

# Compliance Policy and Procedures Manual

## Chapter 4

# Security

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

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

COMPLIANCE POLICY AND PROCEDURES MANUAL

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**SECURITY**

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**SECURITY****400.000****GENERAL STATEMENT ON SECURITY****405.000****POLICY****405.005**

The California Department of Tax and Fee Administration (CDTFA) is authorized to impose a security deposit from a permit or license applicant subject to certain limitations. The various tax and fee programs administered by CDTFA have unique security deposit requirements. The table in CPPM section 405.030 summarizes the applicable minimum-and- maximum security deposit amounts for programs other than the sales and use tax program.

Revenue and Taxation Code (RTC) section 6701 authorizes CDTFA to require “any person” subject to sales and use tax law to post a security deposit to help ensure compliance. For sales and use tax accounts, the minimum amount for a security deposit is \$2,000 and the maximum amount by statute may not exceed \$50,000. The security deposit requirement follows the person, not the account. Therefore, if a person has posted a security deposit or deposits totaling \$50,000 and opens another business under a new seller’s permit, no additional security may be requested.

The security provisions for tax and fee programs where security is not mandatory, must be judiciously administered. All relative factors will be considered when setting the amount of security to be posted and unusual or excessive demands should not be made. (See CPPM 405.020 for security deposit policy for new accounts.)

When a security deposit is required, the taxpayer is given a copy of the CDTFA-598, *Notice of Security Requirements*, and from the types listed, allowed to select the security deposit best suited to the taxpayer’s circumstances. The taxpayer should be given a reasonable length of time (normally 30 days) to post the deposit. A security deposit may also be made in installments (CPPM 410.010). In these cases, the 30-day period may need to be extended. However, if the taxpayer fails to post the deposit within the timeframe allotted, the account will be scheduled for revocation. Issuing a seller’s permit will not be delayed pending receipt of a security deposit.

**SECURITY — NEW ACCOUNTS/NEW OWNERS/EXISTING ACCOUNTS****405.020****General Guidelines**

In general, security deposits are not required from taxpayers applying for a permit with CDTFA unless security is mandated by law. Under exceptional circumstances, team members may request security from taxpayers with a history of non-payment or those which pose a high compliance risk. This requires supervisor approval.

In determining whether security is necessary to protect the interest of the state, consideration should be given to the applicant's payment history, if any, with CDTFA. If the applicant has held prior permits, his or her history may indicate future actions. A poor payment history includes acts such as multiple delinquent returns, multiple liabilities, and/or multiple revocations.

**Business Owners**

As noted above, if the owner(s) of the business (sole proprietor, partnership, corporation, LLC, joint venture, fraternal associations, etc.) does not have a history of payment problems with CDTFA, no initial demand for security will be made unless required by statute. However, when appropriate, taxpayers should be advised that failure to meet their reporting and payment requirements may result in CDTFA demanding the maximum amount of security allowed by law. The taxpayer should also be advised that failure to post security when required may result in revocation of the seller's permit. (Note: Certificate of Registration-Lender accounts are not required to post a security deposit).

**MAXIMUM-AND-MINIMUM-SECURITY POLICY****405.030**

The current maximum-security for sales and use tax is \$50,000 pursuant to RTC section 6701. Except as noted below, the maximum amount of security for persons filing returns for quarterly periods is twice the estimated average quarterly tax liability, or for persons required to file monthly tax returns, the maximum amount of security is three times the estimated average tax liability. The maximum amount of security for a person who has been given a notice of hearing pursuant to RTC section 6070 to show cause why their permit should not be revoked, or a person whose permit has been revoked, is three times the average quarterly tax liability or five times the average monthly tax liability. If an applicant applies for a new permit but previously had an account that was cited or revoked, the security required would be three times the average quarterly tax liability or five times the average monthly tax liability, as the taxpayer has established a poor payment history.

Per CDTFA policy, the amount of security for prepayment accounts is one quarter's estimated tax liability. CDTFA policy states that the maximum amount of security for a prepayment account which has been given a notice of hearing to show cause why the permit should not be revoked or for a person whose permit has been revoked is twice the average quarterly tax liability.

CDTFA has established a minimum-security policy of \$2,000 unless otherwise set by statute. Therefore, if the amount of security required is computed to be less than \$2,000, security will be waived. The following table summarizes the applicable minimum-and-maximum security required for taxes and fees administered by CDTFA other than sales and use taxes.

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

**MAXIMUM AND MINIMUM SECURITY POLICY (CONT.)**

**405.030**

Tax/Fee Program	RTC	Minimum Security (Set by Policy Unless Noted)	Maximum Security
Motor Vehicle Fuel Tax	7486	\$2,000	See Note 1
International Fuel Tax Agreement	60401	\$2,000	See Note 2
Use Fuel Tax	8951	\$2,000	None
Diesel Fuel Tax	60401	\$2,000	See Note 1
Underground Storage Tank Fee	50108.2	\$2,000	None
Oil Spill Fees	46401	\$2,000	None
Childhood Lead Fee	43102	\$2,000	None
Disposal Fee	43102	\$2,000	None
Generator Fee	43102	\$2,000	None
Facility Fee	43102	\$2,000	None
Environmental Fee	43102	\$2,000	None
Occupational Lead Fee	43102	\$2,000	None
Marine Invasive Species	55022	\$2,000	None
Integrated Waste Management Fee	45102	\$2,000	None
Tire Recycling Fee	55022	\$2,000	None
Electronic Waste Recycling Fee	55022	\$2,000	None
Water Rights Fee	55022	\$2,000	None
Cigarette and Tobacco Products Tax	30142	\$1,000 (See Note 3)	None (See Note 4)
Alcoholic Beverage Tax	32103	\$500 (See Note 3)	None (See Note 5)
Energy Resources Surcharge	40036	\$2,000	None
Emergency Telephone Users Surcharge	41041	\$2,000	None
Natural Gas Surcharge	55022	\$2,000	None
Timber Yield Tax	38501	\$2,000	\$10,000
Cannabis Tax	34014	\$2,000	None
Lead Acid Battery Recycling Fee	55022	\$2,000	None

Note 1: The amount of security shall not be more than three times the estimated average monthly tax liability, however, the total amount of security shall not exceed \$1,000,000 where the person has established to the satisfaction of CDTFA that it has equity in real property to which a lien imposed by either section 7872 or section 60445 would attach.

Note 2: The calculated security deposit amount is \$2,000 for the first vehicle and \$500 for each additional vehicle. The maximum amount is \$50,000 per account.

Note 3: Set by statute.

Note 4: If a distributor desires to defer payments for stamps or meter register settings, CDTFA will review the distributor's purchases of stamps and meter register settings for which payment shall be deferred. CDTFA will require that the security deposit shall not be less than 70, 50, or 25 percent of the amount and no more than twice the amount of the deferred payment for the distributor's purchases of stamps and meter register settings (based on the deferred payment plan elected).

Note 5: The maximum amount will not be more than twice the taxpayer's estimated tax for the taxpayer's reporting period.

**RELEASE AND REFUND OF SECURITY — ACTIVE ACCOUNTS**

**405.035**

RTC section 6701 states that security shall be released after a three-year period in which the taxpayer has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid within the time period.

Similar language to RTC section 6701 can be found in RTC sections 7486 (Motor Vehicle Fuel Tax Law), 60401 (Diesel Fuel Tax Law), 40036 (Energy Resource Surcharge), and 41041 (Emergency Telephone Users Surcharge).

The above includes all types of ownership. As a matter of policy, unless statutorily prohibited, CDTFA will release security deposits that meet the following criteria:

1. The security deposit has been held for at least three years.
2. The account has no current accounts receivable.
3. The account has no delinquent return(s).
4. The account has no more than two instances within the last twelve months of non-compliance with items two and three above.
  - a. For item two above, team members will review for any Statement date, Demand date or Notice of Determination date that falls within the last twelve months from the creation date of the Security Deposit Review for Release work item. If in the last twelve months a liability has both a Notice of Determination date and a Statement date or Demand date, team members will review the Statement date or Demand date.
  - b. For item three above, team members will review for any delinquencies within the last twelve months. The delinquency established date (one day after the return due date) will be reviewed to determine if the delinquency falls within the twelve-month period from the creation date of the Security Deposit Review for Release work item.

Security deposit cases are reviewed in the system for release three years from when the security deposit case is created. Security deposits on closed accounts will be reviewed 60 days after the cease date. The system generates a work item for team members to review cases to determine if the criteria above for release has been met. Cases that meet the criteria for release are then assigned to the responsible supervisor for review and approval. After approval, all refunds of cash security will be handled by the Compliance Branch. The CDTFA-168-L, *Return of Liquid Security* will be used to notify the taxpayer that security has been released and is no longer required.

Denial letter CDTFA-930-A, *Security Deposit Release Denial*, will be mailed to taxpayers if the account does not meet the release criteria. The denial letter informs the taxpayer of the reason the security deposit is not eligible for release and that their account will be reviewed again in six (6) months. The denial letters are automatically generated by the system.

Surety bonds require an annual review for renewal for all account types, except Cigarette and Tobacco Products Distributor accounts whose surety bond is continuous. An expiration date is recorded on the case by team members. Forty-five (45) days prior to the expiration date, the system will create the Surety Bond Expiration work item for team members to review and move forward with the renewal or cancellation process. The taxpayer is notified of the cancellation of surety bond by sending the CDTFA-168-B, *Notification of Surety Bond Non-Renewal*.

A surety bond should not be exonerated unless CDTFA receives a request from the bonding company and the account meets the requirements as stated in CPPM 410.025.

These changes do not affect the law or current policy and procedures for bonding companies that wish to terminate a surety bond. Sureties must notify CDTFA, in writing, of the intention to terminate the surety bond. The cancellation is effective 30 days from receipt of the request. Letter CDTFA- 1938-FIS, *Replacement Security Needed*, can be sent to request a replacement of the security deposit.

To end the security deposit requirement, a team member from the office of control, Compliance Branch, or Motor Carrier Office will update the security deposit case by entering a release date or cancellation notice date.

## **INCREASING SECURITY REQUIREMENTS**

**405.040**

It is the policy of CDTFA not to increase security unless the increase is necessary for protection of the state's interest. The amount of security required at the time the application is filed should not be increased merely because the amount of tax later reported is greater than originally anticipated. However, in some instances, a reasonably accurate estimate cannot be made at the time of application, and it is necessary to re-examine the security requirements after the business has operated for several months. In such cases, the applicant must be made aware that security requirements are subject to a later review. After review, the security should be adjusted accordingly. This procedure should be necessary only in a limited number of cases; where applicants have made extremely conservative estimates relating to sales volume, the amount may be increased without delay.

When a taxpayer presents a collection problem, the adequacy of security should be reviewed. If it is found that security is not the maximum permitted under law, and is determined that additional security should be posted, the additional amount should be demanded. (See CPPM 405.030).

If after giving the taxpayer notification of the additional security amount required, and the security is not posted within thirty (30) days, the taxpayer should be cited for revocation of the permit for failure to post security (See CPPM 340.000 et. seq.).

**SECURITY UNDER BANKRUPTCY****405.043**

Trustees or debtors who operate businesses after the debtor has filed for protection under the Bankruptcy Code, are required to conduct the operation according to the laws of the state in which they operate the business. A person's filing for protection under the Bankruptcy Code is not a basis for increasing or demanding security. Any security on deposit should remain on deposit as the security is being held in trust for the sales and use tax and for special taxes and fees (except for the Fee Collection Procedures Law). However, if the security is released, it will be released to the trustee. CDTFA may increase security under appropriate circumstances as provided in CPPM 405.040.

**SECURITY ADJUSTMENTS AND CHANGE OF REPORTING BASIS 405.045**

Additional security is not required when the reporting interval of an account (reporting basis) is shortened or extended unless the change is necessary to address an unsatisfactory reporting or payment record of the taxpayer.

**SALES AND USE TAX ACCOUNTS – SECURITY 405.050**

The office of control is responsible for determining the amount of security required from the taxpayer, has full control over the establishment of the security account, and maintains the security deposit cases in the system for sales and use tax accounts. Letters can be sent to request, acknowledge, correct, transfer and release security through the security deposit case. The Compliance Branch is responsible for refunding eligible security deposits approved for release from the office of control.

Each office of control maintains a file that contains all original surety bonds and time certificate deposits (TCD) received. Security measures in accordance with policy established for controlled forms will be taken to ensure safekeeping of these files.

If excess cash security is released in error, the office of control must recover the funds.

Team members should add notes in the system when the following occurs:

1. The security documents (i.e., TCD's) are mailed to the taxpayer after the security has been released.
2. The security deposit is released outside the release guidelines.
3. The returned check, TCD or bond is mailed to a different address.
4. The CDTFA-168-B, *Notification of Surety Bond Non-Renewal* or the CDTFA-168-L, *Return of Liquid Security* has been mailed.
5. The taxpayer calls with questions regarding the release of his or her security.
6. The mailing address has been confirmed on closed-out accounts when mailing the security deposit check or other security documents.
7. The security deposit is not being released on a closed-out account.

**Inter-office Cooperation**

If the taxpayer mails the security document (i.e., TCD/Bond) to the incorrect office, the document will be forwarded to the office of control. However, cash deposits will be processed at the office where it was received. Walk-ins will be processed at any office and the documentation will be forwarded to the office of control. Notes will be added in the system documenting the transactions.

**SPECIAL TAX AND FEE ACCOUNTS — SECURITY****405.055****Compliance Branch**

The Compliance Branch is responsible for determining the amount of security required of the tax or feepayer, has full control over the establishment of the security account, and maintains the security deposit cases in the system for special taxes and fees accounts. Through the security deposit case, letters are sent to request, acknowledge, correct, transfer and release security. A file is maintained with original surety bonds and TCD's received. Additionally, the Compliance Branch is responsible for handling any approved refunds of security for both sales and use tax and special taxes and fees accounts.

The Compliance Branch sends the Accounting Section a list of security refunds and the corresponding FI\$Cal voucher numbers. Accounting reviews the information and once approved, the Travel Services Unit will issue the checks. Once the checks are issued, proofed and signed, they are given back to the Compliance Branch to mail to the taxpayer.

**Motor Carrier Office (MCO)**

MCO is responsible for determining the amount of security required, has full control over the establishment of the security account, maintains the security deposit cases in the system and handles any refund of cash security for use fuel tax, diesel fuel tax, interstate user diesel fuel tax and international fuel tax agreement (IFTA) accounts. Through the security deposit case, letters are sent to request, acknowledge, correct, transfer and release security. A file is maintained with original surety bonds and TCD's received.

**Accounting Section**

The Accounting Section is responsible for the Security Trust Fund accounting and preparation of financial statements for submission to control agencies. It is also responsible for the bank account maintained for the exclusive use of Security Trust deposits and disbursements.

The Accounting Section receives and reconciles reports in the system which include interface batch information. The system produces two types of interface batches which list incoming security deposits and security deposits being released and applied to a taxpayer's liability. These batches are used as backup documentation to move money into the proper bank accounts. All security transactions are recorded to reflect CDTFA's liability for security collected from or refunded to taxpayers. The liability is specific to the type of security collected, i.e., cash and liquid security deposits. Financial statements are prepared to reflect the status of this fund.

The Accounting Section is solely responsible for issuing replacement (in-lieu) checks to taxpayers when the original checks are lost. When checks are returned, the Accounting Section determines if disposition to the Unclaimed Trust Fund is warranted.

**UNIFORM SECURITY — SUBSIDIARY  
CORPORATIONS AND FRANCHISED OUTLETS****405.075**

No action will be initiated by any field office to establish a uniform statewide security policy for subsidiary corporations or franchisees unless a request is received from the parent corporation, or the field office determines that inequities in the treatment of the taxpayer exist.

When such cases are discovered, they should be referred to the office of control where the main business office is located or where the person with authority to act on behalf of the parent corporation is located. That office will investigate and decide the appropriate security requirements.

The decision made by the office of control will represent CDTFA's policy in connection with the overall operations of the subsidiaries or franchisees. If it is decided that all subsidiaries or franchisees shall be required to post security, then security in an amount provided in RTC section 6701 will be required by any office in which an application is filed.

## SECURITY

### **MANDATORY SECURITY REQUIREMENT FOR CIGARETTE AND TOBACCO PRODUCTS DISTRIBUTORS**

**405.080**

Revenue and Taxation Code section 30141 requires every cigarette and/or tobacco products distributor to furnish mandatory security in the amount and form as prescribed by CDTFA. Pursuant to RTC section 30142 (a), the minimum amount of mandatory security for any cigarette and tobacco product distributor is one thousand dollars (\$1,000). Mandatory security shall be released in a timely manner if the distributor's account(s) is in good standing with CDTFA upon completion of the close-out review.

### **SECURITY REQUIREMENTS FOR DEFERRED PAYMENTS OF CIGARETTE TAX STAMPS**

**405.085**

Pursuant to RTC section 30142 (b), a licensed cigarette distributor may furnish security for the purpose of deferring payments for cigarette tax stamps or meter register settings. Additionally, RTC section 30168 (a)(1), (a)(2), and (a)(3) provides distributors several options for deferred payments and security requirements (see below). A distributor may request deferred payments for their purchases of cigarettes tax stamps by completing a CDTFA-356 *Cigarette Distributor's Application for Deferred Payment Option*. Upon receipt of the request, the Compliance Branch will determine the cigarette distributor's security requirement and deferred purchase credit limit.

Monthly Deferred Payment - If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a monthly basis, CDTFA shall require security equal to no less than 70 percent of the amount and no more than twice the amount, as fixed by CDTFA, of the distributor's purchases of stamps and meter register settings for which payment may be deferred. The distributor will be required to remit the payment on or before the 25th day of the month following the month in which the stamps were purchased.

Twice Monthly Deferred Payment - If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a twice-monthly basis, CDTFA shall require security equal to no less than 50 percent of the amount and no more than twice the amount, as fixed by CDTFA, of the distributor's purchases of stamps and meter register settings for which payment may be deferred. The distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the 5th day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

Weekly Deferred Payment with Security - If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a weekly basis, CDTFA shall require security of no less than 25 percent of the amount and no more than twice the amount, as fixed by CDTFA, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

The distributor will be required to:

1. Remit the payment on or before Wednesday following the week in which the stamps and meter register settings were purchased.
2. Provide an email address to CDTFA and update as necessary, for the purpose of receiving payment information, including, but not limited to, amounts owing for stamps and meter register settings purchased.

## COMPLIANCE POLICY AND PROCEDURES MANUAL

### SECURITY REQUIREMENTS FOR DEFERRED PAYMENTS OF CIGARETTE TAX STAMPS

(CONT.) 405.085

Weekly Deferred Payments with No Additional Security - Pursuant to Revenue and Taxation Code section 30142 (d), a licensed cigarette distributor may elect to defer payments for stamps or meter register settings purchases without posting additional security, if the distributor's average monthly purchase of stamps for the previous 12 months does not exceed seventy-two thousand (72,000) stamps or meter register settings, and the distributor meets all of the following requirements:

1. Has been licensed under this part for a minimum of five years;
2. Has not been delinquent in the filing of any reports or returns required under this part for the preceding three consecutive years;
3. Has not been delinquent in the payment of any tax under the Cigarette and Tobacco Products Tax Law, or for any other tax or fee administered or collected by CDTFA, for the preceding three consecutive years;
4. Provides a valid email address to CDTFA and updates as necessary, for the purpose of receiving payment information, including, but not limited to, amounts owing for stamps and meter register settings purchased;
5. Any other criteria CDTFA may require.

The distributor will be required to remit payment for stamps purchased on the deferred-payment basis without additional security on or before Wednesday following the week in which the stamps were purchased.

**TYPES OF SECURITY****410.000****TAXPAYER'S CHOICE OF SECURITY****410.005**

When security is required, the applicant is given a copy of the CDTFA-598, *Notice of Security Requirements*, and allowed to select the type of security they prefer. *Under no circumstances will the taxpayer be referred to a specific bank, saving and loan association, credit union, or bonding agent which may provide the security.*

The CDTFA-598, *Notice of Security Requirements*, is automatically printed by the on-line security system when the requirement is added, and is used to notify the taxpayer that initial security, additional security, or replacement security is required.

Subject to specific conditions, four types of security are acceptable for purposes of fully complying with the security requirements of the CDTFA. These are:

1. Cash Deposits
2. Deposit accounts in banks, savings banks, and savings and loans including Insured Accounts, Fully Paid Investment, Bonus Investment Certificates and Accumulative Investment Certificates
3. State and Federal Credit Union Shares
4. Surety Bonds

There are two “types” of deposits that indicate why the security is taken and under what conditions it is to be refunded.

- 1. Regular** — A continuing deposit which may be any of the acceptable types of security to cover any of the tax programs. This is the normal security deposit posted by the taxpayer to ensure payment of tax liability. After the security has been held for three years and it meets the release criteria, the security will be released. However, if the account is closed out, the deposit is applied to any unpaid liability before it is released to the depositor.
- 2. 3rd Party** — A deposit made by a “third party” such as a finance company, dealer or some person other than the taxpayer to obtain a tax clearance. The deposit is refunded to the person who made the deposit when the tax is determined, and payment made by the taxpayer or when the deposit is made for an offer in compromise and the offer is not accepted. All third-party refunds require supervisor approval. If collection cannot be made from the taxpayer, the deposit will be applied to amounts due to the date of deposit. For instructions on application of Third-Party Deposits see CPPM 410.080.

**CASH DEPOSITS — TAXPAYER’S CHOICE****410.010**

Cash deposits may be made by personal check, money order, cashier’s check, ACH debit, ACH credit, or credit card and may be accepted in installments. When the taxpayer is unable to pay the full amount, they have the option to warehouse payments through Online Services. Team members will monitor these payments to ensure the requirement is met. A security requirement which cannot be completed in twelve months will be reviewed after the 12th month.

Cash is not considered available for application until the date of closeout, or until security is no longer required. If a cash deposit is to be released while the account is still active and is to be applied entirely or partially to any liability, the security is considered available as of the date CDTFA determines it is no longer needed. Cash deposits do not earn interest as these funds are held by the Office of the State Treasurer, which lacks the statutory authority to pay interest on deposits. Therefore, taxpayers should be encouraged to post security in interest bearing accounts such as time certificate of deposits. A cash deposit posted by personal check cannot be refunded until sufficient time has elapsed to allow for clearance of the check by the bank.

**DEPOSIT ACCOUNTS****410.015**

To be accepted as security, deposit accounts in banks, savings banks, and savings and loans that are submitted as security must:

1. Be issued by a bank insured by the Federal Deposit Insurance Corporation.
2. Have the California Department of Tax and Fee Administration as the account holder (for example: California Department of Tax and Fee Administration, for the benefit of (F.B.O.) depositor’s name).
3. Must be automatically renewable at the date of maturity and may include a right of cancellation clause.
4. Have any interest earned paid to the depositor, not to CDTFA.

In most cases, deposit accounts are accepted only from financial institutions located in California. Taxpayers should not be required to post a time certificate of deposit in an amount less than \$2,000, except for installments in amounts less than \$2,000 (the Cigarette and Tobacco Products Law requires minimum security of \$1,000).

An exception to the “in-state branch” rule exists for security deposits posted for out-of-state Wine Grower/Direct Wine Shipper accounts. Business and Professions Code (BPC) section 23661.2 provides that an individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters per case) per month to any adult resident in this state. The out-of-state wine grower/direct shipper must apply with CDTFA and obtain a seller’s permit. Under the Sales and Use Tax Law, such a seller may be required to post a security deposit. It is permissible to accept a security deposit from an out-of-state bank to avoid the unnecessary complication of having out-of-state wine grower/direct shippers open a bank account with a California financial institution for the sole purpose of posting a security deposit. Although not issued by CDTFA, the out-of-state wine grower/direct shipper must also obtain a Type 82 license and post a \$500 security deposit with the Department of Alcoholic Beverage Control.

The original evidence of deposit, such as the certificate or deposit receipt (when a certificate is not issued) must be submitted to CDTFA. The name of the depositor on the deposit account should agree with the taxpayer(s) on the application (not the firm name or DBA). An exception may be made in rare instances, such as married co-ownership situations or partnerships. Original evidence of deposit should not be accepted when the sole depositor is not listed as an owner, partner, or spouse of the owner. However, it may also include DBA’s or names of others having an interest in the security as a protection of their interests.

**Financial Institution Acknowledgement**

The CDTFA will request authorized representatives of savings institutions to complete the acknowledgement portion of the second page of the CDTFA-598, *Notice of Security Requirements*. The signed acknowledgement portion shows that the savings institution understands its liability for funds transferred or released without a CDTFA release endorsement. The signed acknowledgement is to be kept with the original evidence of deposit in office.

**Waiver of Early Withdrawal Penalty**

CDTFA will request authorized representatives of savings institutions to agree to waive the early withdrawal penalty agreement and complete the agreement portion of the second page of the CDTFA- 598, *Notice of Security Requirements*.

**SURETY BONDS****410.025**

These are bonds executed by the taxpayer as principal and issued by a surety corporation that is authorized to conduct business in this state. Surety bonds have an effective starting date, and the surety has no liability for amounts incurred prior to that date. A surety can be held liable only for that amount which is measured by transactions occurring during the period the bond was in effect.

Surety bond forms *must* be signed by an attorney-in-fact or by a representative of the bonding company.

**Taxpayer Named on Surety Bond**

Surety bonds *must* be written indicating the name of the principal substantially as shown on the permit or license.

In this regard, for an individual or partnership account, the first name, an initial or initials are acceptable, provided the surname or surnames are correct. All names, in the case of partnerships, must be shown.

For a limited partnership, the names of the general partners and the name of the limited partnership will be shown.

**Surety Bond Verification**

Upon receipt of the bond, team members must verify the bond contains the following information:

1. The correct taxpayer's name.
2. The physical address of the business must be listed. Addresses listing a PO Box will not be accepted.
3. The penal sum is the same as the amount requested by CDTFA.
4. The date the bond became effective.
5. An original signature of the attorney-in-fact or a representative of the bonding company.

**Surety Bond Termination and Principal Sum Reduction Riders**

Surety terminations are directed to CDTFA by surety companies in writing and they must be signed by the attorney-in-fact. Properly executed termination notices become effective thirty (30) days after receipt by CDTFA. The penal sum of any bond, which is the maximum amount specified in the bond for which a surety can be held liable, can be changed only by a rider executed by the surety. A rider decreasing the principal sum of the bond becomes effective thirty (30) days after its receipt by CDTFA.

**Successor's Liability**

Unlike other types of security, a surety can never be held liable for an amount of sales or use tax due from its principal under successor's liability.

**Surety Bond Exoneration**

Requests from surety or taxpayers for the exoneration of a bond may involve a cooperative effort on the part of the office of control and the Collections Support Bureau (CSB).

Surety bond exoneration requests, which accompany payments from surety companies resulting from a demand on a surety bond, will be processed by CSB. CSB has responsibility for notification to the surety, demands on bonds, and other activity with respect to collection from surety.

Surety bond exoneration requests received in Headquarters for sales and use tax accounts will be sent to the office of control. The office of control may also receive requests directly from surety companies. Team members must confirm that there are no accounts receivables or delinquent periods, and no current or future audit activity is planned for the period in which the bond is in effect. The office of control will enter exoneration information into the security deposit case. If the exoneration is approved by the office of control, the CDTFA-1152, *Exoneration of Bond*, will be mailed to the surety company. If the exoneration is denied, a CDTFA-322, *Denial of Bond Exoneration*, will be mailed to the surety company. A note should be entered in the system for either action.

The Compliance Branch will process the exonerating requests for special taxes and fees accounts. Once a bond is exonerated, it is no longer available for demand.

**SURETY BOND TRANSFERS****410.026**

Occasionally, riders or endorsements are received from sureties that would transfer a bond from one entity to another. This usually occurs when a partner is being added or dropped.

Such riders or endorsements transferring the bond from one entity to another are not acceptable if the predecessor is delinquent in reporting or paying or there is the potential for an audit-generated liability. The bond is issued for a specific penal sum and should demand be made for predecessor's liability the penal sum available for security under the successor's amount is reduced by the amount demanded on account of the predecessor.

When the office of control elects to accept a rider or endorsement transferring a bond from one account to another, it will provide a statement to the effect that the predecessor's account is clear, and no audit-generated liability will be incurred. The statement will be signed by the Compliance Principal.

**SAVINGS AND LOAN INSURED ACCOUNTS****410.030**

There are various types of savings and loan insured accounts that CDTFA will accept as security. The three types of insured accounts most widely accepted are the fully paid investment certificate, accumulative investment certificate, and the bonus certificate. Fully paid investment certificates are issued for \$100 only or multiples thereof. The savings and loan institution must pay any interest accrued from funds on deposit directly to the depositor.

Accumulative investment certificates are issued for any amount and are not restricted to multiples of \$100. The interest that accrues on these deposits is credited to the account and is paid to the depositor upon request as a withdrawal. If the amount of the insured account is to be increased, the taxpayer will furnish CDTFA with a deposit receipt in the amount of the increase and a new assignment form in the new total amount of the account. The deposit receipt will be held until such time as the insured account has been cashed or reassigned to the taxpayer.

If nothing is owing when an insured account is to be released, CDTFA's interest in the funds on deposit is assigned back to the taxpayer. If, however, there is a liability owing, the evidence of the account (certificate, or deposit receipt) must then be sent to the savings and loan institution to be cashed. The savings and loan institution will then forward a check payable to CDTFA for the proper amount.

**ASSIGNMENT OF CERTIFICATE****410.032**

The assignment of the CDTFA-597, *Assignment of Banking Institution Certificate* is furnished by the Savings and Loan Association, not by offices of CDTFA. An applicant who elects to purchase an investment certificate is instructed to contact an insured savings and loan association of their choice, where they will purchase the certificate and complete an assignment form. The certificate and the original assignment form along with two copies are delivered to a CDTFA office. The third copy is retained by the association so immediate effect can be given to the assignment. An authorized CDTFA representative accepts the certificate and assignment and signs the section titled "Receipt for Certificate and Direction to Pay". The original copy of the assignment is filed in the office's security file. The first copy is returned to the issuing association and the second copy given to the applicant.

**ASSIGNMENT OF STATE AND FEDERAL CREDIT UNION SHARES** **410.035**

State and federal credit union shares may be accepted as security for the various tax programs administered by CDTFA. The deposits are insured by the National Credit Union Administration (NCUA), an agency of the U.S. government. Credit union deposits that are not insured by the NCUA may otherwise be insured by American Share Insurance.

The California Credit Union League will provide an assignment form to their members. They are also providing instructions to their members on this procedure.

The applicant should be instructed to contact the credit union of their choice to initiate the assignment of the credit union shares to CDTFA. The completed assignment form and two copies are then delivered to the CDTFA office. If possible, some additional evidence of the account should accompany the assignment. However, the completed assignment form will be sufficient documentation to approve and to process the security. The third copy of the assignment form is retained by the credit union. The same procedures are then followed as with the assignment of savings and loan certificates.

If nothing is owed when the account is to be released, then CDTFA's interest in the funds will be assigned back to the taxpayer. If there is a liability, evidence of the account or a copy of the assignment will be sent to the credit union. The credit union will then forward a check payable to CDTFA for the amount requested.

## **THRIFT AND LOAN ASSOCIATIONS**

**410.037**

Thrift and loan associations are chartered by the Office of Thrift Supervision and are federally insured. However, these institutions do not meet all requirements of CDTFA and merger-tracking information is not published or readily available. Therefore, security deposits issued by thrift and loan associations are not acceptable to CDTFA.

## **SALES AND USE TAX SPECIAL SECURITY**

**410.080**

Under RTC sections 6811 and 6813, security may be deposited to obtain a CDTFA- 471, *Certificate of Payment*. This form, commonly known as a “clearance,” relieves a successor of any potential tax liabilities incurred by a predecessor. The certificate may be issued after all amounts due, including amounts not yet ascertained, are secured to the satisfaction of CDTFA. This security is not subject to the limitations contained in RTC section 6701. However, the selling/purchase price of the business or stock of goods is the maximum amount of security that can be requested.

The sale of a business or stock of goods is required for security deposits to be taken under RTC sections 6811 and 6813. The security for this section should be limited to cash type deposits, including Third Party deposits.

Discretion and good judgment should be used when determining the amount of security required. Existing liabilities, delinquencies, audit and payment history, and person making the deposit (seller, buyer, and third party) are some of the things that should be considered.

The security should only be held for a measure of time reasonably needed to establish the amount due. It should then be applied. The difference, if any, should be immediately refunded to the person making the deposit. All refunds issued to a third-party will require supervisor approval.

When applied, the security will be considered available as of the date deposited.

## SECURITY

### **SECURITY FORMS**

**415.000**

### **LIST OF FORMS USED**

**415.010**

The forms listed below establish, transfer, change or terminate a security account record:

- CDTFA-598, *Notice of Security Requirements*
- CDTFA-454, *Assignment of Cash Security Deposit* (e.g., from predecessor to successor)
- CDTFA-5005, *-Cashiering Receipt/Voucher*
- CDTFA-487-S, *Surety Bond Receipt Advice*
- CDTFA-1234, *Letter Requesting Conversion of Time and Savings & Loan Certificates to Cash*
- CDTFA-168-L, *Return of Liquid Security*

**MISCELLANEOUS SECURITY INFORMATION 420.000****SECURITY FORMS BY TYPE OF DEPOSIT 420.005**

The appropriate form is printed from the system when security is received from the taxpayer and posted to the system.

**RECEIPT OF SECURITY 420.010**

Security deposits received as surety bonds, and liquid security deposits are recorded on the security deposit case. Cash security deposits are posted to a separate Security Account in the system. Each item of security must be posted separately.

**MULTIPLE SECURITY 420.015**

Two or more sales and use tax accounts, related to each other by an identical Customer/Taxpayer ID (TIN), are covered by the same item of security (e.g., John Doe has two separate sole ownership accounts. The cumulative maximum security is \$50,000. However, if John Doe is also in a partnership, the partnership could also be required to post up to \$50,000 on this account).

**SEPARATION OF DUTIES IN DISPOSITION OF CASH DEPOSITS 420.020**

Care must be taken to ensure proper separation of duties upon disposition of cash deposits. The State Administrative Manual (SAM) contains detailed information regarding separation of duties in all activities connected to funds processing. SAM section 8080 specifically provides that no one person may authorize disbursements and also sign checks.

Releases of all security deposits are performed using the security deposit case in the system. Since the approval in the security deposit case constitutes authority to disburse the deposit, cashiering personnel and the person who approved the refund may not prepare or sign the checks.

No one person in the office should be authorized to perform more than one of the following functions in the preparation and processing of refund checks:

1. Receive and/or deposit remittances.
2. Authorize release of security.
3. Prepare refund checks.
4. Sign refund checks.

For items 2 and 3 above, the person authorizing release of security or preparing the checks should not be the same person who mails the checks.

For item 4 above, a copy of both a manual and facsimile signature, if a facsimile signature is to be used to sign checks, will be retained on file in the Accounting Section when adding and/or deleting a person from the Authorized Signatures File.

A similar separation of duties applies to savings and loan certificates and time certificates of deposit.

## SECURITY

### **CANCELLATIONS OF SURETY BONDS**

**420.045**

A notice of cancellation from the surety company will be handled by the office of control for sales and use tax accounts, Compliance Branch for special taxes and fees accounts, and MCO for their tax programs. Upon receipt of the notice, a copy is made. Both are dated to show the effective date of cancellation. The original is uploaded to the security deposit case and filed with the original bond documents, and the copy is sent to the surety company as an acknowledgment of the cancellation. The cancellation becomes effective thirty (30) days after its receipt by CDTFA. If security is required of the taxpayer, the office of control, Compliance Branch or MCO has the responsibility to request replacement security from the taxpayer.

### **CORRECTION OF SECURITY RECORDS**

**420.050**

Procedures to correct security records established in error vary according to the type of security. Correcting security will be handled through maintenance functions of the security deposit case. Time certificates of deposit and savings and loan certificates must be released, and new security obtained in correct form. Surety bonds will be corrected by obtaining a rider to the surety bond indicating the correct information. (See CPPM 425.040.)

**ASSIGNMENT OF SECURITY DEPOSIT****421.000****GENERAL****421.005**

Of the different types of security acceptable to ensure compliance with the laws administered by CDTFA, only cash may be transferred by assignment between taxpayers. TCD's and fully paid investment certificates are issued to a specific entity and are not transferable.

Surety bonds are also issued to a specific entity, but may be transferred by a rider, in which case a new CDTFA-487-S, Surety Bond Receipt Advice, is prepared. The acceptance of such a rider is not normally considered good practice since the penal sum of the bond remains at its original amount. That is, if the bond were originally \$2,000 under Account A and later transferred by rider to Account B, and a liability was developed under both accounts in excess of \$2,000 each, the surety company would be liable for only \$2,000. Instead, team members should request a new surety bond for Account B.

**PURPOSE OF ASSIGNMENTS****421.010**

The procedures outlined in this section provide for assignments of cash deposits posted as security under the sales and use tax laws and special taxes and fees laws where there has been a change of ownership under all the following conditions:

1. The taxpayer has transferred or is in the process of transferring the business to the purchaser.
2. All of the original security deposit is to remain as security for payment of tax by the purchaser of the business.
3. CDTFA-454, Assignment of Cash Security Deposit, assigning the deposit to the purchaser has been executed.
4. Final audit has been determined and verified and all taxes paid.

**CONDITIONS UNDER WHICH THIS PROCEDURE SHOULD NOT BE USED****421.015**

Regular procedures established for a refund of deposits should be used when a portion of the deposit will be returned to the original depositor and the remainder transferred to the purchaser's account. The original depositor shall initiate the transfer by endorsing the refund warrant to CDTFA.

**ASSIGNMENT OF SECURITY****421.020**

The assignment of the seller's interest in a cash deposit to the purchaser of the business must be achieved by completion of a CDTFA-454, *Assignment of Cash Security Deposit*. In no case should the form be prepared unless all tax has been determined and paid by the outgoing individual or partnership. The form is to be distributed as follows:

- Original – uploaded to the system and retained in office.
- Copy – to seller.
- Copy – to buyer.

## SECURITY

### **PREPARATION OF THE CDTFA-454, ASSIGNMENT OF CASH SECURITY DEPOSIT** **421.025**

If the deposit being transferred was originally posted under more than one account number, a separate assignment form should be prepared for each deposit.

Ordinarily, when the transferor account is a partnership, all partners should be available for signing the assignor portion of the form. In all cases, care should be exercised to obtain signatures of both the assignor(s) and assignee(s) or their authorized representatives, on all copies of the forms. This may be done using carbon paper, rather than having all copies signed individually.

When the assignor account is a partnership and all partners are not available to sign the form, the available partner(s) may sign the form, provided there is no doubt in the CDTFA representative's mind that the remaining partner(s) have full authority to dispose of the security deposit. When doubt does exist, full particulars should be sent to the Headquarters Legal Division requesting a decision on the legality of the remaining partner to sign on behalf of the partnership.

### **SECURITY DEPOSIT RECORD** **421.030**

A complete set of security deposit record forms will be prepared for the assignee. The note "CDTFA-454 obtained" should be added in the system when the security item is released from the seller's account and another note added to the buyer's account. In the event an assignee has also deposited additional security, a separate security deposit case is added in the system for the additional security.

### **DEPOSIT MADE IN INSTALLMENTS** **421.035**

If the transferor's original deposit was made in installments, one assignment form, CDTFA-454, *Assignment of Cash Security Deposit* may be prepared for the total deposit transferred. Each deposit will be released and transferred separately in the system.

**SECURITY DOCUMENTS**

**425.000**

**SURETY BONDS AND RIDERS**

**425.040**

Surety bonds or riders will be uploaded to the security deposit case and the CDTFA-487-S, Surety Bond Receipt Advice will be sent to the taxpayer.

If the original bond is in error and needs a rider for correction, the effective date of the rider must be the same as the original effective date. All riders with corrections to the CDTFA account number, effective date or dollar amount will be handled by the office of control for sales and use tax accounts, Compliance Branch for special tax and fee accounts and MCO will handle their tax programs.

Riders to existing bonds where there is a change of entity should not be accepted unless the office of control, Compliance Branch or MCO has determined there is no existing or potential future liability on the closed-out account.

## SECURITY

### **DECREASES IN SECURITY OR PARTIAL REFUNDS 430.000**

#### **GENERAL 430.010**

Occasions may arise when investigation of an account reveals security is in excess of that required or a taxpayer requests that the security deposit amount be re-evaluated. If the security deposit amount is more than required to properly secure the state's interest, the security is to be refunded to the depositor. However, if the account has a contingent liability, the security deposit should be applied to the contingent liability and any remaining balance will be refunded to the taxpayer.

#### **DECREASE OF CASH DEPOSIT AMOUNT 430.020**

If a portion of a cash deposit is refunded and the balance retained, the information on the security deposit case in the system can be updated to reflect the re-evaluated amount.

#### **DECREASE OF CERTIFICATE 430.030**

Reduction in the amount of time certificates and fully paid investment certificates is an expensive procedure and is not encouraged. However, should it become necessary, it can be accomplished by cashing the certificate, posting the proceeds in the system and releasing the entire amount by issuing two checks for the amount received, one for the purchase of the new security and the other to refund the balance to the taxpayer. A preferred procedure is for the taxpayer to deliver a certificate for the reduced amount to CDTFA. The former certificate is then immediately released to the taxpayer.

#### **DECREASE OF SURETY BOND 430.040**

A surety bond is not refunded, but merely reduced. The surety company must send the office of control a "rider" to decrease the amount of the bond. The office of control will "date stamp" each rider showing the date it was received. Decrease riders are approved by the office of control, uploaded to the security deposit case, and retained in the office. The office of control updates the active surety bond record on the security deposit case for the decreased amount. A new CDTFA-487-S, *Surety Bond Receipt Advice* will be produced by the system showing the new amount of the bond.

The Compliance Branch will process the riders decreasing the amount of the bond for special taxes and fees accounts and MCO will handle their tax programs.

**REFUND OF CASH DEPOSITS****435.000****REFUND OF CASH DEPOSITS – PROCEDURAL POLICIES****435.010**

Checks payable to depositors exceeding \$15,000 must be signed and countersigned by two authorized persons (see BEAM 2517).

The office of control will make refunds for so-called legal cases, such as bankruptcies, assignments and probates. Care must be taken that the check is delivered to the proper person, other than the depositor, who is authorized by the court to receive it.

**RETURNED CASH DEPOSIT REFUND PROCEDURES****435.011**

A taxpayer's address change may be discovered when the post office returns a cash deposit refund check to CDTFA as undeliverable mail. When the cash deposit refund check is \$50.00 or more, a prompt attempt to locate the taxpayer should be made. If the refund check is less than \$50.00, it should be forwarded to the Accounting Section. The responsibility to determine a current address rests solely with the office of control.

If the tax or fee payer is located, verify the tax or fee payer's identity by social security number or driver's license number before mailing the refund check to the taxpayer's new address and update the address in the system. If the depositor is not located within sixty (60) days, a memorandum summarizing all skip tracing actions along with the original check will be forwarded to the Accounting Section. A copy of the refund check and any skip tracing documents will be retained in the office of control for three years.

The Accounting Section will transfer the funds to the unclaimed trust fund. The funds will stay in the unclaimed trust fund for a period of two years. If the taxpayer/depositor does not claim these funds within that time, the funds are escheated to the state's General Fund.

The office of control for the account must maintain a permanent log identifying all returned cash deposit refund checks. The log is to be maintained by someone other than the refund clerk and include date, new mailing address and the disposition of each check. A supervisor is to review all cash deposit refund checks prior to their re-mailing and periodically review the logbook.

**UNCASHED CASH DEPOSIT REFUND PROCEDURES****435.012**

Each quarter, the Chief Accounting Officer is responsible for preparing and sending a memo regarding uncashed checks to the Administrator of the office of control. The memo is mailed along with two copies of every uncashed check that is \$50.00 or more and older than six (6) months from the issue date. The mailing occurs even if there are no un-cashed refunds checks older than six months for that quarter. The office of control is responsible for contacting the Accounting Section if a memo is not received.

Upon receipt of the memo, team members in the office of control will review the account information and, if necessary, will attempt to locate a current address before the CDTFA-1137, *Refund Check Letter to Taxpayer* and STD-805-A, *State Agency Trust Check Replacement Application (Executed Within the State of California)* or STD-805-B, *State Agency Trust Check Replacement Application (Executed Outside the State of California)* are mailed. The office of control will follow up on the mailing within thirty (30) days if a reply to the mailing of these documents is not received.

The office of control will send a report showing the skip tracing actions taken to locate the tax or fee payer on each listed account to the Accounting Section no later than sixty (60) days after receipt of the memo.

**Request for In-Lieu Checks and Stop Payments**

Generally, a request for an in-lieu check originates when the taxpayer informs CDTFA of the loss, destruction, or mutilation of the original refund check and requests a replacement check. The office of control provides the taxpayer with STD-805-A, *State Agency Trust Check Replacement Application (Executed Within the State of California)* or STD-805-B, *State Agency Trust Check Replacement Application (Executed Outside the State of California)*. The office of control sends an explanatory letter and the completed STD-805-A, *State Agency Trust Check Replacement Application (Executed Within the State of California)* or STD-805-B, *State Agency Trust Check Replacement Application (Executed Outside the State of California)* to the Accounting Section to request the stop payment of the original check and the issuance of an in-lieu check.

The Accounting Section is responsible for issuing all stop payments. If a taxpayer's refund check is lost or destroyed within one year of the date of issue, a stop payment is required. When an in-lieu check is required, the Accounting Section will issue the check. The check will be issued after a thirty (30) day waiting period from the time the stop payment was placed by the State Treasurer's Office.

**PREPARATION OF CASH DEPOSIT REFUND CHECKS****435.015**

Refund checks will bear the account number as shown in CDTFA's records and the words "security refund" in the upper left-hand corner. If the check is being sent to an escrow, the escrow number should also be typed in the upper left corner just under the words, "Security Refund." Otherwise, no other entries should be made in this section. Below the section "Pay to the Order of," will appear the name of the taxpayer and his/her last address, as it appears in the system. In the case of an individual, the first name, middle initial (if any) and last name are sufficient to properly identify the taxpayer. The majority of partnerships are comprised of only two parties and there should be sufficient room on the check to include both first names and middle initials of the principals. When a situation is encountered where the number of partners is such that inclusion of the complete first names of each will result in crowding, initials only are acceptable.

- a. John R. Smith  
2345 First Street  
Sacramento, CA 95818
- b. J.R. Smith, W. Jones, F.A. Gildersleeve and P.T. Eisenhower  
2345 First Street  
Sacramento, CA 95818
- c. The Academy Record Shoppe, Inc.  
2345 First Street  
Sacramento, CA 95818
- d. W.T. Ball Co., Inc. and Rocklin Gravel Corp., a joint venture  
2345 First Street  
Sacramento, CA 95818

If the taxpayer is other than an individual, partnership or corporation, it should be identified on the check as indicated in the foregoing. This requirement will allow the cashing institution (usually the bank where the bank account is maintained) to identify the account more easily.

If the inclusion of a business name on the check is deemed necessary by the office of control, Compliance Branch, or MCO the taxpayer's name should read:

- a. John R. Smith, dba Smith Auto Supply.
- b. John R. Smith and Willie Jones, dba Smith Auto Supply.

**ENDORSEMENT OF CASH DEPOSIT REFUND CHECKS****435.020**

Occasionally, recipients of cash deposit refund checks may have difficulty in cashing them because of a bank's refusal to honor their endorsement. The four circumstances most likely to arise are:

1. The cash deposit refund check is made out in the name of a deceased taxpayer and the surviving spouse appears asking for information regarding the proper procedure to be followed to cash the check. When the inquiry concerns a deceased taxpayer, compliance with State Administrative Manual 8477.32 will adequately protect CDTFA.
2. The cash deposit refund check is made out to individually named partners. One partner appears with the explanation that his/her other partner(s) has disappeared. When the inquiry concerns a missing partner(s), the check may be endorsed as drawn, with the remaining partner's signature as partner entrusted with dissolution under provisions of the Corporations Code §16804.
3. The cash deposit refund check is made out to a corporation. A corporate officer requests that the check be made payable to an individual officer. When the inquiry concerns a corporation, an in-lieu check can be issued to an individual officer if a notarized affidavit signed by each corporate officer is provided.
4. The cash deposit refund check is made out to a dissolved corporation. A corporate officer requests that the check be made payable to an individual officer. The original check, a copy of the Certificate of Dissolution with the Office of the Secretary of State seal that clearly states the name of individual that will be receiving the payment, and Forms STD-805-A, State Agency Trust Check Replacement Application (Executed Within the State of California) or STD 805-B, *State Agency Trust Check Replacement Application (Executed Outside the State of California)* will be returned to the office of control. The documents are then forwarded to the Accounting Section.

In the few instances where the office of control recommends issuance of an in-lieu check, the original refund check will be sent to the Accounting Section with a request to issue an in-lieu check (see CPPM 435.012). The office of control is not authorized to issue in-lieu checks.

**PROCESSING FORM CDTFA-168-L, RETURN OF LIQUID SECURITY****435.025**

When security deposits are approved for refunding, the Compliance Branch runs a refund summary report in the system. A voucher is added to Fi\$Cal for each approved refund. The Compliance Branch contacts the Accounting Section for approval of the refunds added through Fi\$Cal. The Accounting Section prints the checks and provides them to the Compliance Branch for mailing. The Compliance Branch adds the check number onto the refund and completes the refund disbursement record on the security deposit case. The CDTFA-168-L, *Return of Liquid Security* is generated through the security deposit case and mailed along with the check. The security deposit case is then staged to release.

**CLOSE-OUT AUDITS AND RELEASING SECURITY DEPOSITS****435.035**

A security deposit refund will be completed only after the appropriate audit program has cleared any pending audits (i.e., selected for audit or in process) and the taxpayer's record has been thoroughly checked for any record of unpaid liabilities. However, for accounts that have been selected for audit but the audit has not yet started, the appropriate audit program has sixty (60) days from the date the close out was processed (i.e., close out "create date") to assign the audit and to contact the taxpayer. If the audit is not actively being worked after sixty (60) days, the security deposit must be released.

**Application of Security**

When a security deposit is to be applied to a liability, the following effective dates should be used.

1. Cash — the date of the close out.
2. Liquid — the date of the close out.
3. Surety Bond — the postmark date of the payment.

When applying a security deposit payment to a liability, the voucher type must be changed to reflect either a period or account payment since the security requirement is no longer required. If there is more than one period of liability, refer to CPPM section 620.030 for the order of allocation

**GUIDELINES FOR REDEEMING AND/OR CONVERTING TIME DEPOSIT AND SAVINGS ACCOUNTS HELD AS SECURITY DEPOSITS****435.050****General**

When a bank is sold to or merged with another bank, CDTFA's policy is to contact the surviving bank for a replacement account, new collateral, and a signed Savings Institution Acknowledgement from the second page of the CDTFA-598, *Notice of Security Requirements*.

CDTFA has experienced some difficulties when attempting to redeem a deposit account for cash or change an account's collateral to collateral from the surviving bank. The three most common problems encountered are: (1) the bank cannot find a record of the account, (2) the bank refuses to issue a certificate from the surviving bank or (3) the bank states the account was transferred to the State Controller as required by operation of law or released to a person other than CDTFA. Banks and financial institutions are required to transfer funds to the State Controller in cases where the depositor cannot be found.

## SECURITY

### GUIDELINES FOR REDEEMING AND/OR CONVERTING TIME DEPOSIT AND SAVINGS ACCOUNTS HELD AS SECURITY DEPOSITS

(CONT. 1) 435.050

#### Procedures

1. If the time deposit needs to be converted, the account should be reviewed for release eligibility. If it meets the release criteria, the security should be released. When time deposits are to be redeemed or converted, the collateral should be sent via first class mail. A photocopy of the collateral and appropriate letters will be sent to the financial institutions. The original certificate will be provided on request. If the certificate cannot be located, a letter explaining the situation will be sent to the banks. Copies of the documents sent to the bank should be kept in a secure place. Team members will continue to work closely with financial institutions until payment is received. When the replacement has been received, the “old” certificate is ended and the new one is posted. Both certificates must be retained.
2. When time deposits are to be redeemed, and there may be excess funds due to the taxpayer, a CDTFA-1234, *Letter Requesting Conversion of Time and Savings & Loan Certificates to Cash*, should accompany the original evidence of deposit sent to the savings institution. Instructions for disbursement of excess funds must be included on the form.
3. All contacts with the bank should initially be in writing or followed-up with a letter. If financial institutions still refuse to redeem the certificate, team members should visit the bank and redeem the certificate. All contacts should exhibit a firm, professional tone. Do not hesitate to speak to the branch manager to resolve any difficulties.
4. When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, send the collateral with release endorsement to the bank. The cover letter should inform the bank that CDTFA has released its interest in the funds to the depositor/taxpayer and, if the funds are transferred by operation of law to the State Controller, CDTFA should not appear as the account holder or other interest holder on the account.

**Circumstances****1. The Bank States It Has No Record of the Account**

**Active Permits and Licenses** — When converting an old deposit account to a new account from a surviving bank, and the bank has no record of the account, explain to the bank that CDTFA is the account holder and is presenting the original collateral for conversion and the request should be honored. If the bank continues to refuse to convert the old account to a new account or redeem for cash, return the collateral to the taxpayer with a completed CDTFA-35, *Security Deposit Old Bank to New Bank*. Include the CDTFA-598, *Notice of Security Requirements* for the required replacement amount.

**Closed-Out Permits and Licenses** — When redeeming a deposit account for cash, explain to the bank that CDTFA is the account holder and is presenting the original collateral for redemption and the request should be honored. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to the Collections Support Bureau for an Attorney General referral.

**2. The Surviving Bank Refuses to Issue a New Certificate for an Old Account**

If the surviving bank retains the account numbers of the former bank but does not issue certificates, a letter from the bank that certifies those circumstances is required. In-lieu of a replacement certificate, the letter will also include that the surviving bank will honor the former institution's certificate when presented for redemption is acceptable — with the required wording.. When attempting to convert a deposit account and/or replace the collateral from a surviving bank, explain CDTFA's policy to the bank. If the bank will not conform to our request, ask to withdraw all the funds without an early withdrawal penalty.

- If the penalty is not waived and the maturity date is within ninety (90) days, hold the certificate until that date. At that time, contact the bank to close the account. Complete and send the CDTFA-36, *Security Deposit Old Bank to New Bank Refusal* to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account.
- If the early withdrawal penalty is waived, redeem the collateral for cash and post the amount as a cash deposit. Notify the taxpayer of the actions taken with a CDTFA-36, *Security Deposit Old Bank to New Bank Refusal*.
- If the penalty is not waived and the maturity date is not within ninety (90) days, hold the certificate and set a follow-up date. Send the bank a CDTFA-37, *Security Deposit Account Verification*. When the account reaches the maturity date, contact the bank to cash the account. Complete and send a CDTFA-36, *Security Deposit Old Bank to New Bank Refusal* to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account. Send the bank a CDTFA-37, *Security Deposit Account Verification*.

If the bank still refuses to redeem the certificate, a copy of the certificate, CDTFA-35, *Security Deposit Old Bank to New Bank* and the CDTFA-598, *Notice of Security Requirements* will be mailed to the taxpayer. If the replacement is not received after thirty (30) days, it should be pursued in the same manner as any other request for security.

## SECURITY

### 3. The Bank States the Account was Transferred to the State Controller or Released

When converting or redeeming an account, explain to the bank that CDTFA is the account holder and is presenting the original collateral and the request should be honored.

- If the account is determined to have been transferred to the State Controller by operation of law, the bank should pay CDTFA and file a Holder's Claim for Reimbursement with the Bureau of Unclaimed Property of the State Controller's Office, (800) 992-4647, to retrieve the funds. If the financial institution still will not send payment, the account documents should be forwarded to the Compliance Policy Unit, who will then file a claim with the Bureau of Unclaimed Property.
- If the account is determined to have been released to the taxpayer, the bank should be informed that the account holder is CDTFA and without CDTFA's release endorsement, the bank remains liable for the funds.
- If CDTFA cannot collect from the taxpayer, the bank should be requested to make payment. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to Collections Support Bureau for an Attorney General referral.

### 4. Security Released to a Taxpayer by CDTFA

When collateral is released to a taxpayer and the taxpayer has difficulties redeeming the collateral with the bank, the taxpayer will sometimes ask CDTFA for assistance.

- If the bank has told the taxpayer that they cannot find a record of the account, the taxpayer should be advised that CDTFA has released its interest in the account to the taxpayer and the bank should honor the original collateral. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.
- In cases where financial institutions refuse to release the security to the taxpayer, CDTFA will provide a letter stating it has released all interest in the funds to the depositor/ taxpayer.
- If the bank determines that the funds were forfeited to the State Controller when the depositor could not be located, the taxpayer should be directed to the Bureau of Unclaimed Property at the State Controller's Office, (800) 992-4647. The funds may be listed under the California Department of Tax and Fee Administration (or Board of Equalization if security was originally posted under a Board of Equalization account), but the taxpayer's name and social security number may also be shown. If the State Controller locates the funds, the local CDTFA office will provide the taxpayer with documentation needed, such as a release of interest letter, for the taxpayer to present to the State Controller when submitting a claim for the funds. If the State Controller cannot find a record of the funds, the taxpayer should be directed to the bank for settlement. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.

However, when the bank or savings and loan association whose certificate has been posted as security to a business taxes account cannot be located, the office of control should be contacted for the name and address of the institution that has assumed responsibility for payment of the certificate.

**DISPOSITION OF INSURED ACCOUNTS AND LIQUID SECURITY  
WHEN THE TAXPAYER CANNOT BE LOCATED OR THE  
FINANCIAL INSTITUTION FAILS**

**435.055**

CDTFA has an obligation to make every effort to return a taxpayer's deposit after the account is closed out and cleared. Team members should exhaust all available sources of information in an attempt to locate the taxpayer.

When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, send the collateral with the release endorsement to the bank. The cover letter should inform the bank that CDTFA has released its interest in the funds to the depositor/ taxpayer and, if the funds are forfeited to the State Controller at a later date, CDTFA should not appear as the account holder or other interest holder on the account.

Should an institution fail, team members will notify the Compliance Policy Unit in the Tax Policy Bureau by sending a listing of accounts secured by certificates issued by the defunct institution. Instruction will follow on how to proceed to protect both the state and the depositor.

## SECURITY

### **JEOPARDY DETERMINATION SECURITY**

**445.000**

#### **GENERAL**

**445.010**

Any person against whom a jeopardy determination is made who decides to file a petition for re-determination must do so within ten days from the date of the determination. At the same time, the person must also deposit with CDTFA such security as may be deemed necessary. The security must be in any of the forms that would be acceptable as regular security. If a surety bond is offered, it will not be accepted unless the effective date covers the oldest period of the liability, and the surety company has knowledge of the pre-existing liability.

#### **AMOUNT OF SECURITY**

**445.020**

Generally, the amount of security required should be equal to the amount of the jeopardy determination. There may be, however, situations where an amount of security less than the amount of the jeopardy will be acceptable. If acceptance of a petition for re-determination is to be recommended by the office of control when the amount of security accepted is less than the amount of the jeopardy determination, the recommendation should be made by the Administrator or designee. The effective date of the security is the earlier of the date of deposit or receipt by CDTFA.

When accepting security on jeopardy determinations, the taxpayer should be informed that interest will continue to accrue on the tax until the liability is re-determined and the security applied. The advantage of full payment over posting security should always be clearly explained to the taxpayer since full payment may avoid possible interest accruals. In cases where the taxpayer has posted security in the form of a cash deposit, interest will stop accruing upon receipt. Other forms of security will not stop the accrual of interest.

#### **PROCESSING**

**445.030**

Security for jeopardy determinations should be processed in the same manner as regular security deposits. Petitions which are accompanied by security should be forwarded immediately to the Headquarters Petition Section with a transmittal letter with information regarding the amount and form of security posted.

## **CLAIMS UPON SECURITY FROM OUTSIDE CDTFA AND LIEN DEMANDS**

**450.000**

### **GENERAL**

**450.010**

Government Code section 12419.4 provides that the state has a lien for any taxes due the state from any person or entity, upon all personal property belonging to such entity and held by the state or amount owed to such entity by the state. Section 12419.4 does not apply to sales and use tax security deposits (see CPPM 465.030).

Government Code section 12419.4 does not apply to salaries or wages owing to officers or employees of the state. It does not permit one agency to obtain property or money held by another agency, as long as the holding agency has any rights against such properties or monies. Whenever it has been deposited with a state agency for a particular purpose, e.g., the payment of taxes, it shall not be used for any other purpose by the holding agency, until it is no longer needed for the purpose for which it was held or deposited.

A lien created by section 12419.4 of the Government Code is enforced by means of a written demand by the creditor agency on the agency holding the property.

### **LIEN DEMANDS ON OTHER STATE AGENCIES**

**450.020**

The Collections Support Bureau (CSB) is responsible for lien demands on other agencies. CSB prepares the demand letter directed to the other agency and maintains a follow-up to ensure receipt of the funds or property or, if nothing is available, that a reply is received.

The demand letter will include the amount of the delinquent liability owed to CDTFA, plus any additional charges which may accrue, and a statement that the amount due constitutes a lien pursuant to section 12419.4 of the Government Code on property held, or amount owed to the taxpayer by the other agency. The other agency shall be requested to transfer the property held or pay CDTFA the amount owed, up to the stated amount of liability.

When a program area has information indicating that another state agency holds property of a person indebted to CDTFA, or owes an amount to such person, CSB will promptly be furnished with the following information:

1. Name of the agency.
2. Nature of the property or the approximate amount the agency owes to the person.
3. Reason for the other agency's indebtedness, and
4. Approximate date on which the property will be returned, or refund made.

Upon receipt of this information, CSB will enforce the lien by making written demand on the other agency.

### **LIEN DEMANDS ON THE CDTFA — OFFICE OF CONTROL ACTION**

**450.030**

When lien demands are received by a program area, the taxpayer will be notified that a demand has been made under section 12419.4 of the Government Code, and CDTFA proposes to honor the demand subject to any prior claim CDTFA may find in its favor. A copy of this letter will be sent to the agency making the demand and to CSB.

If a taxpayer disputes the amount owed to the other agency, CDTFA will not become involved in the matter. The taxpayer will be advised by letter that the matter should be taken up with the other agency, and that CDTFA, under the Government Code, has no alternative but to honor the demand.

**LIEN DEMANDS ON THE CDTFA— HEADQUARTERS ACTION**

**450.040**

Our system sends Employment Development Department (EDD) and Franchise Tax Board (FTB) our refund files electronically. If EDD desires an offset of any of the items indicated under section 12419.5 of the Government Code, they send their requests for offset electronically and our system applies the intercepts automatically. FTB sends all desired offsets electronically to Audit Determination and Refunds Section (ADRS) who manually process requests.

Lien demands received from other agencies by Headquarters will be sent to CSB for processing.

Upon receipt of a lien demand, either through a field office or directly from another agency, CSB will review the account to determine if a tax overpayment refund is pending. If such a refund is pending, CSB promptly notifies ADRS of the lien demand. ADRS will make arrangements for an offset by the State Controller.

## **PAYMENT OTHER THAN SECURITY TO OTHER STATE AGENCIES**

**455.000**

### **ORDER OF PRIORITY OF LIENS**

**455.040**

All liability owed by the taxpayer for any of the tax laws administered by CDTFA must be cleared before meeting the demands of other state agencies. If a CDTFA liability is cleared, and the remaining refund is not sufficient to meet all demands from other agencies, such demands will be paid in the order received.

A federal claim, Notice of Levy, served on CDTFA will not be recognized against a refund until all liabilities owing to all state agencies, which have asserted liens are cleared. When conflicting demands are made upon refunds, they will generally be honored in the following order:

1. Any amount owed to CDTFA under any of the tax laws that it administers.
2. Liens of other state agencies acquired through the provisions of section 12419.4 of the Government Code.
3. Federal levies.

### **FEDERAL CLAIM, NOTICE OF LEVY**

**455.050**

The Federal Notice of Levy is effective on refunds that may be due to the taxpayer. If refunds, either overpayment or audit refunds, are in process, they will be identified when the copy of the Notice of Levy is sent to CSB. Headquarters will take action to give effect to the levy in these cases.

Levies by the Federal Government can be made by service of their Notice of Levy on field offices of CDTFA. All other services on CDTFA must be made on the Director.

When a Notice of Levy is served by an agent of the Federal Government, or by mail, on a field office, it will be accepted by the Administrator or designee. Service only will be acknowledged. No answer shall be made in writing that CDTFA holds anything at this point that may be subject to the levy. The agent should be advised that as soon as it is determined that nothing is owed to the state and that there are no prior claimants that may have priority, the levy will be honored.

A copy of the notice will be immediately transmitted to CSB. Inquiry should be made to determine if any amounts are owed to the other state agencies. If there is surplus refund money after paying CDTFA's amounts in full and any other amounts due other state agencies, a letter will be sent to the taxpayer advising them of the federal levy. If the taxpayer neither acknowledges nor objects to the levy within a specific time, the levy will be honored by CDTFA. Should an objection be received, full particulars will be sent to CSB.

If it is acknowledged or no objection is received, any surplus money will be paid directly to the Federal Government. A copy of their levy should accompany the payment. If there are no funds available, a copy of the levy will be returned to them with a statement that no funds are available.

### **THIRD PARTY DEPOSITS**

**455.060**

Deposits made by a third party to obtain a use tax clearance must be kept in the name of the party placing the deposit. Such deposits are not subject to lien demands. These deposits are not available to apply to any other liability owed by the taxpayer except for those accounts for which a CDTFA-1274, *Notice of Amounts Due*, and/or CDTFA-471, *Certificate of Payment*, have been issued.

**MISCELLANEOUS****465.000****RECONCILIATION OF ACTIVE LIQUID SECURITY****465.010**

To ensure the accuracy of the information on file, the security document from the security file is compared to the records on the security deposit case when the security for that account is to be applied or refunded.

Verification of the actual documents will be made by a person other than the normal custodian of the documents. Reconciliation may also include:

- Acquiring duplicate certificates from banks that have merged,
- Obtaining missing information or documents (e.g., missing information on the Financial Institution Acknowledgment section of the CDTFA-598, *Notice of Security Requirements*),
- Sending a CDTFA-37, *Security Deposit Account Verification*, if appropriate, and
- Transferring certificates to the appropriate office.

When transferring documents to the correct office, a copy will be kept by the transferring office for two years and notes will be added in the system, on the Customer springboard, that include the date the security documents were sent to the receiving office.

If reasonable efforts to obtain missing documents are unsuccessful, team members should pursue replacement security.

**FRAUDULENT ENDORSEMENT OF CDTFA CHECK****465.020**

When a payee reports that a check has not been received, a memorandum should be forwarded to the Headquarters Accounting Section providing the payee's name, current address, account number, check number, date, and amount of check.

In those cases where the intended payee reports to CDTFA that a check has not been received, and the check is found to have been paid by the State Treasurer, CDTFA's Accounting Section prepares the documentation necessary before issuing the replacement check.

**OFFSETS FOR OTHER ACCOUNTS OR STATE AGENCIES****465.030**

RTC section 6701 provides that any security in the form of cash or insured savings accounts shall be held by CDTFA in trust to be used solely in the manner provided by RTC sections 6701 and 6815. Most security provisions for special taxes and fees programs contain similar language. Therefore, cash and savings account security deposits for sales and use tax accounts may not be applied to other tax programs administered by CDTFA or offset or released to other state agencies claiming a lien pursuant to Government Code section 12419.4.

**GUIDELINES FOR RELEASING SECURITY DEPOSITS TO FINANCIAL INSTITUTIONS****465.040**

When funds are forfeited to the State Controller's Office and CDTFA has been unable to locate the taxpayer, the following procedures should be implemented.

When time deposits or any other security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, the bank in possession of the security should be notified. The release endorsement along with a cover letter CDTFA-435-4, *Letter to Bank -Security Not Required/ Cannot Locate TP* must be sent to the bank of record informing them that CDTFA has released its interest in the funds to the depositor. This letter also informs the bank that if funds are forfeited to the State Controller's Office at a later date, CDTFA should not appear as the account holder, or other interest holder on the account.

If the bank contacts CDTFA after receipt of the CDTFA-435-4, *Letter to Bank -Security Not Required/ Cannot Locate TP* letter, an explanation should be provided to the bank representative that CDTFA has been unable to locate the depositor. The CDTFA representative should explain that security is no longer required and CDTFA releases its interest in the funds to the depositor. It should also be emphasized to the bank that CDTFA should not appear as the account holder or other interest holder on the account as stated in the CDTFA-435-4, *Letter to Bank -Security Not Required/ Cannot Locate TP*.

**LIQUIDATION OF A SURETY COMPANY****465.050**

When CDTFA receives notification that a surety company is being liquidated, either the office of control or the Compliance Branch will provide the Compliance Policy Unit with a list of taxpayers with surety bonds issued by the surety company. The Compliance Policy Unit will provide CSB with copies of the notice of liquidation and the list of affected accounts. The Compliance Policy Unit will distribute the list to the offices of control for the accounts with a request that replacement security be obtained if CDTFA still requires security from the taxpayer.

CSB is responsible for making any necessary demands on bonds or other activity with respect to collection from surety. They will send a memo asking the offices of control for the accounts to provide them with a list of accounts for each account for which a claim against the bond is required. CSB will combine all the requests and file one claim in the liquidation.

**SURETY COMPANY NAME AND OWNERSHIP CHANGES****465.060**

When the name or ownership of a surety company changes, CDTFA policy is to contact the new surety company to request a rider showing the change. The office of control, Compliance Branch, or MCO will be responsible for obtaining a rider showing this change.