fees and expenses shall be limited to the following:
- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
  - (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.
- (d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.
- (e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

*(Amended by Stats 2000, Ch. 1052, Sec. 6. Effective January 1, 2001)*

**7092. Investigations for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

- (b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.
- (c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.
- (d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

## Sales and Use Tax

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(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7093.5. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the taxpayers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

- (e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.
- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2003, Ch. 605, Sec. 3. Effective January 1, 2004.)*

**7093.6. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) For amounts to be compromised under this section, the following conditions shall exist:

## Sales and Use Tax

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(1) The taxpayer shall establish that:

- (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.
- (B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

- (e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.
- (f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.
- (h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
  - (1) The name of the taxpayer.
  - (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

- (i) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:
  - (1) The board determines that a person did any of the following acts regarding the making of the offer:
    - (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.
    - (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
  - (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(l) This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 566) by Stats. 2012, Ch. 285, Sec. 2. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*

**7094. Release of Levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

## Sales and Use Tax

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(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section does not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 1. (SB 1507) Effective January 1, 2019.)*

**7094.1. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

*(Added by Stats. 1998, Ch. 612, Sec. 8. Effective January 1, 1999.)*

**7095. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7096. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board 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 board and provided the board with any requested information or documentation sufficient to establish the taxpayer’s position. This provision may be waived by the board for reasonable cause.

- (b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 1. Effective January 1, 2014.)*

**7097. Preliminary notice to taxpayers prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

- (b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

- (c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error.

In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

- (d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1998, Ch. 612, Sec. 9. Effective January 1, 1999.)*

**7098. Notice preliminary to suspension.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

*(Amended by Stats. 1989, Ch. 654, Sec. 6.)*

**7099. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

- (b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs, as defined for purposes of Section 7156.

- (c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

## Sales and Use Tax

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(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1988, Ch. 1574, Sec. 1.)*

**7099.1. Protection of taxpayer communications. (a)** (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communications.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

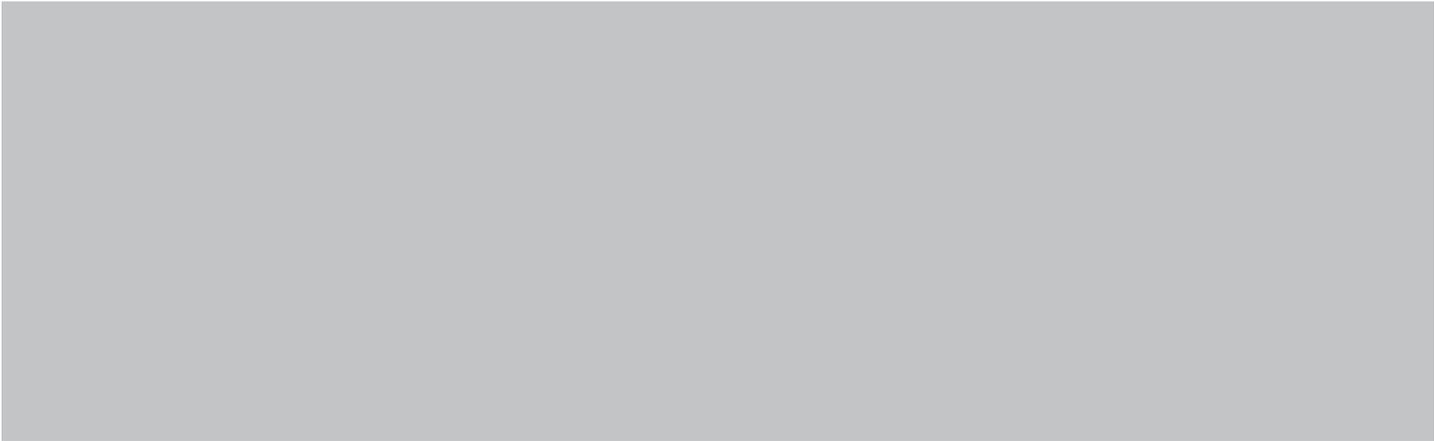
(B) "Tax advice" means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, "federal tax advice" means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) "Tax shelter" means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

*(Added by Stats. 2009, Ch. 411, Sec. 1. Effective October 11, 2009.)*



# **ALCOHOLIC BEVERAGE TAX**



# Alcoholic Beverage Tax

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## REVENUE AND TAXATION CODE

### DIVISION 2. Other Taxes [6001 - 60709]

#### PART 14. Alcoholic Beverage Tax [32001 - 32557]

##### CHAPTER 9. Administration [32451 - 32476]

###### ARTICLE 2. The California Taxpayers' Bill of Rights [32460 - 32476]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 8.)*

**32460. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32461. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32462. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 25. Effective January 1, 2000.)*

**32463. Annual hearing with taxpayers.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Alcoholic Beverage Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32464. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32465. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32466. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32467. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32468. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Alcoholic Beverage Tax

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32469. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 37. Effective January 1, 2001.)*

**32470. Investigations for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include alcoholic beverage tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*

**32471. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the taxpayers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Alcoholic Beverage Tax

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 32455.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 12. Effective January 1, 2007.)*

**32471.5.Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
  - (1) The taxpayer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.
    - (B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.
- (f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (i)** When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.
- (j)** Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the taxpayer.
  - (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.
- (k)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that a person did any of the following acts regarding the making of the offer:
    - (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.
    - (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
  - (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.
- (l)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
- (1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.
  - (2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

## Alcoholic Beverage Tax

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**(m)** For purposes of this section, “person” means the taxpayer, a member of the taxpayer’s family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

**(n)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 577) by Stats. 2012, Ch. 285, Sec. 8. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*

**32472. Release of Levy. (a)** The State Board of Equalization shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers’ Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers’ Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers’ Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The State Board of Equalization shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the State Board of Equalization shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

**(c)** The State Board of Equalization shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

**(d)** Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 4. (SB 1507) Effective January 1, 2019.)*

**32472.1. Return of property. (a)** Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 32389 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

**(b)** Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 32474.

*(Added by Stats. 1999, Ch. 929, Sec. 27. Effective January 1, 2000.)*

**32473. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 162. Effective January 1, 1994.)*

**32474. Claim for reimbursement of bank charges by taxpayer. (a)** A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

**(b)** Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 4. Effective January 1, 2014.)*

## Alcoholic Beverage Tax

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**32475. Preliminary notice to taxpayers prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

- (b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 32311) of Chapter 6.
- (c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.
- (d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.
- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 2006, Ch. 538, Sec. 629. Effective January 1, 2007.)*

**32476. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

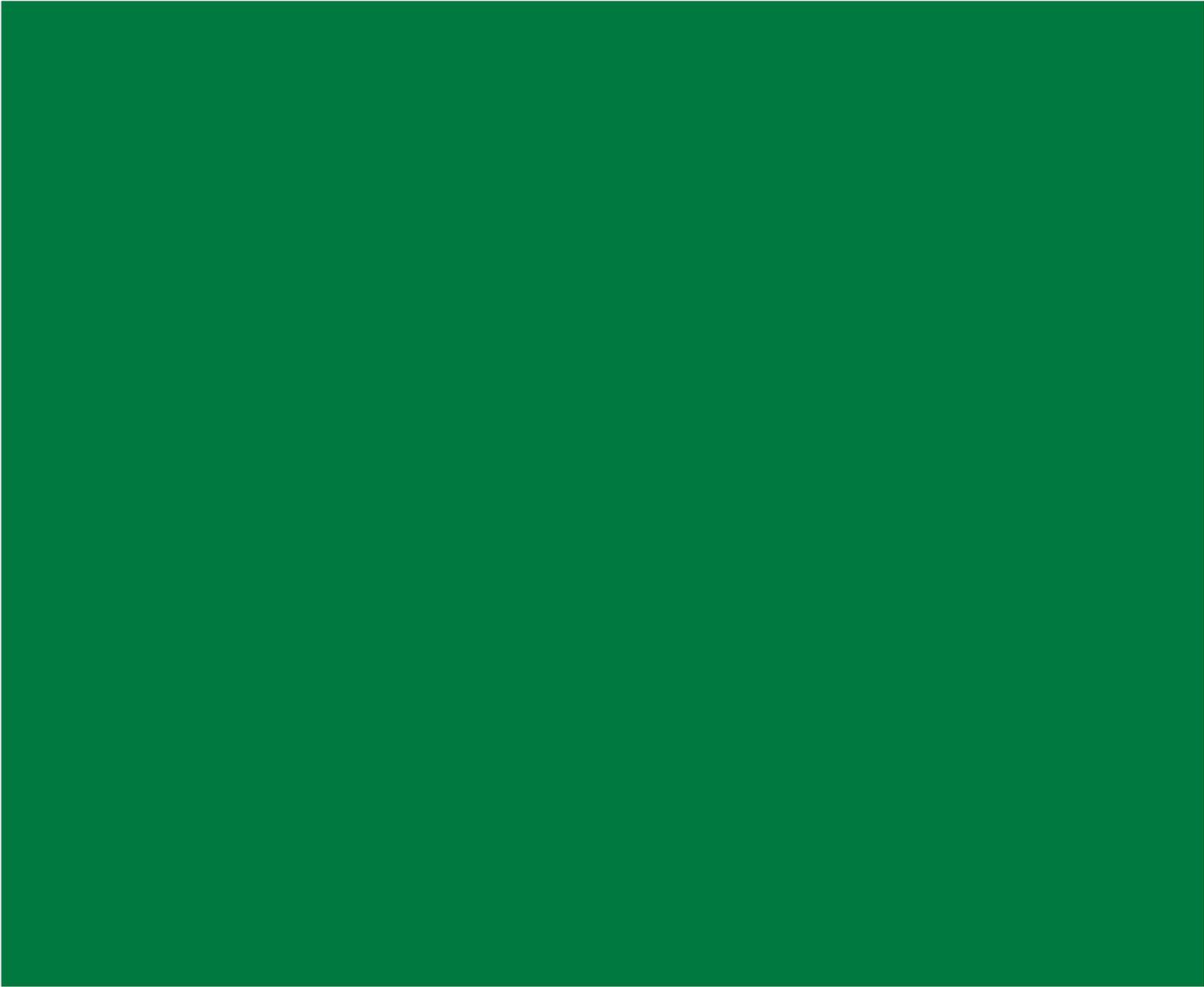
- (b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:
- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
  - (2) Reasonable litigation costs including any of the following:
    - (A) Reasonable court costs.
    - (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
      - (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
      - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
      - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- (c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

**(d)** Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 8. Effective January 1, 1993.)*



**CIGARETTE AND TOBACCO  
PRODUCTS TAX**



# Cigarette and Tobacco Products Tax

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## REVENUE AND TAXATION CODE - RTC

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 13. CIGARETTE TAX [30001 - 30483]

#### CHAPTER 8. Administration [30451 - 30459.8]

#### ARTICLE 2. The California Taxpayers' Bill of Rights [30458 - 30459.15]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 6.)*

**30458. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.1. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.2. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 18. Effective January 1, 2000.)*

**30458.3. Annual hearing with taxpayers.** The board shall conduct at least two hearings per year before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Cigarette and Tobacco Products Tax Law that may further advance voluntary compliance and improve the relationship between taxpayers and government.

*(Amended by Stats. 2004, Ch. 634, Sec. 1. Effective January 1, 2005.)*

**30458.4. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.5. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.6. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.7. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.8. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Cigarette and Tobacco Products Tax

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30458.9. Reimbursement of taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the state was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 29. Effective January 1, 2001.)*

**30459. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include cigarette and tobacco products tax violations.

(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30459.1. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the taxpayers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Cigarette and Tobacco Products Tax

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 30455.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 9. Effective January 1, 2007.)*

- 30459.15. Offers in compromise.** (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.
- (2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.
  - (3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).
- (b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated by the following:
- (1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
  - (2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for the taxpayer’s own use or consumption.
- (d) Offers in compromise shall not be considered under the following conditions:
- (1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.
  - (2) The taxpayer has filed a statement under paragraph (3) of subdivision (e) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for the taxpayer’s own use or consumption.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
- (1) The taxpayer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

- (B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
- (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.
- (3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.
- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (i)** When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.
- (j)** Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

- (k)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that a person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.
- (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

## Cigarette and Tobacco Products Tax

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(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 575) by Stats. 2012, Ch. 285, Sec. 6. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*

**30459.2. Release of Levy.** (a) The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(3) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.



(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (c) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 3. (SB 1507) Effective January 1, 2019.)*

**30459.2A. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 30354 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) shall be subject to the provisions of Section 30459.4.

*(Added by Stats. 1999, Ch. 929, Sec. 20. Effective January 1, 2000.)*

**30459.3. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 160. Effective January 1, 1994.)*

**30459.4. Reimbursement of bank charges.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

## Cigarette and Tobacco Products Tax

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(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 3. Effective January 1, 2014.)*

**30459.5. Mailing of preliminary notice of lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 30241) of Chapter 4.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 21. Effective January 1, 2000.)*

**30459.6. Revocation or suspension of license.** For the purposes of this part only, the board shall not revoke or suspend a person's license pursuant to Section 30144 or 30148 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30459.7. Disagreed by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.



- (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
- (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
  - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
  - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- (c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.
- (d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon a notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 6. Effective January 1, 1993.)*

**30459.8. Revenues and disbursements; Web site posting.** The board shall, in each calendar quarter, post on its Web site the amounts of cigarette and tobacco products revenues collected and disbursed for the previous calendar quarter to the General Fund, Breast Cancer Fund, the Cigarette and Tobacco Products Surtax Fund, and the California Children and Families Trust Fund Account.

*(Added by Stats. 2004, Ch. 634, Sec. 2. Effective January 1, 2005.)*



# **DIESEL FUEL TAX**



## REVENUE AND TAXATION CODE - RTC

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 31. DIESEL FUEL TAX LAW [60001 - 60709]

#### CHAPTER 9. Administration [60601 - 60637]

#### ARTICLE 2. The California Taxpayers' Bill of Rights [60621 - 60637]

*(Article 2 added by Stats. 1994, Ch. 912, Sec. 17.)*

**60621. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60622. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60623. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 84. Effective January 1, 2000.)*

**60624. Annual hearing with taxpayers.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Diesel Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60625. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60626. Restriction on use of revenue collected or assessed information. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60627. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60628. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60629. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

- (a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.
- (b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Diesel Fuel Tax

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60630. Reimbursement of fees and expenses. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer shall be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) The board's proposed award under this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 103. Effective January 1, 2001.)*

**60631. Investigations for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for non-tax-administration-related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include diesel fuel tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60632. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

**(b) (1) (A)** The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part, or within 90 days from the receipt of the funds pursuant to a levy or notice to withhold may order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse or dependents.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

**(2) (A)** The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

**(c)** The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

**(d)** Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section does not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 12. (SB 1507) Effective January 1, 2019.)*

**60632.1. Return of property. (a)** Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 60493 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

## Diesel Fuel Tax

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(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 60633.1.

*(Added by Stats. 1999, Ch. 929, Sec. 86. Effective January 1, 2000.)*

**60633. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60633.1. Claim for reimbursement of bank charges by taxpayer. (a)** A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 12. Effective January 1, 2014.)*

**60633.2. Preliminary notice to taxpayers prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event the tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this action shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 60330) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

- (d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.
- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Added by Stats. 1999, Ch. 929, Sec. 88. Effective January 1, 2000.)*

**60634. Notice preliminary to revocation or suspension.** For the purposes of this part only, the board shall not revoke or suspend a person's license pursuant to Section 60180 or 60181 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

**60635. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs, including any of the following:
  - (A) Reasonable court costs.
  - (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
    - (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
    - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
    - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1994, Ch. 912, Sec. 17. Effective September 28, 1994. Operative July 1, 1995, by Sec. 26 of Ch. 912.)*

## Diesel Fuel Tax

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**60636. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the taxpayers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further

negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 60609.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 44. Effective January 1, 2007.)*

**60637. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
  - (1) The taxpayer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.
    - (B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

## Diesel Fuel Tax

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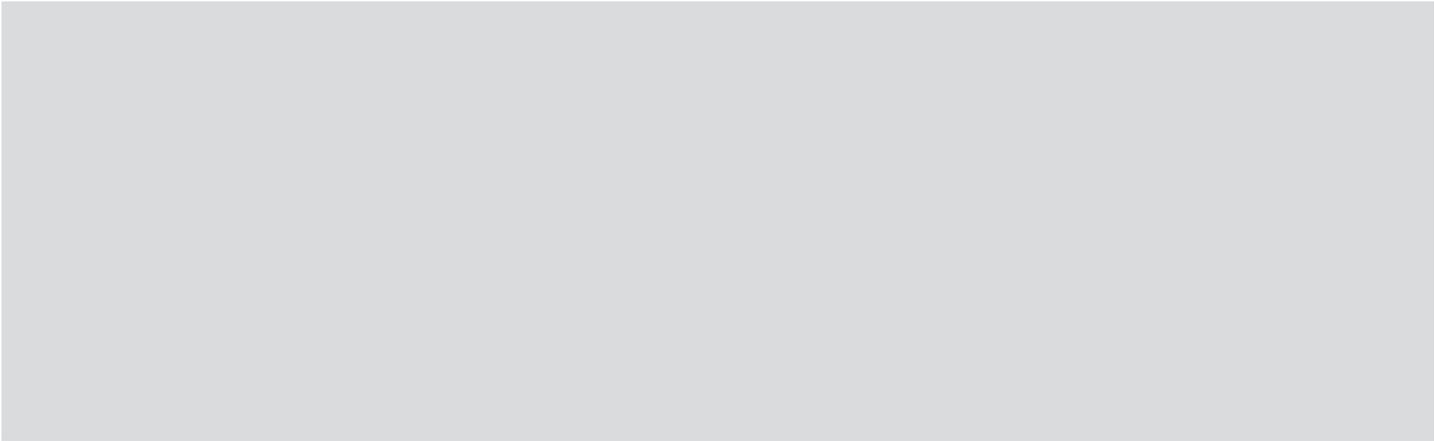
- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (i)** When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.
- (j)** Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.
- (k)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that any person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.
- (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.
- (l)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
- (1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

**(m)** For purposes of this section, “person” means the taxpayer, a member of the taxpayer’s family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

**(n)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 596) by Stats. 2012, Ch. 285, Sec. 18. Effective January 1, 2013. Section operative January 1, 2013, by its own provisions.)*



**EMERGENCY TELEPHONE  
USERS SURCHARGE**



# Emergency Telephone Users Surcharge

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## REVENUE AND TAXATION CODE - RTC

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 20. EMERGENCY TELEPHONE USERS SURCHARGE LAW [41001 - 41176]

##### CHAPTER 7. Administration [41128 - 41176]

##### ARTICLE 5. The California Taxpayers' Bill of Rights [41160 - 41176]

*(Article 5 added by Stats. 1992, Ch. 438, Sec. 10.)*

**41160. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41161. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41162. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 41. Effective January 1, 2000.)*

**41163. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Emergency Telephone Users Surcharge Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41164. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41165. Limit on uses of revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41166. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41167. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41168. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Emergency Telephone Users Surcharge

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41169. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 55. Effective January 1, 2001.)*

**41170. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include emergency telephone users surcharge violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 19 92, Ch. 438, Sec. 10. Effective January 1, 1993.)*

**41171. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

**(b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

**(c)** Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

**(d)** The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

**(e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Emergency Telephone Users Surcharge

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.
- (h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 19. Effective January 1, 2007.)*

**41171.5. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to the surcharge, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
  - (1) The surcharge payer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer’s present assets or income.
    - (B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.
- (i)** When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.
- (j)** Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the surcharge payer.
- (2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41132. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.
- (k)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that a person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board property belonging to the estate of a surcharge payer or other person liable for the surcharge.
- (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.
- (2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.
- (l)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

## Emergency Telephone Users Surcharge

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- (1) Conceals from an officer or employee of this state property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.
- (2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

**(m)** For purposes of this section, "person" means the surcharge payer, a member of the surcharge payer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the surcharge payer, or another corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

**(n)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 582) by Stats. 2012, Ch. 285, Sec. 10. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*

**41172. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

- (c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.
- (d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 6. (SB 1507) Effective January 1, 2019.)*

**41172.5. Return of property. (a)** If any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 41127.5 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 41174.

*(Added by Stats. 1999, Ch. 929, Sec. 43. Effective January 1, 2000.)*

**41173. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 167. Effective January 1, 1994.)*

**41174. Claim for reimbursement of bank charges by taxpayer. (a)** A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

## Emergency Telephone Users Surcharge

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- (b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 6. Effective January 1, 2014.)*

**41175. Preliminary notice to taxpayer prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

- (b) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

- (c) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

- (d) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 44. Effective January 1, 2000.)*

**41176. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

- (b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

## Emergency Telephone Users Surcharge

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- (c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.
- (d)** Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Amended by Stats. 2006, Ch. 538, Sec. 631. Effective January 1, 2007.)*



# **ENERGY RESOURCES SURCHARGE**



# Energy Resources Surcharge

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## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 19. ENERGY RESOURCES SURCHARGE LAW [40001 - 40216]

##### CHAPTER 7. Administration [40171 - 40216]

##### ARTICLE 5. The California Taxpayers' Bill of Rights [40200 - 40216]

*(Article 5 added by Stats. 1992, Ch. 438, Sec. 9.)*

**40200. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40201. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40202. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer education materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 35. Effective January 1, 2000.)*

**40203. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Energy Resources Surcharge Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40204. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40205. Limit on uses of revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40206. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40207. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40208. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney of supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Energy Resources Surcharge

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40209. Reimbursement to taxpayers. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 47. Effective January 1, 2001.)*

**40210. Investigation for nontax administrative purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include energy resources surcharge violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*

**40211. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

**(b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

**(c)** Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

**(d)** The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

## Energy Resources Surcharge

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- (e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
  - (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.
- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.
- (h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 16. Effective January 1, 2007.)*

- 40211.5. Offers in compromise.** (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.
- (2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.
  - (3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).
- (b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 19 (commencing with Section 40001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.
  - (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
  - (d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

- (e)** For amounts to be compromised under this section, the following conditions shall exist:
- (1) The surcharge payer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.
    - (B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.
- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.
- (i)** When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.
- (j)** Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the surcharge payer.
  - (2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.
- (k)** Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that any person did any of the following acts regarding the making of the offer:

## Energy Resources Surcharge

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- (A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.
- (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

**(l)** Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

- (1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.
- (2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

**(m)** For purposes of this section, "person" means the taxpayer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

*(Amended by Stats. 2011, Ch. 15, Sec. 580. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**40212. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

- (i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).
- (ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

- (c) The California Department of Tax and Fee Administration shall not sell any seized property until it first has notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.
- (d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 5. (SB 1507) Effective January 1, 2019.)*

**40212.5. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 40167 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 40214.

*(Added by Stats. 1999, Ch. 929, Sec. 37. Effective January 1, 2000.)*

**40213. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 165. Effective January 1, 1994.)*

## Energy Resources Surcharge

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**40214. Claim for reimbursement of bank charges by taxpayer. (a)** A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

**(b)** Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 5. Effective January 1, 2014.)*

**40215. Preliminary notice to taxpayer prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

**(b)** If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

**(c)** When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

**(d)** The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 38. Effective January 1, 2000.)*

**40216. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

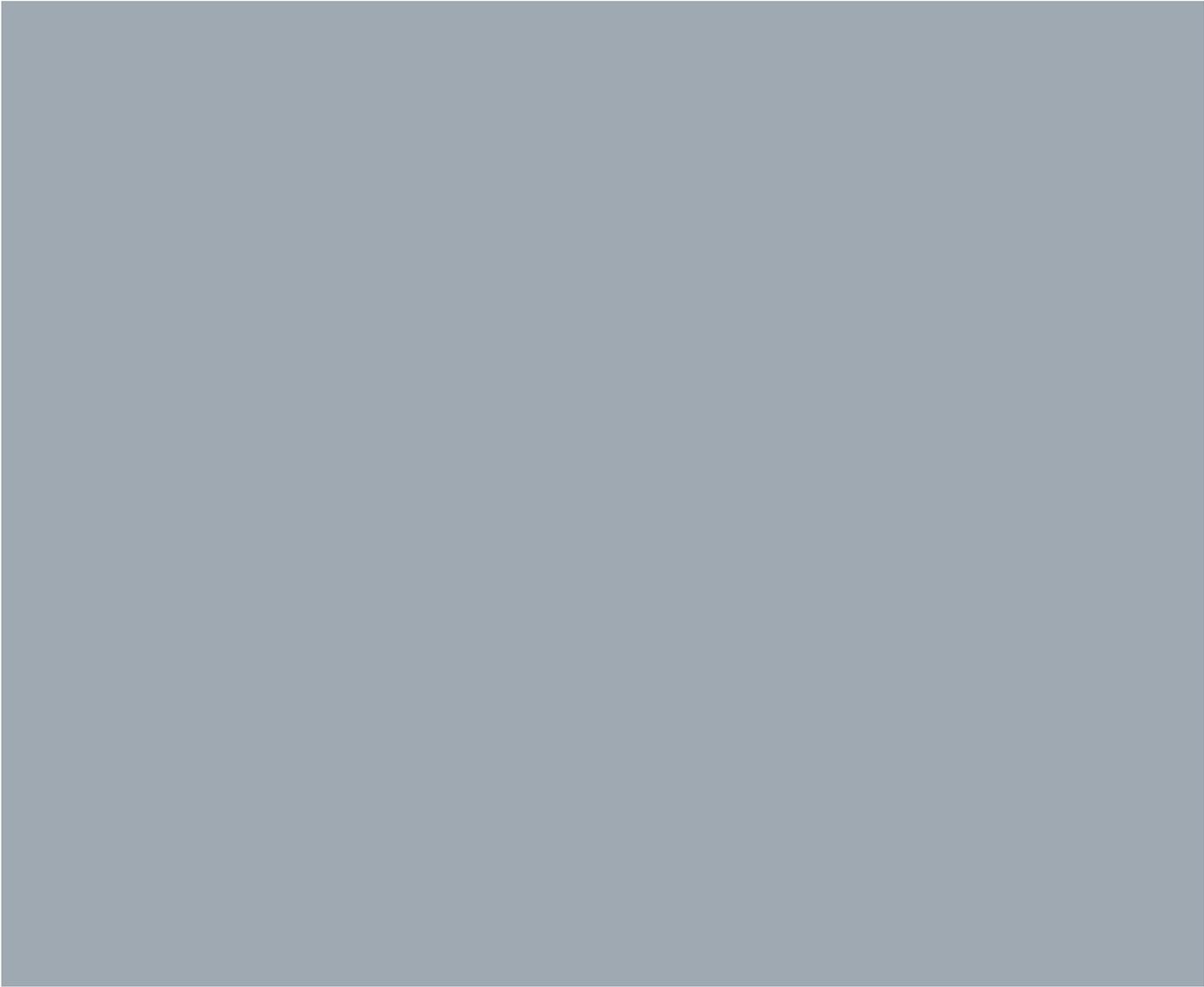
**(b)** In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs including any of the following:
  - (A) Reasonable court costs.
  - (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
    - (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
    - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
    - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- (c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.
- (d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 9. Effective January 1, 1993.)*



# **HAZARDOUS SUBSTANCES TAX**



## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 22. HAZARDOUS SUBSTANCES TAX LAW [43001 - 43651]

##### CHAPTER 6. Administration [43501 - 43527]

##### ARTICLE 2. The California Taxpayers' Bill of Rights [43511 - 43527]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 12.)*

**43511. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43512. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43513. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 48. Effective January 1, 2000.)*

**43514. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Hazardous Substances Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43515. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedure, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43516. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43517. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43518. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Toxic Substances Control Department of the California EPA, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43519. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Hazardous Substances Tax

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43520. Reimbursement to taxpayers. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 63. Effective January 1, 2001.)*

**43521. Investigations for nontax administrative purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include hazardous substances tax violations.

(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*

**43522. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the taxpayers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

## Hazardous Substances Tax

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- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.
- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 23. Effective January 1, 2007.)*

**43522.5. Offers in compromise. (a)** (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 22 (commencing with Section 43001), or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
- (1) The taxpayer shall establish that:
- (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

- (B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
- (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.
- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (i)** When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.
- (j)** Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 43651. No list shall be prepared and no releases distributed by the board in connection with these statements.

- (k)** Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that any person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.
- (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

## Hazardous Substances Tax

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- (l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
- (1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.
  - (2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.
- (m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

*(Amended by Stats. 2011, Ch. 15, Sec. 583. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**43523. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

- (b) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.
- (B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.
- (C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.
- (2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:
- (i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).
  - (ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.
- (B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

- (c) The California Department of Tax and Fee Administration shall not sell any seized property until it first has notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.
- (d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 5. (SB 1507) Effective January 1, 2019.)*

**43523.5. Return of property. (a)** Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 43448 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 43525.

*(Added by Stats. 1999, Ch. 929, Sec. 50. Effective January 1, 2000.)*

**43524. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 169. Effective January 1, 1994.)*

**43525. Claim for reimbursement of bank charges by taxpayers. (a)** A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

## Hazardous Substances Tax

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- (b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 7. Effective January 1, 2014.)*

**43526. Preliminary notice to taxpayer prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

- (b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 43350) of Chapter 3.
- (c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.
- (d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.
- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 51. Effective January 1, 2000.)*

**43527. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

- (b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceedings, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

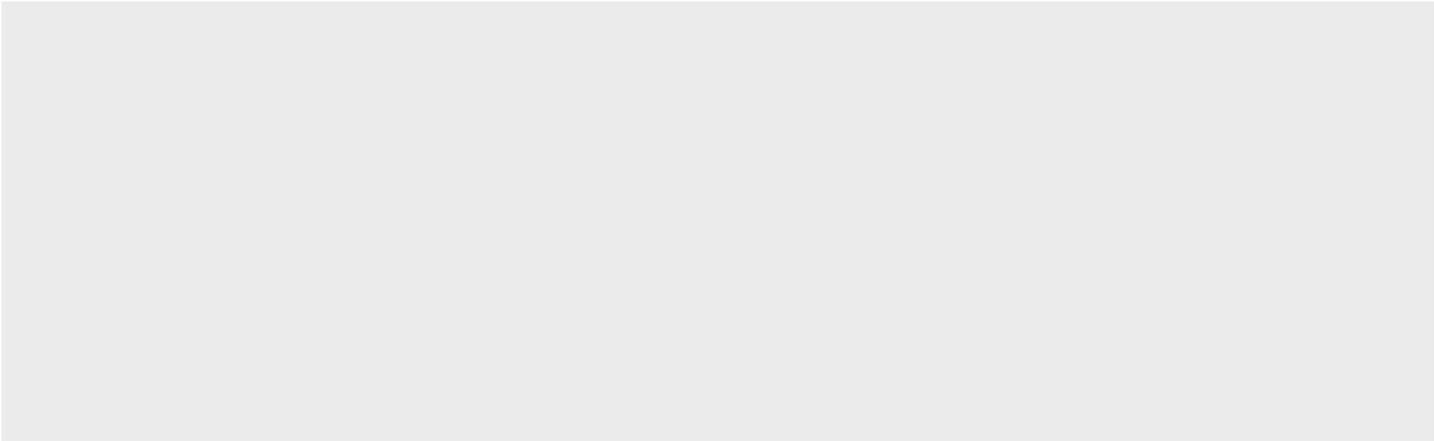
(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

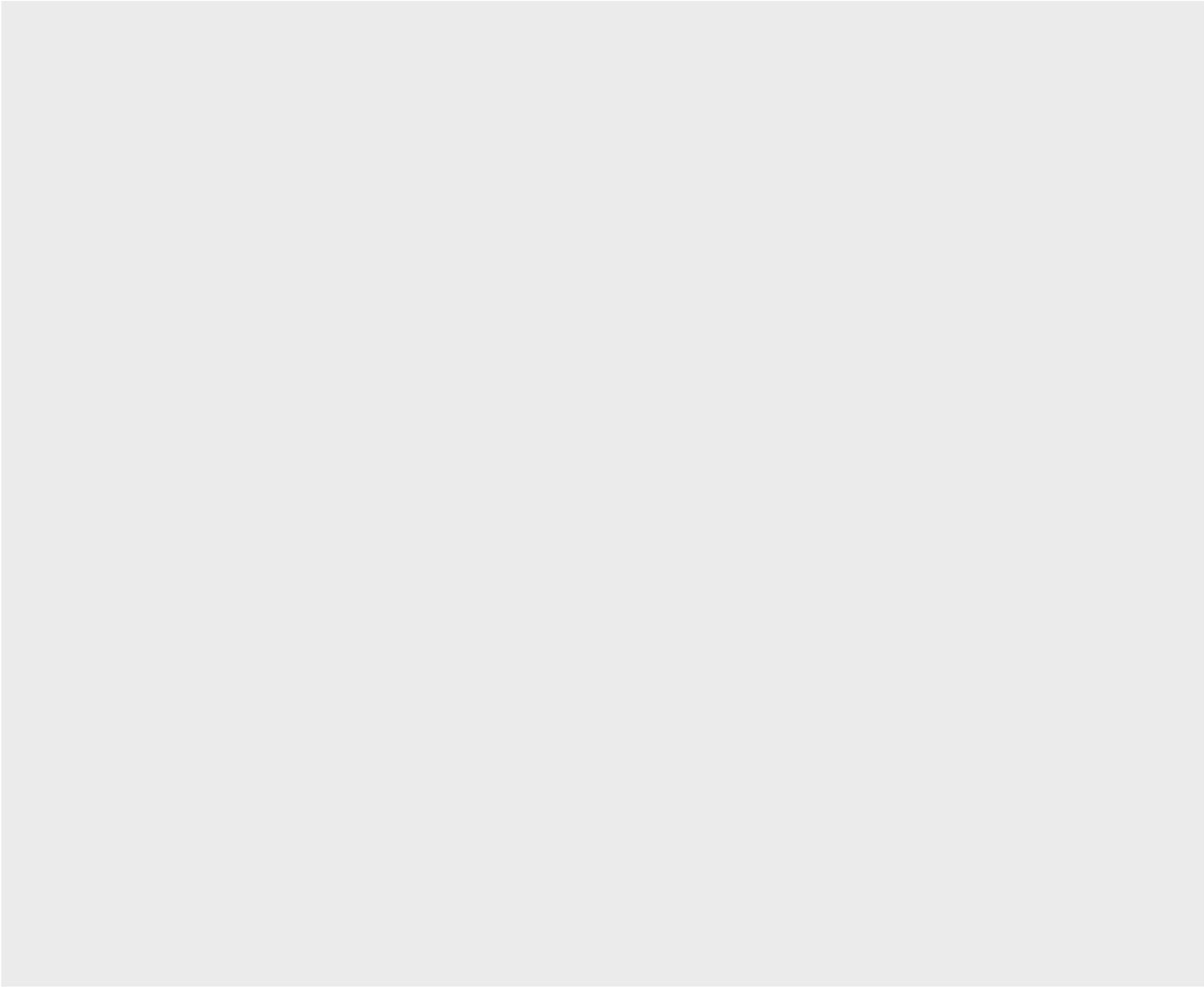
**(c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

**(d)** Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 12. Effective January 1, 1993.)*



**INTEGRATED WASTE  
MANAGEMENT FEE**



# Integrated Waste Management Fee

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## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 23. INTEGRATED WASTE MANAGEMENT FEE LAW [45001 - 45984]

##### CHAPTER 6. Administration [45851 - 45872]

##### ARTICLE 2. The California Taxpayers' Bill of Rights [45856 - 45872]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 14.)*

**45856. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 14. Effective January 1, 1993.)*

**45857. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of feepayer complaints and problems, including any feepayer complaints regarding unsatisfactory treatment of feepayers by board employees, and staying actions where feepayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 14. Effective January 1, 1993.)*

**45858. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Fee payers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered feepayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent feepayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 55. Effective January 1, 2000.)*

**45859. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Integrated Waste Management Fee Law which may further improve voluntary compliance and the relationship between fee payers and the government.

*(Amended by Stats. 1993, Ch. 656, Sec. 52. Effective October 1, 1993.)*

**45860. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 14. Effective January 1, 1993.)*

**45861. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 14. Effective January 1, 1993.)*

**45862. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Amended by Stats. 1993, Ch. 589, Sec. 170. Effective January 1, 1994.)*

**45863. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Department of Resources Recycling and Recovery, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include the determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Amended by Stats. 2010, Ch. 654, Sec. 25. Effective January 1, 2011.)*

**45864. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the fee payer and the fee payer is entitled to receive a copy of the recording.

## Integrated Waste Management Fee

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(c) The feepayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 14. Effective January 1, 1993.)*

**45865. Reimbursement to taxpayers. (a)** Every feepayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 71. Effective January 1, 2001.)*

**45866. Investigations for nontax administrative purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include integrated waste management fee violations.

(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Amended by Stats. 1993, Ch. 656, Sec. 54. Effective October 1, 1993.)*

**45867. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the fee payers who are parties to the settlement.
  - (2) The total amount in dispute.
  - (3) The amount agreed to pursuant to the settlement.
  - (4) A summary of the reasons why the settlement is in the best interests of the State of California.
  - (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Integrated Waste Management Fee

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.
- (h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 26. Effective January 1, 2007.)*

**45867.5. Offers in compromise. (a)** (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
  - (1) The fee payer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.
    - (B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.
- (i)** When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.
- (j)** Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the fee payer.
- (2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.
- (k)** Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that any person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.
- (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.
- (2) The fee payer fails to comply with any of the terms and conditions relative to the offer.
- (l)** Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

## Integrated Waste Management Fee

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- (1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.
- (2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

**(m)** For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

*(Amended by Stats. 2011, Ch. 15, Sec. 585. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**45868. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the fee payer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

**(c)** The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 8. (SB 1507) Effective January 1, 2019.)*

**45868.5. Return of property. (a)** Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 45609 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 45870.

*(Added by Stats. 1999, Ch. 929, Sec. 57. Effective January 1, 2000.)*

**45869. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 172. Effective January 1, 1994.)*

**45870. Claim for reimbursement of bank charges by taxpayer. (a)** A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the feepayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the feepayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the feepayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 8. Effective January 1, 2014.)*

## Integrated Waste Management Fee

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**45871. Preliminary notice to taxpayer prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

- (b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 45351) of Chapter 3.
- (c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.
- (d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.
- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

*(Amended by Stats. 1999, Ch. 929, Sec. 58. Effective January 1, 2000.)*

**45872. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

- (b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:
  - (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
  - (2) Reasonable litigation costs, including any of the following:
    - (A) Reasonable court costs.
    - (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
      - (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
      - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
      - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

- (c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.
- (d)** Whenever it appears to the court that the feepayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Amended by Stats. 2006, Ch. 538, Sec. 634. Effective January 1, 2007.)*



# **MOTOR VEHICLE FUEL TAX**



## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 2. MOTOR VEHICLE FUEL TAX LAW [7301 - 8526]

#### CHAPTER 8. Administration [8251 - 8277]

#### ARTICLE 2. The California Taxpayers' Bill of Rights [8260 - 8277]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 2.)*

**8260. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8261. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8262. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 3. Effective January 1, 2000.)*

**8263. Annual hearing with taxpayers.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Motor Vehicle Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Amended by Stats. 2000, Ch. 1053, Sec. 40. Effective January 1, 2001. Operative January 1, 2002, by Sec. 53 of Ch. 1053.)*

**8264. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8265. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8266. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8267. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8268. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Motor Vehicle Fuel Tax

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8269. Reimbursement of taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 11. Effective January 1, 2001.)*

**8270. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include motor vehicle fuel tax violations.

(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Amended by Stats. 2000, Ch. 1053, Sec. 41. Effective January 1, 2001. Operative January 1, 2002, by Sec. 53 of Ch. 1053.)*

**8272. Release of levy. (a)** The Controller shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

**(b)** The Controller shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

**(c)** This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

*(Amended by Stats. 1993, Ch. 589, Sec. 141. Effective January 1, 1994.)*

**8273. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 142. Effective January 1, 1994.)*

**8276. Revocation or suspension of license.** For the purposes of this part only, the board shall not revoke or suspend a person's license pursuant to Section 7507 or 7508 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*

**8277. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

**(b)** In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

## Motor Vehicle Fuel Tax

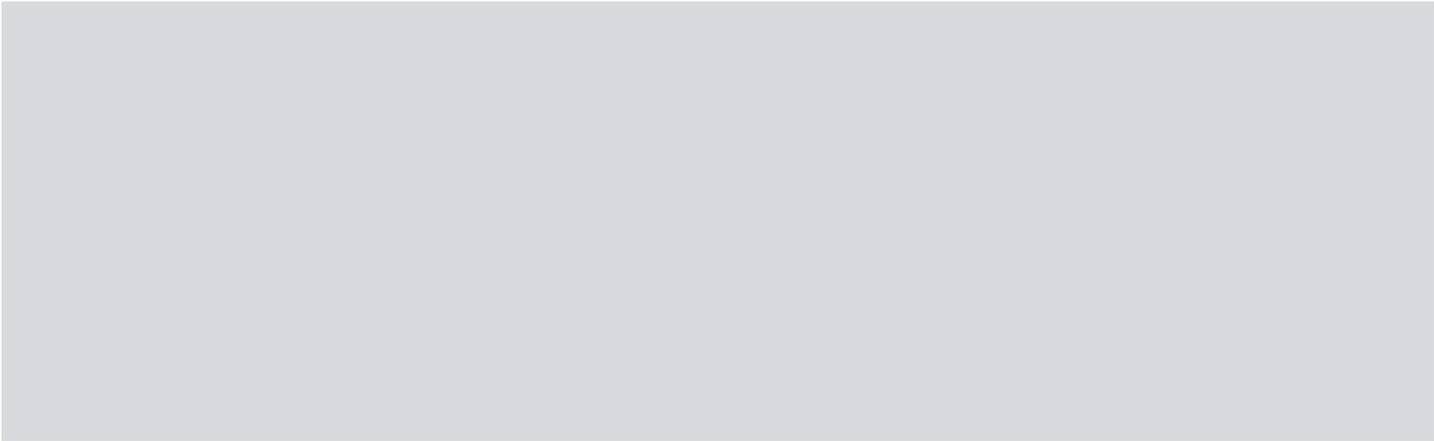
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(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

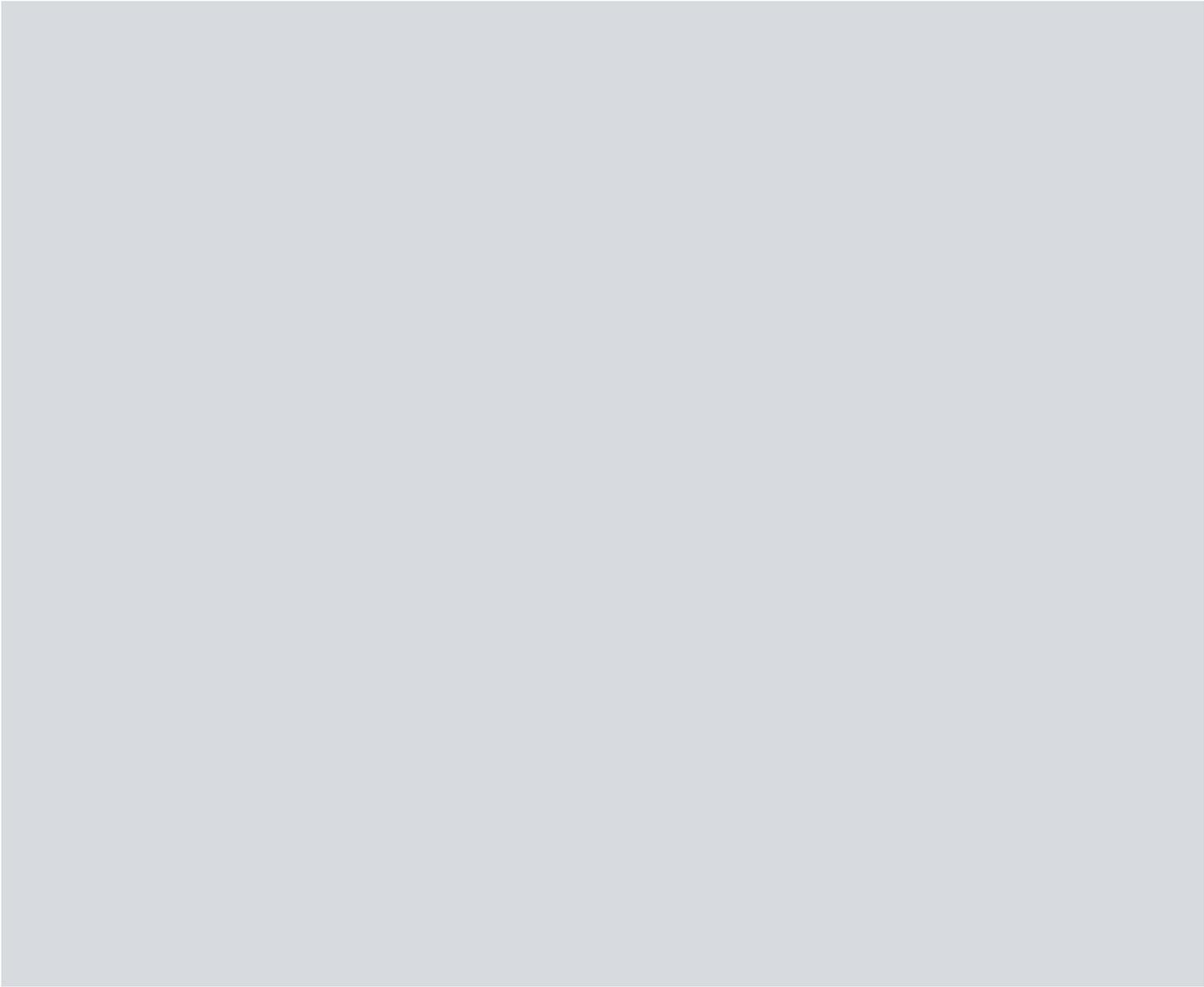
**(c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

**(d)** Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 2. Effective January 1, 1993.)*



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



# Oil Spill Response, Prevention, and Administration Fees

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## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 24. OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES [46001 - 46751]

##### CHAPTER 6. Administration [46601 - 46628]

##### ARTICLE 2. The California Taxpayers' Bill of Rights [46611 - 46628]

*(Article 2 added by Stats. 1995, Ch. 497, Sec. 33.)*

**46611. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46612. (a) Taxpayers' Rights Advocate.** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of feepayer complaints and problems, including any feepayer complaints regarding unsatisfactory treatment of feepayers by board employees, and staying actions where feepayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46613. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Feepayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered feepayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of feepayer educational materials currently produced by the board that explain the most common areas of feepayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to feepayer activities and areas of recurrent feepayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 62. Effective January 1, 2000.)*

**46614. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Oil Spill Response, Prevention, and Administration Fee Law that may further improve voluntary compliance and the relationship between fee payers and government.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46615. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to fee payers.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46616. Limit on uses of revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46617. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46618. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Department of Fish and Game, the Taxpayers' Rights Advocate, and other interested fee payer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46619. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

- (a)** Any conference shall be held at a reasonable time at a board office that is convenient to the fee payer.
- (b)** The conference may be recorded only if prior notice is given to the fee payer and the fee payer is entitled to receive a copy of the recording.
- (c)** The fee payer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

## Oil Spill Response, Prevention, and Administration Fees

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**46620. Reimbursement to taxpayer. (a)** Every feepayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

**(b)** To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

**(c)** The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

**(d)** Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

**(e)** The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 79. Effective January 1, 2001.)*

**46621. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nonfee administration related purposes.

**(b)** Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

**(c)** This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

**(d)** The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include underground storage tank fee violations.

**(e)** For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

## Oil Spill Response, Prevention, and Administration Fees

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**46622. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil fee matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of fee, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Oil Spill Response, Prevention, and Administration Fees

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.
- (h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 29. Effective January 1, 2007.)*

**46623. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of the funds pursuant to a levy or the notice to withhold, may order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

**(c)** The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

## Oil Spill Response, Prevention, and Administration Fees

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(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

(Amended by Stats. 2018, Ch. 181, Sec. 9. (SB 1507) Effective January 1, 2019.)

**46623.5. Return of property. (a)** Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the feepayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The feepayer has entered into and is in compliance with an installment payment agreement pursuant to Section 46464 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the feepayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 46625.

(Added by Stats. 1999, Ch. 929, Sec. 64. Effective January 1, 2000.)

**46624. Exemption from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)

**46625. Claim for reimbursement of bank charges by taxpayer. (a)** A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees that are incurred by the feepayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with either a levy or instructions in a notice to withhold, and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Bank charges include only those charges that are paid by the feepayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement pursuant to this section shall file a claim with the board that shall be in the form as may be prescribed by the board. The board shall not grant a claim unless it determines that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the feepayer. The board shall respond to a claim filed pursuant to this section within 30 days of receipt. If the board denies a claim, the feepayer shall be notified in writing of the reason or reasons for denial.

(Amended by Stats. 2013, Ch. 253, Sec. 9. Effective January 1, 2014.)

## Oil Spill Response, Prevention, and Administration Fees

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**46626. Preliminary notice to taxpayer prior to lien. (a)** At least 30 days prior to the filing or recording of a lien pursuant to either Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the feepayer a preliminary notice of lien. The notice shall specify the board's statutory authority for filing or recording the lien, the earliest date on which the lien may be filed or recorded, and the remedies available to the feepayer to prevent the filing or recording of the lien. In the event liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

**(b)** The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 46301) of Chapter 3.

**(c)** If the board determines that a lien was recorded in error, it shall mail a release to the feepayer and the entity that recorded the lien as soon as possible, but in no event later than seven days after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneously recorded lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the feepayer and the entity that recorded the lien.

**(d)** Upon issuing a release pursuant to subdivision (c), notice of that release shall be mailed to the taxpayer. Upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was recorded.

**(e)** The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the feepayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 65. Effective January 1, 2000.)*

**46627. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a feepayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

**(b)** In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Based on prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

**(c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

## Oil Spill Response, Prevention, and Administration Fees

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- (d) Whenever it appears to the court that the feepayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a fee imposed under this part.

*(Added by Stats. 1995, Ch. 497, Sec. 33. Effective January 1, 1996.)*

**46628. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.

## Oil Spill Response, Prevention, and Administration Fees

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- (h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.
- (i) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.
- (j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
  - (1) The name of the feepayer.
  - (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 40175. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

- (k) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
  - (1) The board determines that a person did any of the following acts regarding the making of the offer:
    - (A) Concealed from the board property belonging to the estate of a feepayer or other person liable for the fee.
    - (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.
  - (2) The feepayer fails to comply with any of the terms and conditions relative to the offer.
- (l) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
  - (1) Conceals from an officer or employee of this state property belonging to the estate of a feepayer or other person liable in respect of the fee.
  - (2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.
- (m) For purposes of this section, "person" means the feepayer, a member of the feepayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the feepayer, or another corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

## Oil Spill Response, Prevention, and Administration Fees

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**(n)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 588) by Stats. 2012, Ch. 285, Sec. 12. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*

**UNDERGROUND STORAGE TANK  
MAINTENANCE FEE**

# Underground Storage Tank Maintenance Fee

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## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 26. UNDERGROUND STORAGE TANK MAINTENANCE FEE LAW [50101 - 50162]

##### CHAPTER 6. Administration [50152 - 50156.18]

##### ARTICLE 2. The California Taxpayers' Bill of Rights [50156 - 50156.18]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 16.)*

**50156. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.1. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of feepayer complaints and problems, including any feepayer complaints regarding unsatisfactory treatment of feepayers by board employees, and staying actions where feepayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.2. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Feepayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered feepayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of feepayer educational materials currently produced by the board that explain the most common areas of feepayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to feepayer activities, and areas of recurrent feepayer noncompliance or inconsistency of administration.

**(c)** Electronic media used to comply with this section shall not represent the voice, picture, or name of members of the board or the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 70. Effective January 1, 2000.)*

**50156.3. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Underground Storage Tank Maintenance Fee Law which may further improve voluntary compliance and the relationship between fee payers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.4. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.5. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.6. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.7. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the State Water Resources Control Board, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.8. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the fee payer.

## Underground Storage Tank Maintenance Fee

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- (b) The conference may be recorded only if prior notice is given to the feepayer and the feepayer is entitled to receive a copy of the recording.
- (c) The feepayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 16. Effective January 1, 1993.)*

**50156.9. Reimbursement to taxpayers. (a)** Every feepayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

- (1) The feepayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.
  - (2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.
  - (3) The board decides that the feepayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.
- (b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.
- (c) The amount of reimbursed fees and expenses shall be limited to the following:
- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refunds.
  - (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.
- (d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.
- (e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 87. Effective January 1, 2001.)*

**50156.10. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

- (b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.
- (c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.
- (d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations that include underground storage tank fee violations.
- (e) For the purposes of this section:
  - (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

## Underground Storage Tank Maintenance Fee

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- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Amended by Stats. 1993, Ch. 589, Sec. 177. Effective January 1, 1994.)*

**50156.11. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

**(b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

**(c)** Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

**(d)** The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

**(e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

## Underground Storage Tank Maintenance Fee

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(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.
- (h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 32. Effective January 1, 2007.)*

**50156.12. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

- (b) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of the funds pursuant to a levy or the notice to withhold, may order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents.
  - (B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.
  - (C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.
- (2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:
  - (i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).
  - (ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

## Underground Storage Tank Maintenance Fee

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(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 9. (SB 1507) Effective January 1, 2019.)*

**50156.13. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 179. Effective January 1, 1994.)*

**50156.14. Claim for reimbursement of bank charges by taxpayers.** (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the feepayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the feepayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.
- (2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the feepayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 10. Effective January 1, 2014.)*

**50156.15. Preliminary notice to taxpayer prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the feepayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the feepayer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

## Underground Storage Tank Maintenance Fee

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- (b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 50120.1) of Chapter 3.
- (c) If the board determines that the filing of a lien was in error, it shall mail a release to the feepayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the feepayer and the entity recording the lien.
- (d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the feepayer and, upon the request of the feepayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.
- (e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the feepayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 72. Effective January 1, 2000.)*

**50156.16. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a feepayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the feepayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Amended by Stats. 1993, Ch. 589, Sec. 181. Effective January 1, 1994.)*

## Underground Storage Tank Maintenance Fee

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**50156.17. Return of property. (a)** Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the feepayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The feepayer has entered into and is in compliance with an installment payment agreement pursuant to Section 50138.6 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the feepayer.

**(b)** Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 50156.14.

*(Added by Stats. 1999, Ch. 929, Sec. 73. Effective January 1, 2000.)*

**50156.18. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability in which the reduction of the fee is seven thousand five hundred dollars (\$7,500) or less.

- (2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.
- (3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

**(b)** For purposes of this section, "a final fee liability" means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

**(c)** Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

**(d)** For amounts to be compromised under this section, the following conditions shall exist:

- (1) The feepayer shall establish that:
  - (A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer's present assets or income.
  - (B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
- (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

**(e)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

## Underground Storage Tank Maintenance Fee

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- (f)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.
- (g)** When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer shall not relieve the other feepayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.
- (h)** Whenever a compromise of the fee or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
  - (1) The name of the feepayer.
  - (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Chapter 8 (commencing with Section 50159). A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

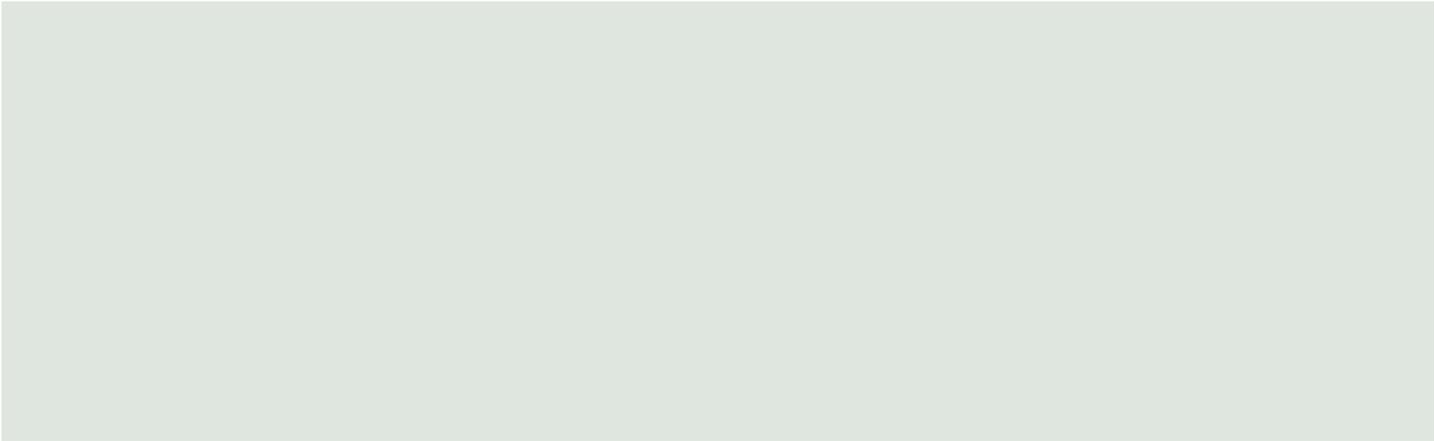
- (i)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:
  - (1) The board determines that a person did any of the following acts regarding the making of the offer:
    - (A) Concealed from the board property belonging to the estate of a feepayer or other person liable for the fee.
    - (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.
  - (2) The feepayer fails to comply with any of the terms and conditions relative to the offer.
- (j)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
  - (1) Conceals from an officer or employee of this state property belonging to the estate of a feepayer or other person liable in respect of the fee.
  - (2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.
- (k)** For purposes of this section, "person" means the feepayer, a member of the feepayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the feepayer, or another corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

## Underground Storage Tank Maintenance Fee

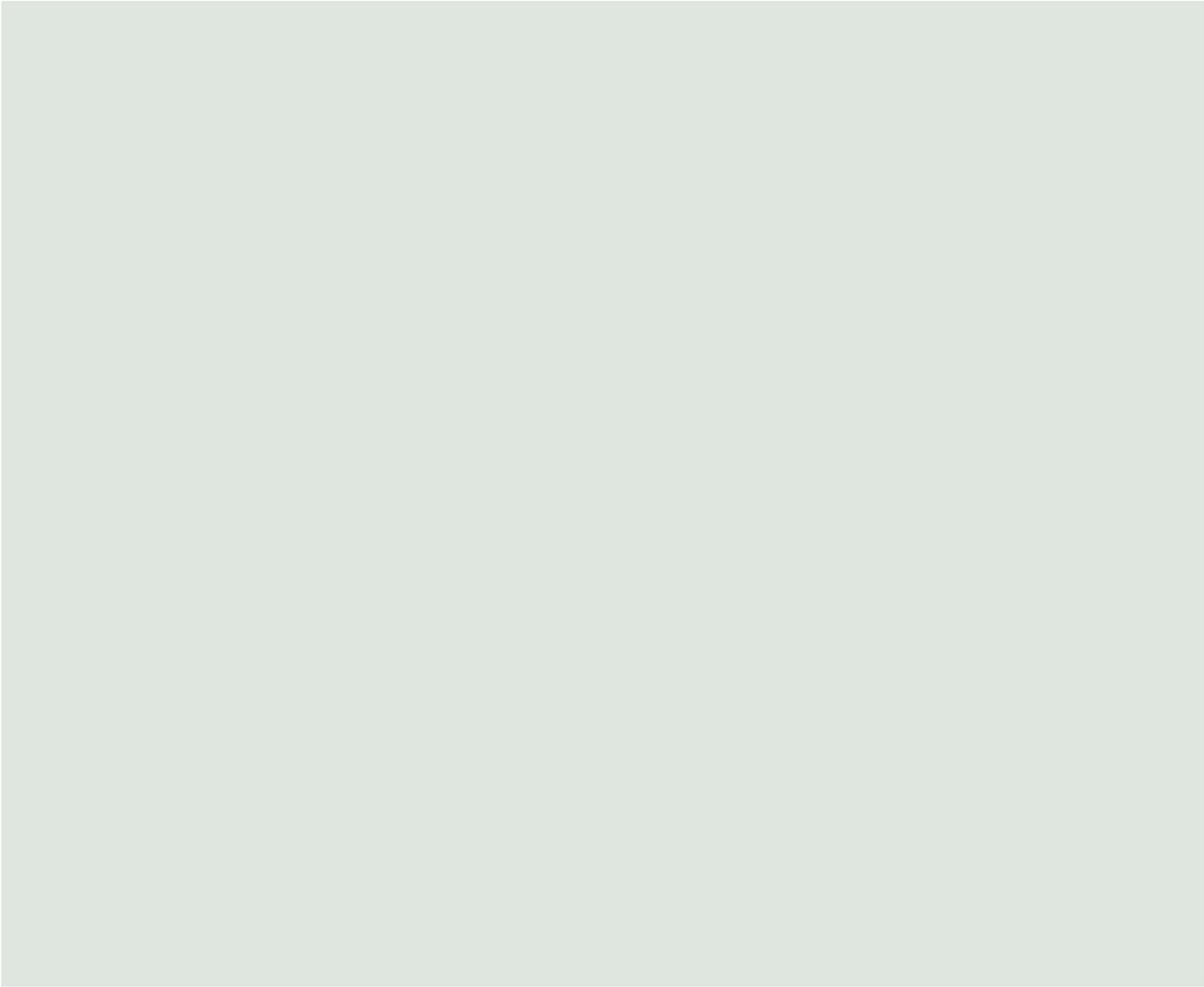
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**(I)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 591) by Stats. 2012, Ch. 285, Sec. 14. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*



# **USE FUEL TAX**



## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 3. USE FUEL TAX [8601 - 9355]

#### CHAPTER 7. Administration [9251 - 9278]

#### ARTICLE 2. The California Taxpayers' Bill of Rights [9260 - 9278]

*(Article 2 added by Stats. 1992, Ch. 438, Sec. 4.)*

**9260. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9261. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9262. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 8. Effective January 1, 2000.)*

**9263. Annual hearing with taxpayers.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Use Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9264. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9265. Limit on revenue collected or assessed. (a)** The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**(c)** Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9266. Evaluation of employees' contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9267. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9268. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

**(a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

**(b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Use Fuel Tax

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- (c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

**9269. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

- (b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

- (c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

- (d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

- (e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 19. Effective January 1, 2001.)*

**9270. Investigations for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

- (b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

- (c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

- (d) This section is not intended to prohibit, restrict, or prevent the exchange of information if the person is being investigated for multiple violations that include use fuel tax violations.

- (e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Amended by Stats. 2006, Ch. 538, Sec. 618. Effective January 1, 2007.)*

**9271. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

**(b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

**(c)** Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

**(d)** The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

**(e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

## Use Fuel Tax

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- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.
- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 9255.
- (h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 7. Effective January 1, 2007.)*

**9272. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

- (b) (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.
- (B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.
- (C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.
- (2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:
- (i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).
- (ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 2. (SB 1507) Effective January 1, 2019.)*

**9272.1. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 9033 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 9274.

*(Added by Stats. 1999, Ch. 929, Sec. 10. Effective January 1, 2000.)*

**9273. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Amended by Stats. 1993, Ch. 589, Sec. 144. Effective January 1, 1994.)*

**9274. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

## Use Fuel Tax

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(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 2. Effective January 1, 2014.)*

**9275. Preliminary notice to taxpayers prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 8826) of Chapter 4.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 11. Effective January 1, 2000.)*

**9276. Notice preliminary to suspension.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 8704 or 8714 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

*(Amended by Stats. 1993, Ch. 589, Sec. 145. Effective January 1, 1994.)*

**9277. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

- (2) Reasonable litigation costs including any of the following:
- (A) Reasonable court costs.
  - (B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:
    - (i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.
    - (ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.
    - (iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.
- (c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.
- (d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Added by Stats. 1992, Ch. 438, Sec. 4. Effective January 1, 1993.)*

- 9278. Offers in compromise.** (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.
- (2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.
- (3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).
- (b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 3 (commencing with Section 8601), or related interest, additions to tax, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) For amounts to be compromised under this section, the following conditions shall exist:
- (1) The taxpayer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

## Use Fuel Tax

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(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

- (e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.
- (f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.
- (g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.
- (h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the taxpayer.
  - (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
  - (3) The amount offered.
  - (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 9255. No list shall be prepared and no releases distributed by the board in connection with these statements.

- (i) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that a person did any of the following acts regarding the making of the offer:
    - (A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.
    - (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
  - (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.
- (j) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:
- (1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

**(k)** For purposes of this section, “person” means the taxpayer, a member of the taxpayer’s family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

**(l)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2011, Ch. 15, Sec. 568) by Stats. 2012, Ch. 285, Sec. 4. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions.)*



# **FEE COLLECTION PROCEDURES**



## REVENUE AND TAXATION CODE

### DIVISION 2. OTHER TAXES [6001 - 60709]

#### PART 30. FEE COLLECTION PROCEDURES LAW [55001 - 55381]

#### CHAPTER 6. Administration and Taxpayers' Bill of Rights [55301 - 55337]

#### ARTICLE 2. The California Taxpayers' Bill of Rights [55321 - 55337]

*(Article 2 added by Stats. 1992, Ch. 407, Sec. 1.)*

**55321. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55322. Taxpayers' Rights Advocate. (a)** The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

**(b)** The advocate shall report directly to the executive officer of the board.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55323. Education and information program. (a)** The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

**(b)** The education and information program shall include all of the following:

- (1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.
- (2) Participation in seminars and similar programs organized by federal, state, and local agencies.
- (3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.
- (4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

**(c)** Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

*(Amended by Stats. 1999, Ch. 929, Sec. 77. Effective January 1, 2000.)*

**55324. Annual hearing for taxpayers to propose law changes.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Fee Collection Procedures Law which may further improve voluntary compliance and the relationship between taxpayers and government.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55325. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedure, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55326. Limit on revenue collected or assessed. (a)** The amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals.

**(b)** The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55327. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55328. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55329. Procedures related to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

- (a)** Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.
- (b)** The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

## Fee Collection Procedures

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(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55330. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

- (1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.
- (2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*(Amended by Stats. 2000, Ch. 1052, Sec. 95. Effective January 1, 2001.)*

**55331. Investigation for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include hazardous substances tax violations.

(e) For the purposes of this section:

- (1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.
- (2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55332. Settlement authority. (a)** It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

- (b)** (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.
- (2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.
- (3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.
- (c)** Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:
- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

- (d)** The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).
- (e)** (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.
- (2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

## Fee Collection Procedures

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- (f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.
- (g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 55381.
- (h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.
- (i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

*(Amended by Stats. 2006, Ch. 364, Sec. 34. Effective January 1, 2007.)*

**55332.5. Offers in compromise. (a)** (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

- (2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.
- (3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

- (b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 30 (commencing with Section 55001), or related interest, additions to fees, penalties, or other amounts assessed under this part.
- (c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.
- (d) Offers in compromise shall not be considered where the feepayer has been convicted of felony tax evasion under this part during the liability period.
- (e) For amounts to be compromised under this section, the following conditions shall exist:
  - (1) The feepayer shall establish that:
    - (A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer’s present assets or income.
    - (B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.
  - (2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

- (f)** A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.
- (g)** (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.
- (2) The minimum offer may be waived if it can be shown that the feepayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the feepayer.
- (h)** When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.
- (i)** When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.
- (j)** Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:
- (1) The name of the feepayer.
- (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.
- The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 55381. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.
- (k)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:
- (1) The board determines that a person did any of the following acts regarding the making of the offer:
- (A) Concealed from the board property belonging to the estate of a feepayer or other person liable for the fee.
- (B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record, or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.
- (2) The feepayer fails to comply with any of the terms and conditions relative to the offer.
- (l)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

## Fee Collection Procedures

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(1) Conceals from an officer or employee of this state property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

**(m)** For purposes of this section, "person" means the feepayer, a member of the feepayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the feepayer, or another corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

**(n)** This section shall become operative on January 1, 2018.

*(Amended (as amended by Stats. 2012, Ch. 285, Sec. 16) by Stats. 2013, Ch. 177, Sec. 3. Effective January 1, 2014. Section operative January 1, 2018, by its own provisions.)*

**55333. Release of levy. (a)** The California Department of Tax and Fee Administration shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold upon his or her finding that the levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The California Department of Tax and Fee Administration shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the California Department of Tax and Fee Administration shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

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<sup>1</sup> There is a drafting error in subsection (b)(1)(A). The text should read as follows: "The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family."

(B) For purposes of this paragraph, “operative threshold” means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

(c) The California Department of Tax and Fee Administration shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy determination.

*(Amended by Stats. 2018, Ch. 181, Sec. 11. (SB 1507) Effective January 1, 2019.)*

**55333.5. Return of property.** (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the feepayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The feepayer has entered into and is in compliance with an installment payment agreement pursuant to Section 55209 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the feepayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 55335.

*(Added by Stats. 1999, Ch. 929, Sec. 79. Effective January 1, 2000.)*

**55334. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*(Added by Stats. 1992, Ch. 407, Sec. 1. Effective January 1, 1993.)*

**55335. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge 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 board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

## Fee Collection Procedures

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(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*(Amended by Stats. 2013, Ch. 253, Sec. 11. Effective January 1, 2014.)*

**55336. Preliminary notice to taxpayers prior to lien. (a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 55101) of Chapter 3.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

*(Amended by Stats. 1999, Ch. 929, Sec. 80. Effective January 1, 2000.)*

**55337. Disregard by board employee or officer. (a)** If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceedings, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

**(c)** In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

**(d)** Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

*(Amended by Stats. 2004, Ch. 183, Sec. 335. Effective January 1, 2005.)*

# For More Information

## Customer Service Center 1-800-400-7115 (TTY:711)

To speak to a representative, call between 8:00 a.m. and 5:00 p.m., Monday-Friday (Pacific time), excluding state holidays, if you have a general tax or fee question.

### CDTFA Offices

<b>Bakersfield</b>	1-661	395-2880
<b>Cerritos</b>	1-562	356-1102
<b>Culver City</b>	1-310	342-1000
<b>El Centro</b>	1-760	352-3431
<b>Fairfield</b>	1-707	427-4800
<b>Fresno</b>	1-559	440-5330
<b>Glendale</b>	1-818	543-4900
<b>Irvine</b>	1-949	440-3473
<b>Oakland</b>	1-510	622-4100
<b>Rancho Cucamonga</b>	1-909	257-2900
<b>Rancho Mirage</b>	1-760	770-4828
<b>Redding</b>	1-530	224-4729
<b>Riverside</b>	1-951	680-6400
<b>Sacramento</b>	1-916	227-6700
<b>Salinas</b>	1-831	754-4500
<b>San Diego</b>	1-858	385-4700
<b>San Francisco</b>	1-415	356-6600
<b>San Jose</b>	1-408	277-1231
<b>Santa Clarita</b>	1-661	222-6000
<b>Santa Rosa</b>	1-707	576-2100
<b>Ventura</b>	1-805	677-2700
<b>West Covina</b>	1-626	480-7200

### Out-of-State Accounts

1-916-227-6600

### Special Taxes and Fees

1-800-400-7115

(Select "Special Taxes and Fees")

## Websites

[www.cdtfa.ca.gov](http://www.cdtfa.ca.gov)

On the CDTFA's website, you can view and print laws, regulations, publications, and forms; get information on tax rates; use industry guides to help you understand how the law applies to your business; register for free classes and seminars; sign up to receive newsletters and announcements; register for a permit or license; make a payment; and much more.

## Forms and Publications

It is easy to view and print forms and publications from the CDTFA website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) – start by clicking on the *Forms and Publications* tab. To receive a form or publication by mail, call the Customer Service Center at 1-800-400-7115 (TTY:711).

## Taxpayers' Rights Advocate

If you would like to know more about your rights as a taxpayer, please see publication 70, *Understanding Your Rights as a California Taxpayer*, or visit the Taxpayers' Rights Advocate's page at [www.cdtfa.ca.gov/tra](http://www.cdtfa.ca.gov/tra). If you have not been able to resolve a problem through normal channels, for example by speaking with a supervisor, we encourage you to contact the Taxpayers' Rights Advocate Office for help.

Taxpayers' Rights Advocate Office, MIC:70

California Department of Tax and  
Fee Administration

PO Box 942879

Sacramento, CA 94279-0070

Toll-free phone 1-888-324-2798

Phone 1-916-324-2798

Fax 1-916-323-3319

