Compliance Policy and Procedures Manual

Chapter 7

Collections

Sales and Use Tax Department
California State
Board of Equalization

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 board office if there are concerns regarding any section of this publication.

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COLLECTIONS 700.000

GENERAL STATEMENT ON COLLECTIONS 702.000

IMPORTANCE OF COLLECTION ACTIVITY 702.010

One of the main responsibilities of the Board is to collect all amounts due under the tax and fee programs it administers. To accomplish that task, it is necessary to have an efficient and effective collection program. The primary objective is to maximize the collection of unpaid tax and fee liabilities while minimizing effort, cost, and time.

To reach this objective, staff in the collections program must be thoroughly familiar with the provisions of the laws pertaining to collections under the Board's various tax and fee programs and there must be proper control of collection assignments. This chapter provides collection staff with basic tools to:

1. Interview tax and fee payers,
2. Locate missing taxpayers and assets, and
3. Perform collection actions as necessary.

The Board uses the Automated Compliance Management System (ACMS) to control all collection assignments. In addition to other functions, ACMS prioritizes collection cases into separate work lists starting with the highest probability of successful collection (the ACCES A work list) and descending to the lowest (the ACCES E work list). New collectors learn about the ACMS system through the ACMS Computer Based Training module.

To advise taxpayers of the Board's collection policies, Publication 54, Tax Collection Procedures, is available on the Board's web site at http://www.boe.ca.gov/pdf/pub54.pdf. Although each taxpayer should be given a chance to pay voluntarily (except in situations where delay jeopardizes the chance of collection), prompt and effective collection action should be taken when necessary. When promises are broken, the taxpayer should be contacted promptly and advised that appropriate remedies will be taken unless payment is made immediately. Failure to promptly follow-up with appropriate collection action when a promise is broken sends a message to the taxpayer that payments can be easily delayed or avoided and may encourage some taxpayers to procrastinate when future payments become due.

As used in this manual, "full collection efforts" means and includes the entire range of activities pertaining to collecting from delinquent taxpayers. "Passive collection efforts" include contacting the taxpayer by mail and phone, skip tracing and asset location. "Active collection actions" are actions imposed upon the taxpayer such as levying bank accounts, filing liens, etc. In most cases, it is preferable to begin working a collection case by utilizing passive collection efforts first. Whenever possible, staff must speak to the taxpayer before employing active collection procedures.

COLLECTION ASSIGNMENT CONTROL 702.020

Control of collection assignments is the responsibility of each compliance supervisor, branch office supervisor, and district administrator. However, it is also the responsibility of each collector to ensure that all assignments are given appropriate attention in a timely manner.

SOURCES OF LIABILITY AND WHEN TO PROCEED 703.000

SOURCES OF LIABILITY 703.010

All sales and use tax liabilities are either self-assessed or Board-assessed.

1. SELF-ASSESSED. A self-assessed liability is an amount that the taxpayer declares is owed to the Board. This type of liability occurs when the taxpayer files:
   a. A sales and use tax return without payment ("no remittance" or "NR" return),
   b. Return(s) accompanied by a payment that is subsequently dishonored by the bank or other type of financial institution,
   c. A return without full payment ("partial remittance" or "PR" return), or
   d. A return after the due date with payment for tax but not penalty or interest.
2. BOARD-ASSESSED. A Board-assessed liability is an amount that staff determines is due from the taxpayer. The source of the amount determined to be due may be any of the following:
   a. Audit,
   b. Examination of taxpayer records from which a compliance assessment (CAS) or a field billing order (FBO) is prepared,
   c. Computation errors in a return filed by a taxpayer showing an underpayment of tax due, or
   d. Information received from other sources such as county Assessor's offices, the Department of Motor Vehicles, Federal Aviation Administration, United States Coast Guard, vehicle dealers or Information Use Tax returns disclosing a liability.

WHEN TO PROCEED ON SELF-ASSESSED LIABILITIES 703.020

Full collection efforts may commence immediately for tax liabilities resulting from "no remittance" or "partial remittance" returns, provided the due date for filing the return has passed. As indicated in section 702.010, in most cases it is preferable to locate and contact the taxpayer prior to taking active collection actions. All penalty and interest charges resulting from the late filing of a return or the late payment of amounts shown to be due on a return are also subject to collection effort at the time the return becomes delinquent. The fact that a return was filed after the due date, or was filed but not fully paid, creates a "delinquent – pay immediately" situation and collection action should begin without delay. It is not necessary for Headquarters to issue a demand notice to the taxpayer before initiating collection efforts or actions.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES 703.030

Taxpayers are formally notified of a Board-assessed liability with Form BOE-1210, Notice of Determination. RTC section 6486, and similar statutes for the Board's special taxes programs, state that "the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the Board." If a notice is served personally by delivering it to the person to be served, service is complete at the time of delivery.

All Board-administered tax and fee program determinations, except for determinations made under the Cigarette and Tobacco Products Tax and Jeopardy Determinations, become final 30 days after service of the Notice of Determination upon the taxpayer. Under Cigarette and Tobacco Products Tax Law (RTC section 30174), a determination for failure to pay for cigarette tax stamps becomes final 10 days after service of a Notice of Determination upon the distributor, unless the distributor files a timely petition for redetermination and posts a security deposit within the 10-day period. Jeopardy determinations have the same requirements.

As in the case of self-assessed liabilities, a demand notice does not need to be issued prior to taking collection action. Passive collection efforts may commence before the finality date. Active collection action may be initiated immediately after a determination becomes final and passive efforts have not been successful in resolving the matter. A "finality" penalty, which is an additional penalty of 10 percent of the unpaid tax, is added to the liability if payment is made after the "finality" date stated on the Notice of Determination, unless the taxpayer files a timely petition for redetermination.

For sales and use tax determinations and most special taxes determinations, a person against whom a determination is made, or any person directly interested, may file a petition for redetermination within 30 days after service of a Notice of Determination. (See Publication 17). The filing of a petition must be in writing and state the specific reasons why the taxpayer believes the amount determined to be due is incorrect. Receipt of a timely petition for redetermination begins the appeal process and, as provided by RTC section 6561, prevents the deficiency determination, as provided by RTC sections 6481 or 6511, from becoming final within the initial 30-day period.

When a taxpayer files a timely petition for redetermination, the original Notice of Determination is superseded by a Notice of Redetermination at the conclusion of the Appeal process. Only passive collection efforts should be taken until the Notice of Redetermination becomes final.

The general policy is that no active actions should be taken on determinations not yet final since approximately three-fourths of these determinations are paid before any action becomes necessary. Except as noted in the following paragraphs, active collection action, e.g., mailing levies, filing liens, serving a Notice to Withhold, etc., may not be taken until after the finality date of a determination.

In cases where all of the tax is paid and a claim for refund has been filed, accounts with billed, final amounts are placed in an appeal status and the IRIS DIF DI Stop Demand field is populated by the Audit Determination and Refund Section (ADRS). This action prevents demand billings from being issued and removes the account from ACMS. No action to collect the remaining interest and penalty is to be taken until the account is removed from Stop Demand status. If the claim for refund is denied, the Stop Demand flag will not be removed for at least 180 days pending verification that a suit for refund of tax has not been filed by the taxpayer. If the taxpayer files a suit for refund of tax and the court rules in favor of the Board's counter-claim for the remaining penalty and interest due, the ADRS will record a comment in IRIS and remove the Stop Demand flag.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES (CONT.) 703.030

In the majority of cases, collection efforts before a determination becomes final are restricted to passive activities. However, when a jeopardy determination is issued, the statutes governing the Board's collection program allow active collection action to be taken, on the tax portion only, before the finality date. Therefore, use of active collection action, prior to the finality date of a determination, is limited to cases where immediate action is necessary to protect the interest of the state, i.e., where a determination has been converted to a jeopardy determination or a jeopardy determination has been issued. Note: For jeopardy determinations, if the principal is not paid within ten days of the billing date, the delinquency penalty and interest attach to the tax amount determined after the finality date (ten days) has expired.

A person against whom a jeopardy determination is made may file a petition for redetermination within 10 days if they post adequate security as required by the Board. (See CPPM section 445.000). The person against whom a jeopardy determination is made may request an administrative hearing within 30 days to:

1. Establish that the determination is excessive,
2. Establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person,
3. Request release of all or a part of property to the person, or
4. Request a stay of collection activities.

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INSTALLMENT PAYMENT PROPOSAL GUIDELINES 707.000

SHORT TERM PAYMENT PROPOSAL GUIDELINES 707.010

Short term payment proposals may be considered for active account liabilities where the individual, corporation, limited liability company (LLC) or limited partnership, over the previous three years or since the start date of the business, has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required (with the exception of the current liability). In reviewing past history, an individual's record under related accounts as an individual, partner or corporate officer should be considered. If a taxpayer's payment history is unsatisfactory, an exception may be granted at the discretion of the district. The primary consideration in accepting a short-term payment plan is whether the plan is in the best interests of the state. Staff shall have full discretion in deciding to accept or deny a short-term payment proposal, based on the taxpayers past payment history, the merits of the proposal or the viability of the business. Staff must document justification in ACMS Notes.

Short-term payment plans should generally not exceed twelve months in length. Payment should generally be made on a weekly basis. Exceptions to the twelve-month maximum must be approved by a supervisor and noted on ACMS notes with justification. Current tax returns and prepayments must be filed and paid timely as a condition of the payment plan.

If a short-term payment proposal exceeds two months on an active account, the taxpayer should be required to make weekly or monthly payments against the anticipated return for the upcoming period. This method will ensure that the taxpayer does not incur further debt with the Board and does not accrue further penalties for failure to file or pay a return timely.

A complete financial statement (Form BOE–403–E, *Statement of Financial Condition*), including bank statements (both personal and business), income tax returns, accounts receivable listings (including names, addresses, phones numbers and amounts owed), income and expense (or profit and loss) statements, balance sheets, and cash flow statements may be required. An individual may be required to submit information as listed on Form BOE–58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE–60, *Installment Payment Proposal — Need Corporate Info*. Additional information and verification may be required as deemed necessary by the district. Weekly or monthly payments should not be forestalled while financial information is compiled by the tax debtor.

The tax debtor should be required to utilize any available lines of credit, including credit card cash advances or a bank loan, to pay the liability in part or in full.

Upon acceptance of a short term payment proposal, a Form BOE–407, *Installment Payment Proposal*, should be completed and provided to the tax debtor for a signature, or a Form BOE–905, *Confirmed Payment Schedule*, should be provided to the tax debtor. If a lien has not already been filed for the period/s in question, a conscious decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. Staff must document the decision and basis in ACMS Notes. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb on the Form BOE–407. The tax debtor should be verbally advised during the installment payment proposal negotiation when a lien may be filed despite the installment payment agreement. Even if a tax debtor is likely to complete the payment plan before returning the Form BOE–407, staff should send the BOE–407 to document the payment proposal.

STANDARD EXPENSE LEVELS FOR LONG TERM PAYMENT PLANS 707.020

The following standard expense level guidelines should exclusively be applied to closed accounts and to open accounts that only have an audit liability. Long term payment plans are generally for a period of twelve months or longer. Active, self-declared liability payment proposals are defined as short term payment proposals, and are covered above in section 707.010.

Before accepting any proposal, the financial condition of the tax debtor will be thoroughly investigated. A complete financial statement in an acceptable form will be obtained (Form BOE–403–E, *Statement of Financial Condition*, is available for use). An individual may be required to submit information as listed on a Form BOE–58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE–60, *Installment Payment Proposal — Need Corporate Info*. If a tax debtor has cash equal to the tax liability, immediate payment should be demanded. Otherwise, unencumbered assets, interests in estates and trusts, and lines of credit from which money may be borrowed to make payment should be considered. In addition, a tax debtor's ability to obtain an unsecured loan should be considered. If there are assets with value and a tax debtor is unwilling to raise money from them, enforcement action should be taken. If there appears to be no borrowing ability, the tax debtor should be asked to defer payment of certain other debts if that would make possible paying the liability in full or in larger installments than otherwise possible. We should not request a payment deferral that will cause the tax debtor to lose assets and thereby jeopardize our ability to collect the liability.

The terms of any proposal should provide for payments commensurate with the ability to pay (equal to monthly disposable income). Installment payments should be paid on at least a monthly basis unless there are extenuating circumstances present, that make it advantageous to accept payments on a less frequent basis.

INSTALLMENT PAYMENT AGREEMENTS — TERMINATION 707.021

If a tax debtor defaults on the terms of a documented installment payment agreement, a Form BOE–407–T, Installment Payment Agreement – Notice of Termination must be sent to the taxpayer immediately. Revenue and Taxation Code Section 6832(b) requires that this notice must be given to the tax debtor if staff intends to terminate the installment payment agreement and continue with collection action. Default of the installment payment agreement is grounds for termination, and may include missed or late installment payments, delinquent or partial remittance tax returns, or failure to disclose assets or income on a financial statement. Other reasons for termination could include a failure to increase payment levels as requested based on new assets or income, or a failure to comply with a review of financial status. An additional audit liability may be a reason to review the financial status of a tax debtor.

Upon mailing of the notice of termination, staff must wait 15 calendar days to allow the tax debtor to file a written request for an administrative review before initiating collection action. Once the 15 days has elapsed, collection action is not required to be halted while an administrative review is scheduled or commencing. However, if the tax debtor provides a reasonable explanation why an administrative hearing can not be set within the 15-day period, staff should administratively extend the grace period before commencing with collection action unless there is a compelling urgency for such action to protect the State's interests.

INSTALLMENT PAYMENT AGREEMENT — ADMINISTRATIVE REVIEW OF TERMINATION 707.022

If a tax debtor requests an administrative review, one shall be provided at the tax debtor's earliest convenience at the district or branch office of the tax debtor's choice. Every effort shall be made to accommodate the tax debtor and allow a review prior to the lapse of the 15-day grace period as mentioned in section 707.021 above.

The administrative review shall be informal, and the review officer shall be a Tax Compliance Supervisor at the district or branch office. When possible, the review officer shall not be the immediate supervisor of the employee who handled the account or issued the Installment Payment Agreement – Notice of Termination. The review officer shall give the tax debtor sufficient advance notice of the time scheduled for the administrative review, either verbally or in writing, and document the contact in ACMS notes. Form BOE–407–AR, Administrative Hearing/Review Notice is available on ACMS DocGen for this purpose. The tax debtor shall be advised that the review will be limited to the issue of the default of the installment payment agreement, and that relevant documentation shall be collected for presentation at the review. The review officer shall issue a written decision within 5 calendar days after the administrative review.

ALLOWABLE EXPENSES — LONG TERM PAYMENT PLANS, DEFINITIONS 707.030

1. *Allowable expenses*: There are two types of allowable expenses — necessary and conditional.

   A. *Necessary expenses* must meet the necessary expense test. The necessary expense test is a general rule, that states that the expense must provide for a tax debtor's and his or her family's health, welfare or production of income. In some situations, the Board representative will need to make a judgment call to determine if the expense qualifies as necessary. The expenses must be reasonable in amount. The total necessary expenses establish the minimum a tax debtor and family need to live. There are three types of necessary expenses:

      1) Statewide *standards*. These establish standards for reasonable amounts for six necessary expenses. Standards for food, housekeeping supplies, apparel and services, and personal care products and services have been originally developed by the Internal Revenue Service based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey 1994–95, and adjusted for inflation to the year 1996. The standards have been stratified by income level. As income levels increase, the percentage of income provided for these expenses decreases. The standard level for miscellaneous expenses was developed by the Board.

      2) Local standards. These establish standards for three necessary expenses, housing, utilities and transportation, based on local economic factors.

      3) Other. Other expenses may be allowed if they meet the necessary expense test. They must also be reasonable in amount. Since there are no statewide or locally established standards for determining reasonable amounts, the Board employee responsible for the case must determine whether the expense is necessary and the amount is reasonable. A common example is child/dependent care.

   B. Conditional expenses. These expenses do not meet the necessary expense test. However, they are allowable if the tax liability, including projected interest and penalty accruals, can be paid in full within three years.

2. *Three year rule.* This rule establishes a time limit. For substantiated conditional and excessive necessary expenses to be allowed, the tax liability, including projected interest and penalty accruals, must be fully paid within three years.
3. *One year rule.* This rule establishes a time limit. It provides the tax debtor up to one year to modify or eliminate excessive necessary or not-allowable conditional expenses if the tax liability, including projected interest and penalty accruals, cannot be fully paid within three years. This period can be adjusted from one to twelve months based on the nature of the expense.
4. *Ninety day rule.* Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days. Minimum payments may be allowed on credit cards to preserve a tax debtor's credit rating.
5. *Reasonable amount.* For certain specified expenses, the reasonable amounts are provided by the Statewide Standards and the Local Standards. If the expense falls under Other Necessary or Conditional Expenses, the Board employee responsible for the case will determine what amount is reasonable from any information available (e.g., comparable costs for child/dependent care for the region). If the tax liability, including projected interest and penalty accruals, can be fully paid within three years, the Board will allow a tax debtor's claimed expenses if the expenses fall within the statewide standard limits, or if the tax debtor substantiates each expense.
6. *Disposable income.* This is the amount of income that remains after allowable expenses are deducted from gross income, including deductions required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited to, Federal and State taxes, FICA contributions, Medicare contributions, and wage garnishment payments. Disposable income is the amount available to apply to the tax liability.

GUIDELINES FOR ACCEPTANCE OF LONG TERM PAYMENT PLANS 707.040

The following procedures are provided as general guidelines. As always, Board representatives should use professional judgment and tact in dealing with tax debtors on payment proposals.

Necessary expenses, if reasonable in amount, should generally be allowed. If the necessary expense is in excess of the established standards, it may be allowed if the tax liability, including projected interest and penalty accruals, can be paid within three years (Three-year rule). If the liability can not be paid within three years, the tax debtor should be given up to one year to adjust for the non-allowable amount. After this adjustment period, the tax debtor should be required to increase the installment payment by the difference (One-year rule). A list of typical necessary expenses can be found in Section 707.060. Necessary expense charts are to be used as maximum guidelines. *If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.*

Conditional expenses are allowable if a tax liability can be fully paid within three years through an installment agreement. If the liability can not be paid within three years, the one-year rule should be applied, and the tax debtor should be told to make the necessary adjustment. A list of typical conditional expenses can be found in Section 707.070. Conditional expense charts are to be used as maximum guidelines. *If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.*

Allowable expense guidelines should only be applied to closed accounts and for open accounts, that only have an audit liability. In the case of an audit liability, the tax debtor should be questioned on whether the accounting practices of the business have been corrected to prevent future audit liabilities of a similar nature. This is particularly true of payment proposals on audits with fraud or negligence penalties.

GUIDELINES FOR ACCEPTANCE OF LONG TERM PAYMENT PLANS (CONT.) 707.040

All proposals for payments exceeding 90 days must be reviewed by a supervisor and approved by the district administrator or his/her designee. Upon acceptance of a long term payment proposal, if a lien has not already been filed for the period/s in question, a considered decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb when preparing Form BOE–407, *Installment Payment Agreement*. Form BOE–407 is then sent to the taxpayer to be signed and returned.

BOE–407 payment plans must be reviewed each twelve month period (minimum) and recorded in ACMS Notes. Prior to this review, the collector must conduct an asset check to verify the tax debtor's current income, a request for a current income tax return and a review of the original BOE–403 to determine if any expenses have terminated (for example, a vehicle loan may have been paid off or a dependent may have completed schooling within the last year).

Accounts in the Promise-To-Pay State (XX05) for 365 days will automatically be routed to the Promise Review State (XX65). Accounts in the Promise Review State will be placed on the collector's worklist. Collectors are expected to perform a review of the payment plan as outlined above, and if appropriate route the account back into the Promise-To-Pay State. Please note that when ACMS routes accounts into the Promise Review State, the promise will remain in effect and any promise reminder notices that are scheduled to be sent out will continue. If it is determined that the existing promise is still in the best interest of the State, then manually route the account back into the Promise-To-Pay State. If, however, the promise needs to be cancelled, collectors should route the accounts to his or her supervisor and ask the supervisor to cancel the promise.

Accounts that remain on the new Promise Review State for more than 15 days will be automatically routed to the worklist of the assigned collector's supervisor.

ANALYSIS, SUBSTANTIATION, AND VERIFICATION OF INCOME AND EXPENSES — LONG TERM PAYMENT PLANS 707.050

A tax debtor may generally be allowed to claim expenses up to the statewide standard and local standard limits without substantiation. If standard limits are not allowed, the reasons must be documented in ACMS. Two standards that require substantiation are the vehicle ownership costs and housing expenses. Tax debtors are required to substantiate vehicle ownership costs since they may not be currently paying for a loan or lease of a car. Tax debtors must show documentation for housing since costs vary greatly and since a residence may be fully paid for. If a tax debtor claims an amount higher than the statewide or local standard for a single expense, then *every* expense under the statewide or local standards must be substantiated before consideration will be given. *In any case where the maximum limit exceeds the actual amount, the actual amount should be used.*

A tax debtor should also be required to substantiate expenses, that are categorized as other necessary and conditional expenses. For substantiation, proof could include items like pay stubs, income tax returns, bank statements, credit card vouchers, rent/lease receipts, payment coupons, court orders and contracts. Canceled checks should not generally be accepted as proof of an expense.

Certain items that are traditionally listed as necessary expenses should not be allowed if they do not meet the necessary expense test. Examples include additional vehicles (more than one), premium cable television programming, long distance telephone charges and charitable contributions. These items should not be allowed unless it can be shown that the expenses are necessary for the tax debtor's and his or her family's health, welfare or production of income, and that they are reasonable in amount.

ANALYSIS, SUBSTANTIATION, AND VERIFICATION OF INCOME AND EXPENSES — LONG TERM PAYMENT PLANS (CONT.) 707.050

Compare income to expenses. If expenses exceed income, the tax debtor should be required to provide an explanation. If the stated income is less than a recent income tax return, request an explanation and documentation.

When review of tax debtor's assets has given no obvious solution for liquidating the liability, the income and expenses should be analyzed to determine the amount of disposable income available to apply to the tax liability. Expense analysis is necessary only if collection is not possible from available assets.

Tax debtors who own homes should provide documentation showing the monthly payment amount, purchase price, date of purchase, the principle amount due, and proof that property insurance and taxes are not being paid via an impound account with the lender. This last item is required to assure that taxes and insurance are not claimed twice, once under the mortgage payment and once in monthly out-of-pocket expenses. The same statewide standard levels should be applied to tax debtors who rent a residence.

In discussing expenses with tax debtors, it should be emphasized how much is expected from them rather than how they are expected to spend their money. For example, if tax debtors have excessive necessary or not-allowable conditional expenses, they should not be told that they cannot own a boat or a summer cabin. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is claimed as an excessive necessary expense or a not-allowable conditional expense. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability. This is especially true for issues such as excessive day care expenses.

If a tax debtor has incurred an expense that is excessive or does not pass the necessary expense test after a tax liability becomes final, the three-year rule and the one-year rule may not apply. For instance, if a luxury automobile was purchased after a tax liability billing was issued, the tax debtor may be required to pay the Board an amount equal to the disposable income and the portion of the automobile expense, that exceeds the standard limits.

In cases where a tax debtor is asked to make adjustments based on the one year rule, special considerations may become necessary. For example, when deciding whether a tax debtor should be required to pay the Board an amount equal to excessive housing expenses, other factors should be considered such as the increased cost of transportation to work and school, the tax consequences of a lost interest deduction, lease termination fees and the cost of moving to a new residence.

When analyzing expenses for a tax debtor, who has a business, make sure that business expenses are not also included under personal expenses.

If a tax debtor defaults on a payment arrangement, then the tax debtor must generally catch up on the missed payment/s to re-enter the payment proposal. Exceptions must be documented in ACMS Notes. A written warning should be provided to the tax debtor after the first default indicating that future defaults will not be subject to the same exception.

If a comprehensive review of a tax debtor's financial statement shows that there is currently no disposable income, the account can be placed in the ACMS Wait 180 State for a period of 180 days with supervisory approval. This is advisable if the tax debtor or the tax debtor's spouse is looking for a new job, or if an expense such as a car loan is due to be paid in the near future. A separate follow-up can be set for an earlier date if necessary.

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS 707.060

Statewide Standards:

Maximum Monthly Standards for Food, Clothing and Other Items

Summary (Chart 1)

Total Gross Monthly Income	1 Person	2 Persons	3 Persons	4 Persons	Each Add'l Person
less than $ 833	$ 367	$ 599	$ 732	$ 859	add $ 132
$ 834 to $ 1,249	$ 420	$ 606	$ 774	$ 934	add $ 143
$ 1,250 to $ 1,669	$ 456	$ 651	$ 801	$ 942	add $ 153
$ 1,670 to $ 2,499	$ 513	$ 727	$ 838	$ 947	add $ 164
$ 2,500 to $ 3,333	$ 619	$ 801	$ 905	$ 985	add $ 174
$ 3,334 to $ 4,166	$ 689	$ 904	$ 1,030	$ 1,202	add $ 185
$ 4,167 to $ 5,833	$ 722	$ 1,005	$ 1,085	$ 1,257	add $ 196
$ 5,834 and over	$ 976	$ 1,271	$ 1,407	$ 1,561	add $ 206

Maximum Monthly Standards for Food, Clothing and Other Items

Detailed Breakdown (Chart 2)

Total Gross Income for One Person	Less than $833	$834 to $1,249	$1,250 to $1,666	$1,667 to $2,499	$2,500 to $3,333	$3,334 to $4,166	$4,167 to $5,833	$5,834 and over
Food	$ 171	$ 214	$ 229	$ 269	$ 260	$ 321	$ 388	$ 527
Housekeeping Supplies	$ 16	$ 21	$ 22	$ 25	$ 26	$ 26	$ 35	$ 48
Apparel & Services	$ 54	$ 55	$ 72	$ 82	$ 122	$ 123	$ 148	$ 248
Personal Care	$ 20	$ 24	$ 27	$ 31	$ 29	$ 43	$ 45	$ 47
Miscellaneous	$ 106	$ 106	$ 106	$ 106	$ 106	$ 100	$ 106	$ 106
Total	$ 367	$ 420	$ 456	$ 513	$ 537	$ 619	$ 722	$ 976

Detailed Breakdown (Chart 2)

Total Gross Income for Two Persons	Less than $833	$834 to $1,249	$1,250 to $1,666	$1,667 to $2,499	$2,500 to $3,333	$3,334 to $4,166	$4,167 to $5,833	$5,834 and over
Food	$ 322	$ 324	$ 343	$ 409	$ 448	$ 511	$ 577	$ 684
Housekeeping Supplies	$ 35	$ 38	$ 39	$ 41	$ 49	$ 52	$ 64	$ 76
Apparel & Services	$ 80	$ 81	$ 101	$ 103	$ 124	$ 154	$ 174	$ 307
Personal Care	$ 30	$ 31	$ 36	$ 42	$ 48	$ 55	$ 58	$ 72
Miscellaneous	$ 132	$ 132	$ 132	$ 132	$ 132	$ 132	$ 132	$ 132
Total	$ 599	$ 606	$ 651	$ 727	$ 801	$ 904	$ 1,005	$1,271

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS (CONT.1) 707.060

Detailed Breakdown (Chart 2)

Total Gross Income for Three Persons	Less than $833	$834 to $1,249	$1,250 to $1,666	$1,667 to $2,499	$2,500 to $3,333	$3,334 to $4,166	$4,167 to $5,833	$5,834 and over
Food	$ 424	$ 425	$ 426	$ 455	$ 473	$ 570	$ 578	$ 776
Housekeeping Supplies	$ 36	$ 39	$ 40	$ 42	$ 50	$ 57	$ 66	$ 78
Apparel & Services	$ 81	$ 113	$ 137	$ 139	$ 174	$ 186	$ 219	$ 308
Personal Care	$ 32	$ 38	$ 39	$ 43	$ 49	$ 58	$ 63	$ 86
Miscellaneous	$ 159	$ 159	$ 159	$ 159	$ 159	$ 159	$ 159	$ 159
Total	$ 732	$ 774	$ 801	$ 838	$ 905	$ 1,030	$ 1,085	$1,407

Detailed Breakdown (Chart 2)

Total Gross Income for Four Persons	Less than $833	$834 to $1,249	$1,250 to $1,666	$1,667 to $2,499	$2,500 to $3,333	$3,334 to $4,166	$4,167 to $5,833	$5,834 and over
Food	$ 441	$ 509	$ 510	$ 511	$ 519	$ 701	$ 702	$ 856
Housekeeping Supplies	$ 37	$ 40	$ 41	$ 43	$ 51	$ 70	$ 71	$ 92
Apparel & Services	$ 146	$ 149	$ 154	$ 155	$ 176	$ 187	$ 235	$ 341
Personal Care	$ 50	$ 51	$ 52	$ 53	$ 54	$ 59	$ 64	$ 87
Miscellaneous	$ 185	$ 185	$ 185	$ 185	$ 185	$ 185	$ 185	$ 185
Total	$ 859	$ 934	$ 942	$ 947	$ 985	$1,202	$1,257	$1,561

Detailed Breakdown (Chart 2)

Total Gross Income for More Than Four Persons	Less than $833	$ 834 to $1,249	$1,250 to $1,666	$1,667 to $2,499	$2,500 to $3,333	$3,334 to $4,166	$4,167 to $5,833	$5,834 and over
For each additional person, add to the four person total the following amount:	$ 132	$ 143	$ 153	$ 164	$ 174	$ 185	$ 196	$ 206

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS (CONT.2) 707.060

Local Standards:

Maximum Monthly Housing and Utilities

Allowable Living Expenses for California (Chart 3)*

County	1 or 2 People	3 People	4 or More	County	1 or 2 People	3 People	4 or More
Alameda	$1,749	$2,058	$2,366	Orange	$1,722	$2,025	$2,329
Alpine	$1,242	$1,462	$1,681	Placer	$1,521	$1,789	$2,058
Amador	$1,165	$1,370	$1,576	Plumas	$1,035	$1,217	$1,400
Butte	$1,036	$1,218	$1,401	Riverside	$1,297	$1,526	$1,755
Calaveras	$1,156	$1,360	$1,564	Sacramento	$1,242	$1,462	$1,681
Colusa	$ 960	$1,129	$1,299	San Benito	$1,740	$2,047	$2,354
Contra Costa	$1,722	$2,025	$2,329	San Bernardino	$1,235	$1,453	$1,671
Del Norte	$1,004	$1,181	$1,358	San Diego	$1,592	$1,873	$2,154
El Dorado	$1,449	$1,705	$1,960	San Francisco	$1,888	$2,221	$2,554
Fresno	$1,078	$1,268	$1,458	San Joaquin	$1,254	$1,475	$1,696
Glenn	$ 880	$1,036	$1,191	San Luis Obispo	$1,398	$1,645	$1,892
Humboldt	$1,015	$1,194	$1,373	San Mateo	$2,128	$2,504	$2,880
Imperial	$1,058	$1,245	$1,432	Santa Barbara	$1,514	$1,782	$2,049
Inyo	$1,125	$1,324	$1,523	Santa Clara	$2,053	$2,415	$2,777
Kern	$1,021	$1,201	$1,381	Santa Cruz	$1,817	$2,138	$2,459
Kings	$1,014	$1,193	$1,372	Shasta	$1,057	$1,244	$1,430
Lake	$1,009	$1,188	$1,366	Sierra	$ 938	$1,103	$1,268
Lassen	$ 998	$1,174	$1,351	Siskiyou	$ 858	$1,009	$1,161
Los Angeles	$1,539	$1,811	$2,083	Solano	$1,477	$1,738	$1,998
Madera	$1,027	$1,209	$1,390	Sonoma	$1,579	$1,858	$2,137
Marin	$2,322	$2,732	$3,141	Stanislaus	$1,139	$1,339	$1,540
Mariposa	$1,038	$1,222	$1,405	Sutter	$1,081	$1,272	$1,463
Mendocino	$1,153	$1,357	$1,561	Tehama	$ 915	$1,077	$1,238
Merced	$1,049	$1,234	$1,419	Trinity	$ 894	$1,051	$1,209
Modoc	$ 724	$ 852	$ 980	Tulare	$ 981	$1,154	$1,327
Mono	$1,466	$1,724	$1,983	Tuolumne	$1,116	$1,313	$1,510
Monterey	$1,512	$1,778	$2,045	Ventura	$1,678	$1,974	$2,270
Napa	$1,559	$1,835	$2,110	Yolo	$1,362	$1,602	$1,843
Nevada	$1,340	$1,577	$1,814	Yuba	$ 909	$1,070	$1,230

* Verification of Housing Expenses should be obtained in all cases. Standards for owned dwellings include mortgage payments, home equity loans, property taxes and insurance, expenses for property management/security, expenses for maintenance and repairs. Standards for rented dwellings include rent, parking fees, maintenance, renters insurance and other expenses.

Utilities include natural gas, electricity, fuel oil, wood, kerosene, coal, bottled gas, water, garbage and trash collection, sewerage maintenance, basic phone service and other public services. Basic cable television should be included in miscellaneous expenses.

Figures are based upon Federal Internal Revenue Services January 1, 2004 allowable living expenses for similar payment plans.

Maximum Allowable Monthly Transportation Expenses (Chart 4)

Allowable Transportation Expenses		No Car	One Car	Two Cars
Automobile Ownership Costs:*			$ 450	776
Operating Costs and Public Transportation Costs by Metropolitan Area		No Car	One Car	Two Cars
Los Angeles	(Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties)	$ 270	$ 374	$ 471
San Francisco	(Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma counties)	$ 318	$ 391	$ 486
San Diego	(San Diego county)	$ 302	$ 305	$ 403
All Remaining Areas		$ 243	$ 307	$ 402

* Tax debtor must show documentation for a lease or loan on a vehicle to claim ownership costs.

Transportation costs include gasoline, oil, maintenance and repairs, vehicle insurance, registration and license fees, parking fees, towing charges, tolls and automobile service clubs. Transportation costs also can be used to cover public transportation such as fares for mass transit, buses, trains, airlines, taxis, private school buses and boats, provided they pass the necessary expense test

Other Necessary Expenses:

Accounting and legal fees for representation before the Board. Fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are not necessary expenses but are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.

Charitable Contributions. These expenses include donations to tax exempt organizations such as: civic organizations, religious organizations (tithing and educational), and medical services or associations. To be necessary, charitable contributions have to provide for the health and welfare of the tax debtor and his or her family or be a condition of employment. Any contributions that do not meet the necessary expense test will be considered as conditional, and may be allowed only if the tax debtor can show a pattern of similar contributions in the past.

Child Care. Baby sitting, day care, nursery and preschool. Expenses are necessary if they meet the necessary expense test (health, welfare or production of income). Care should be taken to ensure that only a reasonable amount is allowed. Costs of childcare can vary greatly. We should not allow expensive childcare if more reasonable alternatives exist. If a portion of a child care expense is disallowed, the tax debtor should be not be told to move their child to a cheaper facility. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is determined to be excessive. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability.

Court-Ordered Payments. Alimony, child support (including orders made by a state administrative agency) and other court-ordered payments. If the expense is already being deducted directly from a tax debtor's pay, do not allow it to be included as an additional expense.

Dependent Care. For the elderly, invalid or handicapped. This expense is necessary if there is no recourse except for a tax debtor to pay the expense.

Education. Education is a necessary expense if required for a physically or mentally challenged child and no public education providing similar services is available. It is also a necessary expense if required as a condition of employment, such as a teacher whose employment is conditioned upon completion of a graduate program.

Health Care. Health insurance, medical services, prescription drugs and medical supplies (including eyeglasses and contact lenses). A guide dog for someone who is visually handicapped would also fall into this category.

Involuntary Deductions. Deductions from income include FICA, Medicare and mandatory union dues.

Life Insurance. To be a necessary expense, insurance is limited to term policies that are already in effect at the time of the billing. Life insurance used as an investment is not a necessary expense. Consider if the payoff of the policy is high compared to the lifestyle of the beneficiaries. Even for term policies, expensive premiums must be justified. On whole life policies, the tax debtor should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the payment plan is in progress (if allowable by the insurance company). If payments can not be suspended, the expense will be considered as conditional.

Secured or Legally Perfected Debts. If the debts meet the necessary expense test (health, welfare or production of income), payments will be allowed for these debts. To be allowed, a tax debtor must substantiate that the payments are being made regularly.

Taxes. Current federal (including FICA and Medicare), state and local tax payments. Back federal, state and local tax payments are necessary expenses. A tax debtor who is currently making payments on back taxes to other agencies should be required to work out a prorated payment to those taxing agencies based on the total liability amounts.

Unsecured Debts. Minimum payments will be allowed if the tax liability, including projected interest and penalty accruals, will be paid within three years. Otherwise, payments will have to come from the total amount allowed under statewide and local standards. Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days, with the exception of credit card minimum payments (90 day rule).

Miscellaneous Expenses. This expense category has been established to avoid confrontation over minor expenses, that the tax debtor claims, are necessary, but which the Board does not recognize as necessary. Examples include cable television bills for remote areas with poor reception, extracurricular activities for children or monthly Christmas savings account deposits.

CONDITIONAL EXPENSES, LONG TERM PAYMENT PLANS 707.070

Accounting and Legal Fees. Fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health, welfare or production of income). Other accounting and legal fees are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.

Education. Expenses for private elementary and secondary, or public and private college education are conditional expenses and are allowable if the liability, including projected interest and penalty accruals, can be fully paid within three years.

Housing. Housing other than the principal residence is not a necessary expense. Other housing is a conditional expense allowable only if the tax liability, including projected interest and penalty accruals, can be paid within three years. Examples of such housing would include vacation property, owned, rented, leased or time-shared. If equity exists in the property, the tax debtor must make an attempt to borrow against the property.

The Board will generally allow a subordination of a lien to refinance a home to allow for increased payments or a lump sum payment from the refinance.

Other costs associated with housing are usually conditional. For example, pool service and gardening are optional and could be done by the tax debtor. Other types of home maintenance, such as roofing and plumbing repairs, may qualify as necessary expenses.

Retirement — voluntary payments. Payments will be allowed if the liability, including projected interest and penalty accruals, will be paid in full within three years and if the tax debtor's voluntary contribution existed prior to the tax liability.

Transportation. Although transportation charges, that are within the statewide standard limits, are not generally questioned, transportation not needed for family health, welfare or the production of income is not a necessary expense. If the tax debtor is claiming expenses for more than one vehicle, the additional vehicle must pass the necessary expense test. A review of the vehicle usage to determine conditional expenses may be required if the tax debtor is claiming in excess of the standard expenses in the transportation expense or in other standard expense levels. In keeping with the necessary expense test, any expenses associated with boats, motorcycles and recreational vehicles will not be allowed unless they are necessary for the production of income.

Secured or Legally Perfected Debts. Debts, that do not pass the necessary expense test, will be considered as conditional expenses, provided that the tax debtor can show that the payments are being made regularly.

STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.000

GENERAL 708.010

The Board of Equalization, in an effort to effectively manage the collection workload and minimize the negative impact upon tax debtors, will offer tax debtors meeting stated criteria a Streamlined Installment Payment Agreement (SIPA) to pay their liability over an extended term without a review of financial information or documentation. An active account with self-declared return liabilities or failure to file determinations will be required to pay the liability in equal monthly payments within one year. A closed-out account or an active account with only an audit determination will be required to pay the liability in equal monthly payments within three years, including interest accrual.

ACCEPTANCE OF STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.020

An account should be considered for a SIPA if the following criteria are met:

- Account balance between $500 and $5000.
- An active account will not be considered if it has any return delinquencies. All past-due returns must be filed for an account to be considered for a Streamlined Installment Payment Agreement.
- Account is not currently the subject of enforced collection action.
- Account is not in bankruptcy or legal status.
- Taxpayer has not repeatedly broken promises to pay or file a return.
- Taxpayer is willing to make equal monthly payments that will pay the liability in full within three years for a closed-out liability or an active, audit-only liability; or within one year for an active, self-declared liability, including interest accrual. Requests for accelerated payments or large, lump-sum payments at the end of the term should be handled as regular Installment Payment Agreements and be supported by financial documentation.

PROCESSING OF STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.030

All accounts that meet the acceptable criteria listed above should be solicited for a SIPA. A Form BOE–407–S, Streamlined Installment Payment Agreement, is available on ACMS DocGen for this purpose. Provide a Form BOE–407–S, *Streamlined Installment Payment Agreement,* to the tax debtor. Request that the tax debtor sign the agreement and return it within 15 days. If a form is not signed and returned within 15 days, a follow-up phone call should be made. If the agreement is still not signed or returned within 30 days, the SIPA should still be considered as accepted, and appropriate notes should be entered on ACMS.

Do not require the taxpayer to submit a Form BOE-403, *Statement of Financial Condition*, or financial documentation. Allow terms up to 36 months without restrictions or designated yearly reviews. The minimum monthly payment amount should be $25. Estimate interest accrual in the calculation of the term. The tax debtor may be advised that a term of less than three years may be selected to reduce the amount of interest that will accrue.

If the taxpayer qualifies for the relief of finality penalty, as authorized by Operations Memo No. 888, the taxpayer should be notified by including the available blurb on Form BOE–407–S. Withhold the filing of a lien, unless one has been previously filed for the billed period(s).

An automatic debit program may be developed to allow for the automatic debit of Installment Payment Agreement payments from a tax debtor's bank account. The automatic debit program will be utilized on these accounts once the process is developed. Each tax debtor should be verbally advised that they may be asked to participate in the automatic debit program at a later date. Form BOE–407–S also advises the tax debtor of the pending automatic debit program.

Taxpayers who default on a SIPA must be sent a Form BOE-407-T, *Installment Payment Agreement - Termination Notice* as required in Revenue and Taxation Code Section 6832(b) before staff commences with collection action. See CPPM Section 707.021 for Installment Payment Agreement termination procedures.

TAXES COLLECTED BY OTHER AGENCIES 709.000

VEHICLE, VESSEL OR MOBILEHOME USE TAX COLLECTIONS 709.020

The Board is responsible for administration of the Sales and Use Tax Law and is responsible for the collection of these taxes. The only exception is in the collection of the use tax on vehicles, vessels or mobilehomes required to be registered or are subject to identification by the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) and were sold by other than a licensed motor vehicle dealer, manufacturer, dismantler or, in the case of vehicles/mobilehomes, subject to identification by a licensed manufacturer, dealer, or dismantler, or a person required to hold a seller's permit or a person regularly engaged in the sale of vessels. The use tax will be collected by DMV or HCD at the time the vehicles, vessels or mobilehomes are registered.

The Board will continue to be responsible for the collection of the use tax on other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health & Safety Code) not registered or subject to identification with DMV or HCD.

For further information, refer to Pamphlet 23, Occasional Sales of Vehicles, Vessels, and Aircraft.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT 709.030

Mobile Home Registration Information

Ownership and registration information for mobilehomes not registered with DMV may be obtained from HCD. Ownership information is filed by license, serial or decal number, but may also be available by name and address of the owner.

A formal title search may be requested by completing Form No. HCD–491.1. The form is available from HCD and the fee will be waived. Once the title report is obtained, you will be notified of any changes filed with HCD for the following 120 days.

MOBILEHOME DEALER REPORT OF SALE BOOKS 709.040

Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement that allows for mutual notification when a dealer terminates his or her business.

When HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board (see new Report of Sale book sample attached). When the Board has no further need for the books, they will be returned to:

Department of Housing and Community Development
Division of Codes and Standards
Occupational Licensing Section
PO Box 31
Sacramento CA 95801

If the Board does not require the Report of Sale books, they will be subsequently destroyed by HCD.

MOBILEHOME DEALER REPORT OF SALE BOOKS (CONT.) 709.040

When HCD is reviewing dealer Report of Sale books and finds evidence of noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.

When this Board finds that a mobilehome dealer has closed out or sold his or her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323–9803 or ATSS 8–473–9803. If Report of Sale books are required, they can be requested at this time.

The Board will also provide the close-out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.

To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts:

1. A mobilehome dealer has an outstanding liability that requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:
   (a) Based on the audit, it does not appear the business is properly financed to clear the probable liability.
   (b) There is factual information produced through our audit that the business is in financial trouble.
   (c) The district administrator approves the telephone call.

A notation that HCD has been contacted should be entered on the compliance or audit assignment.

INTERDISTRICT AND INTRADISTRICT TRANSFER OF COMPLIANCE ASSIGNMENTS 721.000

GENERAL 721.010

Form BOE–142, District Request for Investigation, includes both interdistrict and intradistrict assignments. The purpose of this form is to refer an assignment to another district or branch office and receive back a reply in the form of a progress report or a completed assignment.

PROCEDURE FOR MAKING REFERRAL 721.020

Intradistrict: Form BOE–142 may be used by district offices to send assignments to their branch offices and shift assignments between branch offices.

Interdistrict: Form BOE–142 may be used for making assignments to other districts, but only when a field call is necessary. Assignments should never be transferred from one inside collector to another.

All pertinent information should be transmitted with the assignment. This would include copies of correspondence, billings and other related documents. Supplemental sheets containing any additional information, such as file notes, should be included.

If additional information is later received by the referring office that might be helpful to the receiving office or that would supplement or alter information forwarded with the original assignment, the additional information should be promptly forwarded to the receiving office.

Form BOE–142 has a reply section. Referring offices must prepare the form in sufficient copies so at least one copy, in addition to the original, is available to the receiving office for making progress reports. Should sufficient copies not be available to the receiving district for making a series of progress reports, copies of the original assignment may be used for this purpose.

Suggested number of copies and distribution:

Original	to receiving district
First and Second	to receiving district
Third and Fourth	Referring district file and assignment follow-up file

CONTROL OF ASSIGNMENT BY REFERRING DISTRICT 721.030

When an account is referred to another district, the referring district shall enter the assignment in an approved assignment control system such as, the Compliance Assignment Control Program (COMPASS), BOE–93, Assignment Control Sheets, or alphabetical binder containing copies of the assignments until cleared (see CPMG 205.100). The follow-up controls are based upon the time intervals in Subsection 721.050.

CLEARANCE OF ASSIGNMENT BY REFERRING DISTRICT 721.040

If the referring district clears the referred case, they should promptly notify the receiving district to return the assignment. Prompt notification is important in matters involving collection items. Failure to do so could result in continued collection activity against a taxpayer that has no liability. Notification of receipt of partial payments on collection assignments should be made to the receiving district by the referring district.

A copy of the Payment Application Document or Form BOE–424, Advice of Payment, (See Subsection 799.015) should be used for the purpose of notifying districts payments have been received. The referring district shall prepare the Payment Application Document or Form BOE–424, for each payment collected by their district, and shall forward a copy of the document to the receiving district.

RESPONSIBILITY OF RECEIVING DISTRICTS 721.050

Upon receipt of an assignment from another district, the receiving district will log the assignment into an approved Assignment Control Program (see CPMG 205.100). A follow-up date of forty-five days from the day the assignment is received in the district will be set to initially review the assignment. The receiving district will have sixty days, after receipt of the interdistrict assignment, to advise the referring district of progress made. Thereafter, progress reports must be made every sixty days. Receiving districts may use a copy of Form BOE–142 as a progress report. The BOE–142 assignment, when returned to the referring district, will be accompanied by the original assignment request, along with any documents that may have been generated.

In all cases where a receiving district makes a collection on a case referred by another district, a copy of the Payment Application Document or Form BOE–424, Advice of Payment, will be forwarded to the referring district.

REASSIGNMENT BY RECEIVING DISTRICT 721.060

If the receiving district needs to reassign the case to a third district, copies of the reassignment correspondence will be forwarded to the originating office.

DISTRICT RESPONSIBILITY — DETERMINATION BILLINGS 721.070

If a BOE–414–A, Report of Field Audit, BOE–414–B, Field Billing Order or, Compliance Assessment, is being done for another district, the district preparing the assessment will be responsible for controlling the request until a billing is issued, to avoid losing the document.

TRANSFER OF REVOKED ACCOUNTS 721.080

Prior to making an interdistrict transfer of a revoked account, all reasonable attempts to clear the revocation should be made. Reasonable attempts would include, but are not limited to: (1) making contact with the taxpayer to determine whether the account is active or should be closed-out; (2) if contact is made with the taxpayer, can the cause for revocation be cleared and the account reinstated prior to transfer; or (3) if unable to contact the taxpayer, initiate a Form BOE–142, District Request for Investigation, to the district where the taxpayer is operating.

The account may be transferred only after it has been proven the taxpayer has been found to be actually operating in another district and the district of record cannot clear the cause of revocation and the account cannot be reinstated. The following steps must be followed when transferring an account:

1. The originating district's Principal Compliance Supervisor will send to the receiving district's Principal Compliance Supervisor a memorandum indicating a revoked account is being transferred.
2. The word "REVOKED" will be printed in red or highlighted on the Form BOE–1047, Notice to Change Account Record, in Section D, #2, on the Delinquency line.
3. The BOE–1047 and the memorandum will be stapled to the front exterior of the account file folder being transferred.

The originating district should not send new or replacement permit card(s) to the taxpayer nor should the original BOE–1047 be sent to Headquarters Registration Unit. The originating district should forward all documents to the receiving district. Documents being forwarded would include all notes the representative made during the investigation. Any original documents that need to be mailed to the taxpayer and/or headquarters will be mailed by the receiving district when applicable. If the receiving district cannot complete the transfer of the account, all paperwork and the file folder will be returned to the originating district.

Any attempts to transfer an account without following the above instructions will cause the receiving district to return all documents and the file to the originating district.

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CONTACT AND INTERVIEW 722.000

THE COLLECTION INTERVIEW 722.020

All assignments will be performed in a professional manner. It is the Board's policy to administer its laws and policies fairly and efficiently, with the expectation that employees will conduct themselves with dignity, integrity and courtesy. In addition, discretion must be exercised to avoid disclosing confidential information to unauthorized parties. (See Publication 58).

To a considerable degree, collection productivity will be controlled by the manner in which the collection interview is conducted and by the impression the collector makes on the taxpayer. Whether the interview is conducted in a Board office or elsewhere, the interview will be conducted with courtesy and professionalism; but at the same time, the collector should be firm and direct.

The most successful collection case, aside from a paid-in-full account, is one where the taxpayer fully understands the consequences of failing to pay the liability promptly. If the taxpayer perceives that the collector is inexperienced or uncertain or the collector does not convey a sense of urgency to resolve the situation, the taxpayer may attempt to postpone payment of the liability through excuses or insincere promises. Therefore, the impression the collector should strive to create is one where the taxpayer understands that the interviewer is a trained professional who:

1. Is knowledgeable about the situation,
2. Is able to apply pertinent laws and regulations to the situation,
3. Will treat the taxpayer fairly, but
4. Will follow through, if necessary, with actions to compel payment.

The collector must always be prepared to answer taxpayer questions about collection procedures and taxpayer rights. Publication 54, Tax Collection Procedures, and Publication 70, Understanding Your Rights as a California Taxpayer, contain excellent information covering both areas. At the time of the initial interview, the collector must provide both publications to the taxpayer. If the initial interview is by telephone, both publications must be mailed to the taxpayer at the conclusion of the conversation. Be sure to document that these publications were provided to the taxpayer in the collection notes.

CONTACT WITH TAXPAYERS REPRESENTED BY COUNSEL OR OTHER REPRESENTATIVE 722.025

A taxpayer may be represented by legal counsel, Certified Public Accountant, or other representative when a power of attorney appoints a representative and the collector receives a power-of-attorney document signed by the taxpayer. Although the taxpayer may provide another person with power-of-attorney to act on the taxpayer's behalf, the collector is under no obligation to exclusively conduct discussions regarding the taxpayer's case with the assigned representative. Unless the taxpayer or the taxpayer's representative has obtained a restraining order forbidding the Board to contact the taxpayer without the representative being present, the collector may contact the taxpayer directly, especially in those cases where compliance is being delayed. However, contacting the taxpayer directly, despite the taxpayer's or the representative's request to the contrary, should only occur after consulting with the collector's supervisor. The decision to contact the taxpayer directly should be based on the representative's degree of cooperation with Board staff and the taxpayer's compliance with the Board action(s) that are requested through the representative. Such requests must be fully documented in the appropriate file or record. In addition, all subsequent contacts with the taxpayer should be documented in ACMS case notes to protect against potential claims or allegations of harassment.

In circumstances requiring personal contact with the taxpayer, a supervisor or lead person may participate in a conference call with the collector and the taxpayer or may accompany the collector when meeting with the taxpayer to assist in conducting difficult negotiations.

If the taxpayer, or his or her representative, has obtained a restraining order forbidding contact by the Board without the taxpayer's representative being present, the order must be complied with and the Chiefs of the Field Operations Divisions, the Internal Security and Audit Division, and the Chief Counsel must be notified of the restraining order.

CONDUCTING THE INTERVIEW 722.030

The objective of every contact with the taxpayer is to obtain full payment of the liability. Therefore, the representative must be in firm control of the interview from the very start. The representative should impress upon the taxpayer the seriousness of failing to pay immediately and apprise the taxpayer of the consequences for nonpayment. If payment is not forthcoming, the collector does not need to disclose the specific collection action(s) that will occur to enforce compliance.

If, after discussing the case with the taxpayer, the collector is certain that full payment cannot be obtained immediately, direct questions need to be asked to secure as much information as possible regarding sources of income, available assets, and ability to pay. This information is always documented for future reference, for reporting purposes, or for the use of another staff person should reassignment of the case become necessary.

If the taxpayer cannot pay the liability in full, attempt to obtain a substantial payment on account, or a definite promise to pay at an early date. The collector must stress to the taxpayer that if payment is not made as promised, collection action will be taken to compel compliance. When a promise of full or substantial payment is obtained, the representative has an obligation to follow up with the taxpayer to make sure payment is made as promised. Failure to conduct timely follow-up actions will give the taxpayer the impression that the situation is not important to the collector.

If the taxpayer insists that payment cannot be made in full and is reluctant to enter into an installment payment agreement, do not attempt to provide the taxpayer with any legal alternatives. It is never appropriate for Board employees to offer advice regarding filing a petition in bankruptcy or to give any legal advice other than an interpretation of the tax laws administered by the Board. Instead, the taxpayer should be encouraged to seek the expertise of a CPA, attorney, or other paid professional who is qualified to address the taxpayer's specific situation.

UNCOOPERATIVE TAX DEBTORS 722.040

Taxpayers who are argumentative or uncooperative with regard to discussions of their tax liability should be dealt with in a firm and professional manner, and without resorting to, or assuming, a similar attitude. The collector should inform the taxpayer of:

1. The basis for the liability,
2. The taxpayer's rights, and
3. The time frame for making payment to avoid immediate collection action.

If the taxpayer remains uncooperative or argumentative, politely terminate the discussion and shift to an approach of compelling payment through appropriate active collection action(s). Be sure to note the taxpayer's uncooperative attitude in ACMS case notes and, if necessary, notify your supervisor of the situation.

In the event that the situation escalates to the point where a threat is issued by a taxpayer, or his or her representative, refer to the procedures outlined in the Board's Threat Policy. (Board of Equalization Administrative Manual (BEAM) section 5194).

INABILITY TO PAY IN FULL 722.050

If a taxpayer indicates an inability to pay the amount due in full, the collector should stress the advantages of making immediate full payment. The following points are often helpful in convincing a taxpayer to make payment in full immediately:

1. Not having to pay a 10 percent failure to file timely penalty if the tax amount is paid in full on or before the due date of the return,
2. Saving an additional 10 percent by not having to pay a finality penalty on a Board-assessed liability, if the tax amount is paid in full on or before the thirtieth day after the date on the notice of determination,
3. Saving accruing interest every month on the unpaid tax balance,
4. The negative effect on the taxpayer's credit standing if a Notice of State Tax Lien or Abstract of Judgment is filed (see CPPM Section 760.000), or
5. The loss of personal property as a result of liens, levy, and seizure and sale procedures.

The collector may point out that, in addition to making a loan application with legitimate lending institutions such as banks and credit unions, taxpayers often have other sources of money available that may clear the liability. Some avenues include, but are not limited to, borrowing from friends and family members, borrowing against the equity in real estate owned by the taxpayer, refinancing vehicles, vessels or aircraft owned by the taxpayer, or paying with a credit card.

PAYMENTS TO OTHER CREDITORS 722.060

A taxpayer may refuse to pay the Board because payments are due to other creditors, for example, employees, vendors, other government agencies, etc. The taxpayer should not be given the impression that payments to other creditors are a higher priority than payments due to the Board.

The taxpayer should be informed that:

1. Failure to pay sales and use tax at the time the tax becomes due and payable creates a perfected and enforceable state tax lien that includes the tax, penalties, interest, and any additional costs. (RTC section 6757),
2. Payment to other creditors will result in collection action being taken without delay, and
3. If the taxpayer is a corporation, LLC, etc., payment to other creditors can lead to the officers or other responsible parties being held personally liable. (RTC section 6829).

NOTIFICATION TO ATTORNEY GENERAL 722.070

The Office of the Attorney General of the State of California is the legal counsel for the Board and represents the Board as its attorney in most cases before a court. The Headquarters Special Procedures Section (SPS) may refer certain types of collection matters to the Attorney General's Office for action when requested to do so by the district offices or the Centralized Collection Section (CCS). These matters include filing a notice of lien on cause of action, objection to a third party claim or a claim of exemption, filing a suit for tax for collection against a surety or guarantor, spousal earnings withholding orders for taxes, out-of-state collection accounts, foreclosure on Board lien, and seizures and sales of property.

To maintain a good working relationship between attorney and client, the Attorney General's Office must be notified whenever there is a change in the status of an account that the Board has referred to it. For example, a payment received from a delinquent taxpayer in a district office must be reported to SPS so that the Attorney General's Office may be notified. The district offices and CCS will maintain controls to ensure that SPS is notified of any status changes in all accounts that have been referred to the Attorney General's Office.

RETENTION OF LEGAL DOCUMENTS 722.080

Whether received in a district office by mail, or through personal delivery, legal documents or documents that could have legal ramifications should be forwarded immediately to SPS for review. These types of documents include, but are not limited to, notification of an assignment for benefit of creditors, probate notice, information regarding receivership proceedings, and bankruptcy notices. After review by SPS, the documents may be referred to the Board's legal staff or the Attorney General's Office for appropriate action. (The above statement should not be construed to conflict with the instructions contained in BEAM section 7700 covering service of legal process, summons, restraining orders, subpoenas, etc.)

EVALUATION OF COLLECTION PROGRAM 722.090

The Chief of the Tax Policy Division has overall responsibility for evaluating the effectiveness of the statewide collection program and determining whether the cumulative collection efforts of the district offices and CCS meet the projected work goals set by the Sales and Use Tax Department.

REPORTING EXTRAORDINARY SITUATIONS OR TECHNICAL COLLECTION PROBLEMS 722.092

Whenever extraordinary situations or technical problems that require a legal opinion are encountered in a collection case, the Supervisor of SPS must be notified. When this type of guidance is necessary, the District Administrator, District Principal Compliance Supervisor, or delegated supervisor should make the contact with the Supervisor of SPS and the Legal Department. The Supervisor of SPS will keep the Chief, Tax Policy Division, informed of these occurrences so that they may be included in the evaluation of the Collection Program.

BOARD-ASSISTED SEARCHES OF THE PREMISES OF TAXPAYERS ON JUDICIAL PROBATION 722.100

In some instances, Board staff may be asked to accompany a probation department officer who conducts a search of a taxpayer's business and/or residence. Although rare, these situations can occur, for example, as the result of misdemeanor or felony cases where the taxpayer must pay court-ordered restitution to the Board.

When a field office receives a request for this type of assistance, the request must be sent to the Investigations Division. The probation department officer should be instructed to contact the appropriate Area Administrator in the Investigations Division by telephone. The Southern Area Administrator is responsible for Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, and Imperial counties, while the Northern Area Administrator is responsible for all other counties. If the field office is requested to provide assistance or advice in a search, the Area Administrator of the Investigations Division will send the request to the appropriate Chief of Field Operations.

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PARTNERSHIP COLLECTIONS 724.000

GENERAL 724.010

A partnership is an entity composed of two or more persons who have contracted to join in business and share the profits either equally or otherwise.

Partnerships may be formed either by written or verbal agreements. With sufficient evidence, a person may be considered a partner without an agreement if there was an investment in the business, participation in profit sharing, or if in the operation of the business, there was an exercise of rights or authority normally reserved to a partner. This is rebuttable by the taxpayer. When there is uncertainty whether a partnership existed, a complete report should be forwarded to the Special Procedures Section for a decision.

LIABILITY OF PARTNERS 724.020

When a liability is created by a general partnership, the partners are collectively and individually liable for the entire amount owing. This means the entire liability may be collected from the assets of one individual partner or from the collective assets of the general partnership.

No representative of the Board should lead any partner to believe the partner will be relieved of further liability if a payment equal to their particular percentage of the partnership is made.

If the partnership entity is still operating, the first efforts toward collection should be from partnership assets. If collection cannot be made readily from this source, there should be no delay in proceeding against the assets of the individuals who comprise the partnership. If a partnership agreement was filed with the Board, then refer to Section 6831 of the Sales and Use Tax Law and the applicable Corporations Code Sections.

If the partnership is no longer operating and all partnership assets have been distributed, the action to be taken will be against individual assets of the former partners without concern as to whether equal amounts are collected from each of them.

The fact that one or more members of a partnership may be making payments is not a reason to withhold action against other partners. Until the liability is paid in full, there should be no relaxation of effort against any of the partners.

Generally, a partner cannot be held responsible for a liability accrued after the dissolution of the partnership in which the partner has retired. The retired partner may be held liable, however, if the Board was not notified of the retirement or if the partner did not in fact retire but continued to participate in the partnership affairs. The retiring partner may be held liable if the taxable transactions were made in winding up the partnership affairs or in completing transactions unfinished at the time of dissolution of the partnership.

Where a billing is to be made when the above situation is encountered, a complete report should be forwarded to the Headquarters Special Procedures Section together with the district recommendation. The determination against the original entity would be issued on the basis that failure to provide notification of dissolution of the partnership deprived the Board of an opportunity to obtain from the new entity adequate security, thereby resulting in a loss to the state unless collected from the entity that held the seller's permit.

NON-PARTNER CLAIMS 724.025

If a partner claims that he or she was not involved as a partner during all or part of a liability period and therefore not liable for all amounts due, he or she (claimant) must request relief in writing. The request must state the grounds or reasons why the claimant should not be held liable as a partner. The burden of proof rests with the claimant. Evidence or documentation supporting the claim is required to be presented to the district office of control. Examples of evidence or documentation should include the following:

- Federal and state income tax returns for the periods in question for the claimant and the business. Schedule K-1 of Form 1065, *U.S. Partnership Return of Income*, should list each partner and their individual shares of income from the partnership business.
- Statement of Partnership Authority, Statement of Denial, and/or Statement of Dissociation filed with the California Secretary of State.
- Registration records and tax returns from other government agencies.
- Public records, such as a city business license, fictitious name statement, liquor license, etc.
- Copy of business premises lease agreement, utilities billings, etc.
- Canceled business checks and bank records showing authorized signers.
- Any other evidence that will assist in substantiating the true ownership of the business during the period in question.

The receiving office will forward the written request and evidence or documentation to the Special Procedures Section for review. The Special Procedures Section will review the documents, the seller's permit application, tax return signatures, other Board records, and the submitted reasons or grounds when considering the claimant's request. The Special Procedures Section makes a recommendation and forwards the case to the Chief of Field Operations for an approval or denial decision. After a decision is rendered, the Chief of Field Operations returns the case to the Special Procedures Section Supervisor who will send the requester a denial or approval notification letter with a copy to the receiving office, and the Chief of Field Operations. If the request is approved, the case will be forwarded to the Registration Specialist, PetitionSpecial Projects Team, Program Planning Division Section for removal of the claimant from the liability.

If the request is denied, an appeal must be made through the refund request/appeal process as long as the refund request is for paid amounts or the appeal is within statutory periods.

LIMITED PARTNERS 724.030

The liability of a limited partner extends only to their contribution to the business enterprise. On July 1, 1984, the California Revised Limited Partnership Act was created. This act partially repealed the existing Uniform Limited Partnership Act. If a limited partnership existed on July 1, 1984, and elected not to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability if the limited partnership was duly established under Corporation Code Section 15502 and had complied with the provisions of Sections 15501 through 15533, except as provided therein. (see, e.g., Sections 15506, 15507, 15511, 15517.) If a limited partnership was established after June 30, 1984, as well as those existing limited partnerships electing to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability when the limited partnership was duly established under the Corporation Code Section 15621 and has complied with the provisions of Sections 15611 through 15723, except as provided therein (see, e.g., Sections 15632, 15633). Both the new and the old limited partnership acts are found in the Corporation Code.

Contributions of a limited partner may be in the form of money, goods, real or personal property, and, in the case of bars or liquor stores, interest in the liquor license. These are subject to levy and execution for debts of the limited partnership. The names of limited partners cannot be included in liens or abstracts recorded to acquire liens on real property unless the real property was all or part of the contribution to the business.

JOINT VENTURE 724.040

In general, collection of liabilities from joint ventures is governed by and enforceable under the rules applicable to partnerships. If collection cannot be made from the assets of the joint venture, then from which of the members of the joint ventures collection is made becomes immaterial.

INNOCENT SPOUSE 724.050

Under Section 6456 of the Revenue and Taxation Code, a spouse may be eligible to receive relief or partial relief of liability if the claiming spouse meets certain qualifying conditions. The conditions are listed in Regulation 1705.1, *Innocent Spouse Relief from Liability*. Innocent Spouse (IS) accounts that qualify for consideration are accounts that have been registered as husband and wife co-ownership accounts. To seek relief, the claiming spouse must submit a request in writing for Innocent Spouse Relief. The request must be received within the applicable statute of limitation period; that is, within one year from the date of first contact for collections, or within five years from the finality date of the assessment, or within five years of the due date of the return.

IS cases normally occur when the spouses divorce, separate, or no longer live with one another. Generally, the requesting spouse claims no involvement with the business at the time the liability was generated. The burden of proof rests with the requesting spouse.

IS requests received in district or headquarters' offices should be directed to the OIC Section in the Taxpayer's Rights and Equal Opportunity Division for review. A memo outlining support of the spouse's claim or information that may be contrary to the spouse's claim should accompany the spouse's request. In addition, any information regarding the actual date of first contact and information pertaining to the claiming spouses involvement with the business during the period(s) of liability, or benefits received (both indirect and direct) from the business during the periods of liability should also be sent by the forwarding section along with the request.

After a decision is made regarding the request for relief, the OIC Section will send an approval or denial letter to the claiming spouse. If the request is approved, appropriate changes will be made to IRIS registration records, reflecting the periods involved, and a single party release of lien may be issued*.

Effective January 1, 2001, innocent spouse relief was expanded to provide relief of liability for spouses that may have not qualified for IS as set forth in subdivision (a) of Section 6456. A spouse may be relieved of liability under this expanded provision, termed "equitable relief", for any **unpaid** tax or deficiency, if, after considering all the facts and circumstances, it is found to be inequitable to hold the spouse liable. Regulation 1705.1 lists several factors that are considered before a decision to approve or deny a claim can be reached.

The regulation also requires the Board to send notification of the claim for relief and the basis for the claim to the nonclaiming spouse. The nonclaiming spouse is sent a questionnaire and given the opportunity to provide input regarding the requesting spouse's claim.

Regulation 1705.1 also allows the Board to reconsider cases denied for equitable relief. Taxpayers who are denied equitable relief are entitled to continue their administrative appeal through an appeals conference and a Board hearing.

* Although the IS may receive real property through a divorce settlement, the property may have been transferred without clear title (quit claim). A single party release of lien may not remove the effects of our tax lien for the non-claiming spouse's ownership interest or for community property interests.
IS cases may result in partial relief being granted on a particular period of liability. In these cases, the claiming spouse's name is not removed from registration and the claiming spouse may not receive a single party release of lien.

SUCCESSOR'S LIABILITY 727.000

POLICY REGARDING COLLECTION FROM SUCCESSORS 727.010

Any purchaser who does not avail themself of the protection provided in the law becomes liable as of the date of the purchase of the business or as of the date the predecessor's liability becomes final. However, no collection action can be taken against the successor until a notice of successor's liability is issued and becomes final.

As a policy, first efforts to collect will be directed against the predecessor. This policy will be adhered to only as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor held by a third person. This policy will be disregarded if successor collection will become jeopardized by delaying future collection action.

LIABILITY SECURED BY SURETY BOND 727.020

If the liability of the predecessor is secured entirely by a surety bond, no collection action should be taken against the successor even though a successor's billing has been issued. This billing will merely notify the successor of what might be termed a "contingent liability". In these cases if collection cannot be made from the predecessor, demand will be made upon the surety to clear the liability.

If a portion of the predecessor liability is secured by a surety bond, demand should first be made on the surety before requiring the successor to pay or, if action is taken against the successor before payment by the surety, the approximate amount to be received from the surety should be taken into consideration.

The amount for which a successor is liable is not reduced by the amount for which the surety of the predecessor is liable until payment is made by the surety.

SURETY BOND ON SUCCESSOR'S ACCOUNT 727.030

The surety of a successor cannot be held liable for the amount its principal owes as a successor.

SUCCESSOR'S LIABILITY AS A TAX 727.040

The liability of a successor is considered a tax liability and is subject to all the remedies and priorities the same as if the liability had been incurred by the successor through his/her own operations. A successor's liability will be included in bankruptcy, assignment or probate claims filed against the estate of successors and is entitled to the same priority as other tax claims.

Agreements or contracts between the buyer and seller that attempt to place the responsibility and time of payment of the liability cannot overcome the requirements of the law and will be disregarded.

SUCCESSOR BILLINGS 727.050

Billings against a successor are made for any amounts over $100 on a notice of successor's liability. The law requires a notice of successor liability be issued and the successor be allowed 30 days within which to petition the liability prior to any collection action (see Section 6814 of the Sales and Use Tax Law).

AMOUNTS NOT DUE OR DELINQUENT AT TIME OF SALE 727.060

Even though the liability of the seller might not be due or delinquent at the time of transfer of the business or might be disclosed by an audit at a later date, the purchaser is liable for these amounts up to the amount of the purchase price. These amounts need not be a matter of record at the time the sale of the business takes place.

Reference: Sales Tax Regulation 1702

SUCCESSOR'S LIABILITY RESTRICTED TO LOCATION PURCHASED 727.070

In addition to the other limitations, the liability of the successor is limited to amounts owed by the predecessor that were incurred at the location purchased. If the seller operated at more than one location, while incurring a total liability for all locations, his/her liability incurred at the location being sold must be determined. This represents the amount for which the successor can be held liable.

PURCHASE OF FIXTURES AND EQUIPMENT OR PART OF A BUSINESS 727.080

Before a purchaser can be held liable as a successor, the fact, "a business or stock of goods" has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease or a liquor license, successor's liability is not necessarily applicable.

If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor's liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor's business to become liable, a comprehensive report should be submitted to the next level of supervision for possible referral to the Headquarters Special Procedures Section for further review.

CONSIDERATION IN A FORM OTHER THAN MONEY 727.090

The purchase price paid for a business need not be in the form of money to establish a liability against the successor. If the purchaser agrees to the assumption of obligations owed by the seller, or agrees to cancel amounts owed to him by the seller, or gives something other than money as a consideration for the transfer of the business, the purchaser can be held liable as a successor. In cases where the consideration is represented by something other than money, the value of the business or stock of goods purchased must be determined to define the extent of liability.

Reference: Section 6812 Sales and Use Tax Law

PENALTY AND INTEREST — SUCCESSOR'S LIABILITY 727.100

The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her, that include taxes, interest thereon to the date of payment of the taxes, and penalties including penalties for nonpayment of taxes. Liability also extends to penalties determined and unpaid at the time of sale for negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, and fraud or intent to evade the Sales and Use Tax Law or authorized rules and regulations.

Section 6814 (b)(1) of the Revenue and Taxation Code, added in late 1989, states:

> "If the Board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability."

Section 6814 (b)(2) of the Revenue and Taxation Code states "Any successor seeking to be relieved of the penalty shall file with the Board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief."

Reference: Sales Tax Regulation 1702

PURCHASE MONEY DEPOSITED IN ESCROW DOES NOT RELIEVE A SUCCESSOR 727.110

A successor cannot be relieved of liability because the purchase price was deposited, or a portion thereof, in escrow from which the Board did not receive payment. If the buyer allows funds in escrow to be distributed without first securing a clearance from the Board, the fact an escrow was conducted is of no significance.

If the funds in escrow are exhausted by levies, other creditors, or only enough funds are left to make partial payment to the Board, the successor remains liable to the extent of the purchase price.

When the discovery is made, levies are being served by other creditors on funds in escrow, the Board should promptly levy for the amount of the obligation due from the predecessor in order to secure any or all available funds.

Reference: Sections 6811 & 6812 Sales and Use Tax Law

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY 727.120

If the purchaser of a business or stock of goods does not request a Certificate of Tax Clearance from the Board as outlined in Section 6812 of the Revenue and Taxation Code, the purchaser can be billed for the predecessor's liability to the extent of the purchase price valued in money.

A "Notice of Successor's Liability" billing may be issued not later than three years after the Board is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuance of the notice does not begin to run until the Board has been notified in writing of the purchase of the business. If there is no notification, there is no statute of limitation. This assumes a timely billing to the predecessor under Section 6487 of the Revenue and Taxation Code.

The time within which collection from the successor may be enforced, and during which time all summary procedures may be used, shall start to run at the time the notice of successor's liability becomes final. Summary procedures may be used at any time within ten years from the start of this period. The period may be extended by recording a Notice of State Tax Lien or abstract against the successor in any county before the expiration of the ten-year period and may be further extended by a new recording before the expiration of ten years from the date of the original recording.

Reference: Sections 6812 & 6814 of the Sales and Use Tax Law

HEADQUARTERS' RESPONSIBILITY — SUCCESSOR BILLINGS 727.130

Successor liability billings will be generated through the Headquarters Special Procedures Section.

The Petition Section will process, acknowledge, and control all petitions for reconsideration. This section is charged with the responsibility of seeing that petitions are resolved expeditiously and, if possible, without the necessity of a preliminary and/or Board hearing(s). Since successor billings are frequently based on sketchy or unverified information, the petition will usually be referred to the district for additional investigation. Petitions that are sent to the district will be directed to the administrator for assignment to the appropriate section. Periodically, the Petition Section will make a request for a progress report to ensure that the district of control is handling the petition on a priority basis.

DISTRICTS' RESPONSIBILITY — SUCCESSOR BILLINGS 727.140

The district offices will occasionally receive a petition for reconsideration directly from the successor. Since routine collection procedures are normally instituted on "final" liabilities, the original of the petition and the envelope in which the petition was mailed should be immediately forwarded to the Petition Section for processing. The placing of the successor billing into petition status by the Petition Section will cause an "SW" (sundry withhold) indicator to appear on the video terminal accounts receivable program and will also stop any collection activity that would normally commence on the now petitioned liability.

The district staff is responsible for ensuring all petitions for reconsideration are handled on a priority basis. Copies of any correspondence between the successor and the district or other Headquarters' staff should be sent to the Petition Section.

When the district investigation is completed, a report of the findings should be sent to the Petition Section. This report should include the following:

1. If applicable, the district's basis for recommending that the successor billing either be reduced or canceled.
2. Whether or not the successor agrees with the district's recommendation.
3. Whether or not the successor wants a hearing.
4. Information as to efforts to collect from the predecessor. Such information also must be clearly documented in the predecessor file and included in hearing information prepared for Board hearings.

Form BOE–467, Notice of Requirement in the Sale of a Business, or Form BOE–1274, Notice of Amounts Due, will be used during the close-out process when the predecessor's existing liability exceeds or is expected to exceed $100.

CORPORATE COLLECTIONS 730.000

GENERAL 730.010

Sales and Use Tax Law recognizes a corporation as a "person" within the meaning of the law subject to the same requirements as any other type of taxpayer.

A corporation is an entity created by statute and is distinct and separate from members or stockholders and from directors or officers. Consequently, a corporate liability generally can be collected only from assets of the corporation. Stockholders, directors, and officers acquire no personal liability solely through affiliation with the corporate entity. Exceptions that relate to tax collection are discussed in Subsections 730.045 and 730.050.

Approximately 65% of all amounts due, for which discharge from accountability was obtained during a three-year period, were balances due from corporations. This amount represents less than one-third of the total number of items written off. When a corporation is without assets, is defunct, and/or there is no personal liability, there is no source from which collection can be made. Therefore, you must take prompt appropriate action to enforce collection of delinquent liabilities from corporations as soon as difficulties are apparent.

By thoroughly analyzing the situation at the time the application for permit is filed, obtaining adequate security, reappraising security requirements when difficulties first develop, documenting tax reimbursement for possible future use in justifying action under Section 6829, and promptly utilizing appropriate remedies including dual determinations against corporate officers, losses on corporation accounts can be held to a minimum.

REQUIREMENTS TO QUALIFY AS A CORPORATION 730.020

Before a corporation can operate as such the incorporators must file with the office of the Secretary of State articles of incorporation and then must be issued a corporate charter. Should the corporation later be suspended, the corporation will become incapable of exercising its rights, privileges, and powers until such time as it is revived.

INCORPORATION WITHOUT NOTIFICATION TO THE BOARD 730.030

Cases arise where a seller's permit has been issued to an individual or partnership and the entity to which the permit was issued later incorporates without notification to the Board. A liability is then disclosed that was incurred during the period subsequent to the date of incorporation and is assessed against the corporation. If the liability is uncollectible from the corporation, a report will be made to the Headquarters Special Procedures Section where consideration will be given to the issuance of a dual determination against the entity to which the permit was issued.

The dual determination against the original entity would be issued on the basis that failing to provide notification of incorporation has deprived the Board of an opportunity to obtain from the corporation adequate security that resulted in a loss to the state.

INCORRECT CORPORATE REGISTRATION 730.035

A significant number of California corporations re-incorporate in other states without notifying the Board. Once a corporation has been identified as being out of compliance with regard to Board registration, new registration should be requested and sanctions imposed if the corporation fails to comply.

If the dissolved corporation has a liability or a liability is disclosed through investigation or audit, a successor billing should be requested and cleared through established collection procedure. In cases where the successor has terminated and their security is in the form of a surety bond, the procedures to follow are explained in Subsection 727.000 et. seq.

An action against corporate shareholders is still another remedy. The California Corporations Code requires a notice must be filed with the Secretary of State upon dissolution of the California corporation (Section 1901 (a) Corporations Code). The notice must be sent to all shareholders, known creditors and claimants whose addresses appear on corporate records (Section 1903 (c) Corporations Code).

If notice is not given, where there is no security or other means of collection, and assets have been distributed, shareholders may be sued in the corporate name for any liability of the corporation arising prior to dissolution (Section 2011 (a) Corporations Code). The stock register, corporation commissioner or Secretary of State files should be checked for shareholder information. California corporate law will generally apply to foreign (out-of-state) corporations doing business within California, as well as California corporations.

UNPAID LOANS 730.045

When loans to stockholders, officers or directors remain unpaid, a legal basis for collection action from such person(s) exists. If directors approve unauthorized loans, court action can be taken against those directors and/or shareholder recipients. An unauthorized loan is one not voted on by the holders of a majority of the shares of all classes of stock other than stock held by the benefited person. When either unpaid authorized loans or unauthorized loans exist, an audit or investigation should document the type of loan, name of recipient, terms of loan, balance unpaid and type of action by the board of directors authorizing such loans (Corp. Code Section 315, 316(a)(3)).

UNLAWFUL DISTRIBUTIONS 730.050

Sections 309 and 316 of the Corporations Code provide that directors who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders:

1. The distribution of retained earnings or assets to the corporation's shareholders in the following circumstances:
   (a) When the amounts of retained earnings prior to the distribution do not at least equal or exceed the amount of the proposed distribution; or
   (b) When immediately after the distribution:
      (1) The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) is not at least equal to 1 1/4 times its liabilities (not including deferred taxes, deferred income and other deferred credits); and
      (2) The current assets of the corporation are not at least equal to the corporation's current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years were less than the average of the interest expense to the corporation for such fiscal years if the average earnings were not at least equal to 1 1/4 times current liabilities (Corp. Code Section 500); or
   (c) When a corporation makes a distribution and it is likely the corporation will be unable to meet any liabilities as they mature (Corp. Code Section 501).
2. The distribution of assets to shareholders after institution of dissolution proceedings without paying or adequately providing for all known liabilities.

In addition, shareholders may be liable for unlawful distributions knowingly received (Corp. Code Section 506).

When collection of the liability from the corporation is doubtful and an unlawful distribution or other unlawful act by a director or directors (as described above) is suspected, the minutes of the board meetings should be examined for proof of such unlawful distribution or other unlawful acts. Other documents that may need to be examined are the retained earnings statement, the balance sheet, the statement of changes in financial position, etc.

If there is sufficient proof of an unlawful distribution, the Board may seek court action to pursue collection of the liability against the directors and/or shareholders.

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OUT-OF-STATE COLLECTIONS 733.000

GENERAL 733.010

Each in-state district is responsible for taking action to collect delinquent amounts of sales and use tax from persons who are located outside of the state but who have incurred liabilities in this state. The in-state district in which the liability was incurred is the district that is responsible for taking this action. In those cases where the person has departed from California leaving no means of collection in this state, such action will consist of efforts to collect through the use of correspondence, telephone calls, out-of-state DMV, IRS returns, credit reports and county assessor checks and requests to any other out-of-state agency that may be of assistance in locating the taxpayer or assets. Board levies **may not** be served on out-of-state entities holding property located outside the state. EWO's **may not** be served on out-of-state entities holding wages earned outside the state by an employee residing outside the state. If these efforts are unsuccessful in clearing the liability but the taxpayer has been located, and there appear to be attachable assets, and the amount owing is sufficient to warrant an out-of-state auditor making personal contact, the assignment should be referred to the Out-of-State District. When referral is made to the Out-of-State District, all pertinent information must be included with the referral letter.

AMOUNT OF LIABILITY 733.020

In determining whether further action by the Out-of-State District is warranted, the in-state district will consider the amount owing, as well as whether a course of further action is available to the Out-of-State District. Accounts should not be referred to the Out-of-State District if the amount owing is relatively small or if it is obvious that no further action can be taken beyond that already taken by the in-state district. Accounts should not be referred to the Out-of-State District if there is a clear indication they should be written off. When further action on accounts of this type is not warranted or is not available, a recommendation for discharge from accountability should be sent to the Headquarters Special Procedures Section from the district.

OUT-OF-STATE DISTRICT ACTION 733.030

Upon receipt of in-state district referrals, the Out-of-State District will consider the amount owing with any other significant factors, and determine whether to have an auditor make personal contact when assigned an audit in the taxpayer's area. If a personal contact is not practical, or if personal contact by the out-of-state auditor does not result in payment or positive information on assets, the Out-of-State District will return the assignment to the in-state district office with a report on the investigation. If the out-of-state auditor makes contact with the taxpayer, the auditor should obtain as much information as possible concerning the taxpayer's assets and forward this information to the Out-of-State District for their action or referral. In any case, the report should detail any action taken on the account or relay any information that may be helpful in determining whether a referral to the Attorney General or a write off is warranted. The responsibility of the in-state district office is to then write off the liability or ask Headquarters Special Procedures Section to refer the case to the Attorney General.

If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.

OUT-OF-STATE DISTRICT COLLECTION RESPONSIBILITY 733.040

Persons who maintain a place of business in this State, but whose records are located out-of-state, are assigned Out-of-State District account numbers (see Section 230.000 et seq.). The Out-of-State District has the responsibility for all compliance functions, including accounts receivable. The Out-of-State District may call upon in-state districts for assistance in performing compliance functions, particularly on those accounts with in-state business locations.

If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.

SPECIAL PROCEDURES SECTION — AUTHORITY AND RESPONSIBILITY 733.050

The Headquarters Special Procedures Section has final authority for determining whether a request for discharge from accountability should be made pursuant to an Out-of-State District recommendation. The Headquarters Special Procedures Section will thoroughly review each Form BOE–479 received. If there is concurrence in the recommendation, the request for discharge from accountability will be processed. If, however, for any reason, the Special Procedures Section does not concur with the recommendation, the write-off will be returned to the district office.

The Headquarters Special Procedures Section also has final authority in determining whether referral to the Attorney General should be made pursuant to an Out-of-State District recommendation. In most cases, when such a recommendation is received, the Special Procedures Section will arrange to secure a credit report on the taxpayer. After securing the credit report, the Special Procedures Section will consider all factors and determine whether the case should be referred to the Attorney General.

NOTIFICATION OF ACTION TO DISTRICTS 733.060

In every case where a Form BOE–479 is received by the Headquarters Special Procedures Section, or where referral to the office of the Attorney General has been recommended, the Special Procedures Section will inform the district of the action taken. Such notification may be in the form of a copy of Form BOE–479, or a copy of the letter referring the case to the Attorney General.

NOTICE TO WITHHOLD — FORMS BOE–465 736.000

GENERAL 736.010

Forms BOE–465, Notice to Withhold, are used respectively under sales and use tax as a simple means of preventing the transfer of assets belonging to delinquent taxpayers when the assets are in the possession of other persons and, for some reason, use of a Notice of Levy is not desired. Persons who hold the assets and who are served with the Notice to Withhold may neither transfer nor make other disposition of the assets during the effective period of the notice without first receiving consent of the Board (see Subsection 135.070).

The notice attaches only those assets in the person's possession at the time of service and has no effect on assets that later come under that person's control. The notice will not be used to garnish wages.

Any person who, after being served with the notice, makes a transfer or other disposition of assets during the effective period of the notice without first receiving consent of the Board, becomes personally liable to the extent of the value of the assets transferred if, solely by reason of the transfer, collection cannot be made.

The notice provides an effective collection aid if not abused by indiscriminate use. In general, the notice should be utilized only after the taxpayer has had an opportunity to pay voluntarily and has failed to do so or to stop the transfer of assets when the transfer would jeopardize collections. The notice should not be used in a routine manner on ordinary delinquent accounts as the first effort to collect or as a means of trying to "reform" a troublesome taxpayer. At the same time, unreasonable restrictions tending to discourage the use of the notice should not be imposed.

SERVICE OF NOTICE — FORM BOE–465 736.020

Service of the Notice to Withhold may be made within three years from the date the liability became final or within ten years from the last recording of an abstract or a lien (see Subsection 712.030).

The service may be made by first class mail. However, if the district office feels it is in the state's best interest, service may be made in person or by certified or registered mail. When service is accomplished in person, an acknowledged copy of the notice should be obtained at the time of the service. At the same time, an effort should be made to obtain a report of the assets of the taxpayer being held pursuant to the notice. Since it is not always possible to obtain a report immediately, depending upon the type of organization served or the type of assets being held, a follow-up must be maintained to be sure a report is received in cases of this type as well as when service is made by mail.

RELEASE OF NOTICES TO WITHHOLD AND LEVY 736.025

Whenever possible, a photocopy of the Notice to Withhold or Notice of Levy should be used for the release instead of Form BOE–465–F or dictated letter. Stamp the upper-right corner of the notice with the release stamp, complete the blanks including authorized signature and prepare photocopies for the taxpayer and person(s) served.

Form BOE–465–F has been revised for use when a copy of the notice is not available or photocopies are illegible. Note the office address and type of notice must be entered. Offices may continue to use Form BOE–465–F, Rev. 2, to release Notices to Withhold until existing supplies are exhausted.

REFUSAL OF PERSONAL SERVICE OF FORM BOE–465 736.030

When the person served refuses to acknowledge service, a notation should be made on the form and the date and time of service should be shown with the name of the person with whom the notice was left.

If a person refuses to accept personal service of a notice of withhold, an attempt should be made to have the notice served either by certified or registered mail.

If this service is also refused, a Notice of Levy should be served or, if the assets are other than money, a warrant should be obtained from Headquarters for levy by the sheriff, marshal constable or California Highway Patrol.

REPORT OF ASSETS HELD 736.040

When a report has been received that assets are being held, an attempt should be made to immediately contact the taxpayer and arrange for either payment of the liability or release to the Board of the assets held if they are in the form of money. If the taxpayer refuses to cooperate or is not available, a warrant should be promptly requested or a Notice of Levy should be promptly served.

ASSETS TO BE HELD BY A PERSON SERVED FORM BOE–465 736.070

The person, other than a bank, served with a Notice to Withhold, is required to hold all of the assets belonging to the taxpayer over which control is exercised, regardless of their value or form and regardless of the amount set forth on the notice (see Subsection 135.070).

Banks and Federal and State Savings and Loan Associations are required to hold not in excess of two times the amount, including penalty and interest, shown on the Form BOE–465 with respect to deposits, credits or personal property in their possession or under their control.

Generally, where the value of assets held exceed the amount of liability, an order to authorize release of excessive assets so as not to work an undue hardship on the taxpayer will be issued. Caution must be exercised in determining the amount to be released since a sufficient amount should be retained to pay all of the liability plus any costs that might develop through the necessity to use warrant procedures. Releasing assets as described will almost always be applicable only when money is being withheld.

SERVICE OF FORM BOE–465 ON JOINT BANK ACCOUNTS 736.080

Service of the BOE–465 may be made on a delinquent taxpayer who maintains a joint bank, savings and loan, or credit union account with another person. A bank, savings and loan association or a credit union that withholds amounts pursuant to a Notice to Withhold issued by the Board, is not liable to any other persons who have an interest on the withheld account. Similarly, the institution is not liable to a third party for withholding the account of the third party pursuant to a state order, when the delinquent taxpayer has no interest in the withheld account. In each case where the Board has issued a Notice to Withhold, the institution is required to mail a notice to each person named on the account indicating the reason the account is being withheld and the amount. The institution may assess the account a reasonable service charge for providing the notice.

If, after review of the reply, there is uncertainty as to the extent of the taxpayer's interest in the account, a Notice of Levy should be served. This action places the burden of determining the taxpayer's interest in the account on the institution. The institution will usually hold the entire account to avoid becoming liable through an improper release.

EFFECTIVE PERIOD OF FORM BOE–465 736.090

The effective period of the withhold notice is 60 days from the date of service unless released sooner by the Board.

When necessary to maintain the withhold in excess of the effective period, the time may be extended by making a new service prior to the expiration of the original notice. Since the notice is used for collection purposes, there should seldom be more than one service. After an effective service is made, the taxpayer should either arrange for payment or release to the Board the assets held or the warrant procedure should be used.

SERVICE OF FORM BOE–465 CREATES NO LIEN 736.100

The service of the Notice to Withhold does not create a lien upon the assets being held. To create a lien, a Notice of Levy or a levy under a warrant is necessary. As long as the assets are held pursuant to the notice they are subject to the liens of other creditors who might levy under a Writ of Execution and thereby assert priority over the Board's withhold. Therefore, a Notice of Levy should be promptly served to seize the assets and/or perfect the Board's lien.

SERVICE OF FORM BOE–465 TO REACH RESERVE ACCOUNTS 736.110

If service of a notice upon a bank or finance company reveals a reserve account against which there is a contingent liability, the service should be promptly followed by a Notice of Levy. Usually, a considerable period of time is required for the contingent liability to be eliminated during which time other creditors can levy under a Writ of Execution. Therefore, the Notice of Levy procedure should be used to establish a lien (that will be in effect two years) rather than renewals of the Notice to Withhold.

SERVICE OF FORM BOE–465 ON EMPLOYERS 736.120

Form BOE–465 will not be served on employers to reach salaries, wages or commissions due taxpayers.

DISTRICT OFFICE CONTROLS — FORM BOE–465 736.130

Each district office should establish proper controls over the use of the notice. All employees must clearly understand who is authorized to sign and approve the use of the BOE–465 and those persons so authorized should have a thorough understanding of the situations and circumstances when utilization is proper. After service has been made, the person sending the notice has the responsibility for maintaining a follow-up and taking appropriate follow-up action to bring the matter to a successful conclusion.

UNAUTHORIZED TRANSFER OF ASSETS 736.140

Any person, who, after being served with the notice, transfers assets belonging to the taxpayer without consent of the Board and before the expiration of the effective period, can become liable to the extent of the value of the assets transferred. This will occur only if the amount is uncollectible from the taxpayer solely because of the unauthorized transfer. Comprehensive reports should be made to the Special Procedures Section in all such cases. The Special Procedures Section will determine whether the matter should be referred to the Attorney General for appropriate action against the transferor.

SERVICE OF FORM BOE–465 TO REACH COMMUNITY INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT 736.150

Family Code Section 910 provides:

(a) Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

Family Code Section 911 provides:

(a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are not commingled with other community property, except property insignificant in amount. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise.

The BOE–465 has been revised to include the blurb "Service of this notice is intended to reach any and all community property interest of defendant in any account held in the name of the spouse. We believe the account(s) in the name of taxpayer name is community-funded and subject to this order [Cal. Family Code Section 910(a)]." You should also attach Form BOE–425–L4, Levy/Withhold Attachment — Spousal Affidavit. This form is available only through ACMS DOCGEN and the LAN in Special Taxes.

The use of the above statement, on your Notice to Withhold, is recommended when the intent is to reach the community property interest, that the taxpayer may hold, in an account standing in the name of the spouse. The spouse should be specifically named on the withhold and the taxpayer would continue to be named as defendant. If the social security number is available, the number should be entered below his or her name, as should any alias. On partnership defendants, name only the partner on whom you wish to reach a community property interest.

Should the necessity arise to levy a Warrant of Collection on the asset, notify Headquarters Special Procedures Section with a BOE–200–W and include the name and social security number of the spouse.

COMMUNITY PROPERTY AND SEPARATE PROPERTY 736.160

Separate property includes the following:

1. Property owned by either spouse before marriage.
2. Property acquired during marriage by gift, devise, bequest, or descent.
3. The rents, issues and profits of separate property.
4. Property acquired during marriage with the proceeds of separate property.
5. Personal injury damages acquired from an interspousal action.

Family Code Section 760 says community property includes all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state, and property held in trust pursuant to certain revocable trusts (see Family Code Section 761).

The most common types of community property are:

1. Earnings of either spouse.
2. Personal injury damages.
   (a) Wrongful death of or injuries to a child.

   NOTE: The recovery of the wrongful death of a spouse belongs to heirs, and is not community property [Fiske v. Wilke,67 C.A.2d 440,444(1945).].

   (b) Workman's Compensation award.
3. The proceeds of community property and proceeds of earnings, including pension and retirement benefits.
4. A proportionate share of the profits of a separate property business to which a spouse contributes labor or skills.
5. A loan on personal credit. NOTE: Money borrowed on the credit of separate property is separate property. An example of this is when separate property is used as security (mortgaged) so that money can be borrowed.

LIABILITY OF SEPARATE AND COMMUNITY PROPERTY FOR DEBT 736.165

Due to the complexities of California's community property law, use the following approach to any community property question:

1. Is the property you wish to secure community property, the separate property of the taxpayer, or the separate property of the taxpayer's spouse?
2. Did the taxpayer or the spouse incur the debt?
3. Was the debt incurred before, during or after the marriage?

In general, community property is liable for a debt incurred by either spouse before or during marriage. However, the earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage until such earnings are deposited in an account in which the person's spouse has a right of withdrawal or are commingled with other community property.

Once a marriage is terminated, the person's debts are his or her own. Separate property and property received in the division of property at dissolution of marriage is liable for a debt incurred by the person before or during marriage even when the debt was assigned for payment by the person's spouse. Such property is not liable for a debt incurred by the person's spouse before or during marriage unless the debt was assigned for payment by the person in the division of the property. (This does not affect the liability of property for the satisfaction of a lien on the property.)

WARRANTS AND LEVIES 742.000

GENERAL 742.010

The Board may issue warrants for enforcement of liens and collection of amounts due. Warrants may be issued at any time within three years from the date on which the liability became final, or within ten years after the last recording of an abstract or lien (see chart, Subsection 760.020).

Before a decision is reached to request a warrant for levy, a survey of the case will be made to ensure the action will produce sufficient money to pay all costs and leave enough to make the effort worthwhile. A Notice of Levy, rather than a warrant, will be used to levy on money, or right to money, held or controlled by the tax debtor or by a third party.

Levies pursuant to warrants, with the exception of wage levies, are made by sheriffs, marshals, constables or California Highway Patrol. Upon receipt of the warrant, the officer is required to promptly serve the levy and take possession of the available assets according to the instructions that accompany the warrant. If the instructions require a keeper be placed on the premises of the taxpayer, this course of action will be followed.

If the asset consists of money, the person served is required to turn the money over to the officer who will turn the money over to the Board for the credit of the taxpayer's account after deducting fees, expenses and commissions. If the asset is other than money, the officer will take possession and arrange for sale to the highest bidder at public auction. After deducting his fees, expenses and commissions from the proceeds of the sale, he will remit the remainder to the Board for the credit of the taxpayer's account.

In order for the levy to be effective, the district should determine if the assets, other than money, are relatively free from third party claims since there is no provision, in general, that would allow us to pay off third party claims. On rare occasions, however, as in the case of a "nearly clear" motor vehicle, arrangements can be made to provide the levying officer with sufficient advance fees to allow him to pay off the small interest of a legal owner. If such a course is anticipated, Headquarters Special Procedures Section will be advised of the exact amount needed in order to determine the advisability of this course of action.

The BOE–425–LA, Notice of Levy, is a two-page document. The first page of the form is sent to the entity being levied, i.e. a bank, a savings and loan association, etc. The second copy is sent directly to the tax debtor informing them of the levy. A BOE–425, Exemptions from the Enforcement of Judgments, must accompany the tax debtor's copy of the levy.

A BOE–425–L3, Information Sheet, should be attached to the original levy to a third party or a direct deposit institution, and to the tax debtor's copy of the levy.

If the property you are levying upon is a joint account held in the name of the tax debtor and the tax debtor's spouse, be sure to attach Form BOE–425–L4, Levy/Withhold Attachment — Spousal Affidavit. This form is available on ACMS DOCGEN and on Special Taxes LAN. The community property blurb for Form BOE–425–LA that is available on ACMS DOCGEN, should also be selected.

Memorandum of Garnishee is on reverse side of Notice of Levy, therefore it will always accompany the levy.

Summary warrant procedures are one of the Board's most effective collection remedies and should be used with proper discretion but without unreasonable restrictions that might tend to discourage use. There are many times when the use of a warrant is necessary. When the use of the levy is indicated, there should be no hesitancy because of possible unpleasant reactions from the taxpayer. In practically all cases where the levy is used, the taxpayer will have had an opportunity to clear any liability and failed to do so.

INTEREST ACCRUALS ON COLLECTIONS BY WARRANT 742.020

Since the officer making the levy and collection is acting in the capacity of an agent of the Board, the date payment is received by the officer is considered to be the date of payment. Interest accruals, therefore, will depend upon the date the officer receives the funds and not on the date they are remitted to the Board by the levying officer.

ISSUANCE OF WARRANTS AND INSTRUCTIONS 742.030

All warrants, except those on wages, are issued by the Headquarters Special Procedures Section upon request from the district offices. Requests will be reviewed by the Headquarters Special Procedures Section to determine whether the use of a warrant is appropriate. Factors that will be considered are legality of action, anticipated results and costs compared to amount expected to be collected.

At the time the warrant is prepared, the instructions to the levying officer will also be prepared by the Headquarters Special Procedures Section. If, after the warrant and instructions are issued additional assets are located, or the instructions are inadequate, administrators or persons who have been delegated authority are authorized to amend or supplement the instructions as necessary. In no case, however, will the period or amounts shown on the warrant be altered; in these instances, new warrants will be requested from Headquarters.

REQUEST FOR WARRANT 742.040

Districts may request the issuance of a warrant by preparing Form BOE–200–W, Special Procedures Warrant Request. This form is remotely printed in the Special Procedures Section.

ADVANCE PAYMENT OF FEES AND EXPENSES 742.050

Officers making levies pursuant to warrants are permitted to require advance payment of fees and expenses and, with the exception of fees and expenses incurred under the Cigarette and Tobacco Products Tax Law, the Board is authorized to make advance payments. The Cigarette and Tobacco Products Tax Law provides for payment of fees and expenses upon completion of the services of the levying officer.

Before any warrant is requested:

> The determination should be made whether an advance payment will be necessary and, if so, in what amount.

When a warrant request is forwarded to Headquarters Special Procedures Section, the amount of advance payment required should be indicated, as well as to whom the check should be made payable.

The Headquarters Special Procedures Section, at the time the warrant and the warrant instructions are transmitted to the district office, will enclose a check covering any advance fees.

Whenever a levy for which an advance payment has been made results in full or partial satisfaction, separate remittance advice forms must be used to transmit the payment so the amount of reimbursement for the advance is clearly identified. Form GA–904, Advice of Miscellaneous Receipts, is used for transmittal of all non-tax items such as the reimbursement of the levying officer's fees and expenses. Unless this is done, the account of the taxpayer will be credited with the amount of the reimbursement instead of payment being diverted to the proper fund (see Subsection 843.030).

PROTECTIVE BIDS — MOTOR VEHICLE WARRANT PROCEDURE 742.060

The Department of General Services has authorized the Attorney General to bid upon and purchase motor vehicles at a public sale conducted pursuant to an agency warrant. In order to avoid the possibility of a motor vehicle being sold for an unreasonably small amount, districts may enter a "protective" bid.

If the Board desires to enter a protective bid, the Attorney General will designate an employee, to be named by the Board, as the AG's special representative, to actually make the bid. The Headquarters Special Procedures Section will coordinate this procedure.

The maximum bid shall not exceed two-thirds of the low "as is" Kelly Blue Book value of the vehicle, or the amount of the tax, including all costs of levy, whichever is the lesser.

The district will furnish Headquarters Special Procedures Section with all pertinent information regarding an anticipated public sale. The information should include, but is not limited to:

(a) Estimated value of the vehicle and amount of proposed bid.

(b) All facts regarding third party claims.

(c) Name of Board employee who will represent the Attorney General in making the bid.

(d) Date of expected sale.

As a successful bidder, the Board employee should take possession of and deliver the vehicle to the nearest installation of the Department of General Services. The district concerned must furnish the Administrative Services Division, Accounting Section, with an itemized statement of expenditures in triplicate (letter form), including the amount bid for the motor vehicle.

The Department of General Services is prepared to handle the storage and resale of the vehicle, and the Headquarters Special Procedures Section will notify the Department of General Services of all facts concerning the purchase and proposed resale of the vehicle.

Upon reasonable prior notice, vehicles may be delivered to state garages maintained at Sacramento, San Francisco, Fresno, Los Angeles and San Diego.

Upon proper notice, the Accounting Section will issue a check for sheriff's, marshal's, constable's or California Highway Patrol fees.

The Accounting Section will obtain an advance from the State Controller in the amount needed for the revolving fund to credit the taxpayer's account with the amount of the bid, less expenses. The Accounting Section will prepare a revolving fund check for the credit of the taxpayer's account and transmit the check to the Headquarters Cashier through the Headquarters Special Procedures Section.

When a motor vehicle purchased by the Board through bid-in procedures is subsequently resold by the Department of General Services, the proceeds from the sale, that are transmitted to the Board, will be distributed as follows:

(1) The revolving fund will be reimbursed for all funds advanced,

and

(2) The remaining funds will be transferred to the general fund.

CIGARETTE TAX LAW WARRANTS 742.070

Since the Cigarette Tax Law does not provide for advance payment of fees and expenses, the officer who will make the levy should be contacted to learn whether the levy can be made without an advance payment. If this cannot be arranged, the Special Procedures Section should be notified. The Special Procedures Section will then determine whether the matter should be referred to the Attorney General for action against the taxpayer.

STATEMENT OF COSTS REQUIRED 742.080

Whenever the Board is required to pay the costs of a levy for which no reimbursement was received as a result of the levy, a statement of charges is required. The statement must be submitted by the officer in triplicate and should be forwarded through the district office to the Special Procedures Section for approval and referral to the Accounting Office for payment if not already paid in advance. No payment will be made until the statement, in triplicate, detailing the items, has been received.

A statement is not necessary if an advance payment is made and full reimbursement is received as a result of the levy.

COSTS AS AN OBLIGATION OF THE TAXPAYER 742.090

The advance payment required, as well as any costs incurred in the use of a warrant, becomes the obligation of the taxpayer and should be collected by the officer making the levy.

Whenever costs are incurred through a levy from which no satisfaction is obtained, whether an advance was made or costs were later billed to the Board, the amount of the costs should be added to the tax liability and collected along with the tax when collection becomes possible. Those cost items are not posted to the accounts receivable, therefore, other controls must be developed by each office. When payments include reimbursement for previously paid costs, remittance advice forms will contain an explanatory statement.

ALCOHOLIC BEVERAGE LICENSE SUSPENSIONS AND TRANSFERS 748.000

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE FOR FAILURE TO FILE OR PAY SALES & USE TAXES 748.005

Section 24205 of the Business & Professions Code provides for the suspension of any alcohol beverage license if the taxpayer is three or more months delinquent in the payment of taxes or penalties due under the Sales & Use Tax Law, the Bradley Burns Uniform Local Sales & Use Tax Law, or the Transactions & Use Tax Law, when that liability arises in whole or in part from the exercise of the privilege of an alcoholic beverage license.

Section 24205 should be utilized in every case where a taxpayer has an alcohol beverage license that is directly related to a delinquent seller's permit, is three or more calendar months delinquent in the payment or filing of taxes and is not currently making payments on an approved payment plan.

Two warning letters have been placed on ACMS DOCGEN for use in cases that have the potential for a alcohol beverage license suspension. The first letter (BOE–1495, ABC Suspension — Preliminary Notice, Delinquency) is designed to be used once an account is roughly 2 1/2 months delinquent in the filing or payment of a return (measured from the due date of the return/prepayment). This letter warns of the potential consequences of not filing and paying the delinquent return/prepayment or paying the delinquent account receivable. In the case of return delinquencies, a blurb will be attached to the delinquency citation notices that warns of the possibility that their liquor license may be suspended.

The second letter (BOE–1497, ABC Suspension — Final Notice, Delinquency) is a final notice that must be sent prior to suspension. The taxpayer must be delinquent in the filing or payment of a return for three full calendar months (measured from the due date of the return/prepayment) before this notice can be mailed. A BOE–1497 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This final letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14 days has lapsed, and the taxpayer has not paid the liability or commenced with a satisfactory payment plan, a BOE–200 should be completed and forwarded to Special Procedures for processing. Special Procedures will verify that the BOE–1497 has been sent via ACMS DOCGEN, that 14 days have lapsed, and that the taxpayer is currently three full calendar months delinquent in the payment or filing of taxes. Special Procedures will forward a memo (BOE–1499, ABC Suspension Request) to ABC, requesting that the alcoholic beverage license be suspended until further notice. If the taxpayer complies prior to issuance of the BOE–1499, notify Special Procedures immediately.

ABC will conduct a field call, confiscate the liquor license, and notify Special Procedures when completed.

Section 24205 expressly provides that reinstatement should only be allowed when the taxpayer is current on all sales & use tax returns. Once the seller has filed and paid all current sales & use tax returns, a release memo (BOE–1500, ABC Suspension Release), should be sent by the district to ABC, notifying them that the taxpayer's license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved BOE–407 against an audit liability.

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE FOR FAILURE TO RENEW A SURETY BOND 748.006

Section 24205 of the Business & Professions Code provides that the license of any taxpayer shall be automatically suspended upon cancellation of his or her sale and use tax bond, or if that bond becomes void or unenforceable for any reason, or if the taxpayer fails to pay any taxes or penalties that are delinquent for at least three months under the Sales & Use Tax Law, the Bradley Burns Uniform Local Sales & Use Tax Law, or the Transactions & Use Tax Law, when that permit is related to the exercise of the privilege of an Alcoholic Beverage Control (ABC) license.

Section 24205 should be utilized in every case where a taxpayer has an ABC license that is directly related to a delinquent seller's permit and:

- has a cancelled or unenforceable bond, or
- is three calendar months delinquent in payment of taxes or penalties,
- and is not currently making payments on an approved payment plan to pay delinquent taxes or penalties.

This avenue is not available in cases where the Board is making an initial demand for security.

Two warning letters are available in ACMS DOCGEN for use in cases that have the potential for an ABC license suspension. The first letter (BOE–1496, ABC Suspension — Preliminary Notice) should be used when the taxpayer has not replaced a bond that was cancelled, is unenforceable, or when the taxpayer is delinquent in the payment of taxes or penalties for for approximately 2 1/2 months. This letter warns of the potential consequences of an automatic suspension of their alcoholic beverage license for not providing a valid surety bond or not paying delinquent taxes.

The second letter (BOE–1498, ABC Suspension — Final Notice) is a final notice that should be used approximately two weeks after the first letter, Form BOE–1496, or when a taxpayer is delinquent in the payment of taxes for three full calendar months. A BOE–1498 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This final letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14 days has lapsed, and the taxpayer has not provided a valid surety bond or paid their delinquent taxes or penalties, Form BOE–200, *Special Procedures Action Request*, should be completed and forwarded to Special Procedures for processing. Special Procedures will verify that the BOE–1498 has been sent, that 14 days have lapsed, and that the taxpayer has not provided a valid surety bond or paid their delinquent taxes or penalties. Special Procedures will forward a memo (BOE–1499, *ABC Suspension Request*) to ABC, requesting that the ABC license be suspended until further notice. If the taxpayer complies prior to issuance of the BOE–1499 notify Special Procedures immediately.

ABC will conduct a field call, confiscate the liquor license, and notify Special Procedures when completed.

Section 24205 expressly provides the license shall be automatically reinstated if the taxpayer files a valid bond, or pays his or her delinquent taxes or penalties, as the case may be. Once the seller has provided a valid surety bond and has paid all delinquent taxes or penalties, a release memo (BOE–1500, *ABC Suspension Release*) should be sent by the district to ABC. This memo will notify ABC that the taxpayer's license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has a valid surety bond, and is making payments on an approved installment payment agreement.

WITHHOLD OF TRANSFER — ALCOHOLIC BEVERAGE LICENSE 748.010

Section 24049 of the Alcoholic Beverage Control Act provides for the refusal of any transfer of any alcoholic beverage license if the applicant is delinquent in the payment of any taxes due under the Alcoholic Beverage Tax Law or the Sales and Use Tax Law, as well as the Personal Income Tax Law, or the Bank and Corporation Law, or on unsecured property as defined in Section 134 of the Revenue and Taxation Code, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license, or any amount due under the Unemployme nt Insurance Code when such liability arises out of the conduct of a business licensed by the Department of Alcoholic Beverage Control. This allows the Board of Equalization, through an arrangement with the Department of Alcoholic Beverage Control (ABC), to request withholds be placed against any liquor license transfers when the applicant is delinquent under any of the laws mentioned above.

For the purpose of these withholds and in cases of transfers, an applicant is deemed to be either the transferor or the transferee.

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLDS 748.020

Limited liquor licenses are those licenses that are restricted. This type of license is issued based on the population of the county in which the business premises are located. Those that lend themselves to withhold procedures are listed by the following ABC Tax Control Codes:

20 Off-sale beer and wine (effected by the moratorium)

21 Off-Sale General

47 On-Sale General Eating Place

48 On-Sale General Public Premises

49 On-Sale General Seasonal

75 Brewpub-Restaurant

In transferring a limited liquor license for a purchase price or consideration, establishment of an escrow is mandatory with the following exceptions:

Any transfer of a liquor license made by an executor, administrator, guardian, conservator, trustee, receiver, assignor, or fiduciary who has been approved or authorized by ABC is considered to be the same as an escrow agent for the purpose of receiving withholds and release letters. Escrows are not required on premise transfers when ownership of the license remains the same.

Four types of licenses are excluded from the withhold procedure, as there is no requirement escrow information be furnished to ABC. These license codes are:

20 Off-sale beer and wine (not effected by the moratorium)

40 On-sale beer

41 On-sale beer and wine

51 Club (worth a maximum of $350)

FORM LETTERS USED IN THE WITHHOLD PROCESS 748.030

Form letter BOE–871 is sent by Headquarters Special Procedures Section to ABC to request a withhold on the transfer of a liquor license. This form is prepared in sets of five to provide copies to all offices concerned.

Form BOE–872, Release of Withhold, is used by the district offices to notify ABC to release a withhold placed against the transfer of a liquor license.

Form BOE–872–A, Escrow Instructions and Demand, is used to inform the escrow agent of requirements that need to be met prior to the transfer of the liquor license.

Form BOE–872 will accompany Form BOE–872–A, Escrow Instructions and Demand, to the escrow holder if a demand has been made to the escrow agent because of a liability against an account. If all liabilities against an account have previously been cleared, Form BOE–872, Release of Withhold, will be forwarded to ABC so the liquor license may be transferred.

Form BOE–1031, Transfer of Liquor License — Audit Decision, is a district office form used by compliance to notify auditing an application to transfer a liquor license has been filed.

TRANSFER WITHHOLDS 748.040

District offices and Headquarters Special Procedures Section share responsibility with respect to the placing of withholds against the transfer of certain types of liquor licenses.

The knowledge a license transfer application has been made will come, for the most part, from daily information sent to the Headquarters Special Procedures Section from ABC Headquarters. Each of the ABC district offices will send daily notices of license transfer applications to ABC Headquarters who will, in turn, transmit the information to the Headquarters Special Procedures Section on a rush basis.

The Headquarters Special Procedures Section will determine account numbers and check for reporting delinquencies and final liabilities. A liquor license withhold will be placed only when the license transferring has a reporting delinquency or a final liability exists. When the determination is made to place a withhold on a liquor license by Headquarters Special Procedures Section's review, a Form BOE–871, Flag Withhold Letter, will immediately be sent to ABC headquarters, Sacramento, copying the Board district office for their information.

Where no reporting delinquency or final liability exists, Headquarters Special Procedures Section will forward notice of the license application transfer to the district office for any action deemed necessary.

When there is a pending liquor license transfer and the Board has a withhold on the license, the district will notify, by letter, all interested parties and inform them a tax liability exists that must be cleared prior to the withhold being removed and the license being transferred.

WITHHOLD, DEMAND AND RELEASE PROCEDURE 748.050

ABC will send to Headquarters Special Procedures Section two copies of the application to transfer the license upon receipt of Form BOE–871, Flag Withhold Letter. The Headquarters Special Procedures Section will refer this information to the district.

Since a liquor license can transfer no earlier than 30 days from date of application to transfer, the district must make every effort to clear delinquent periods, search for related accounts that may be involved and when final liability is determined, send Form BOE–872, Release of Withhold, and Form BOE–872–A, Escrow Instructions and Demand, to the escrow holder. In cases where the escrow is not being handled by an escrow company, bank, etc., only the Form BOE–872–A, Escrow Instructions and Demand, should be presented to the escrow holder. The Form BOE–872, Release of Withhold, should be held pending payment of the demand.

If demand and release are not forwarded to the escrow holder within 30 days, ABC may allow the license to transfer without payment.

When the escrow holder is in a position to disburse funds, payment will be made to the Board pursuant to the instructions contained on the Form BOE–872–A; and the escrow holder, except as noted above, will simultaneously forward the Form BOE–872, Release of Withhold, to ABC, Sacramento. ABC will then remove the withhold on the transfer of the liquor license.

DISTRICT OFFICE RESPONSIBILITY 748.060

When a district determines a withhold needs to be placed on the transfer of a liquor license, the district will notify the Headquarters Special Procedures Section either by telephone, Form BOE–200, Check List Request for Collection Action, or a mini-memo. The taxpayer's name, account number, liquor license number, and reason for withhold must be given in the request.

Each district is responsible for their own follow-up on liquor license withholds. Any other agency that may place a withhold has thirty days from the date the transfer application is filed with ABC in which to file their release and demand request with the escrow holder. Where possible, any and all action taken early on will aid ABC in concluding the transfer. If it appears an audit may be warranted, the district audit staff will be notified immediately by Form BOE–1031, Transfer of Liquor License — Audit Decision.

When Form BOE–1031 is received by the audit staff, an audit will be promptly initiated or an audit waiver will be obtained.

If the district finds additional liabilities within the allotted time or before all the funds are disbursed, an amended demand should be made on the escrow agent.

When a license withhold cannot be placed because no delinquencies exist either with respect to reporting or final liabilities at the time the application for transfer is made, full consideration must be given to bringing into play the provisions of Sales and Use Tax Law Section 6813, Certificate. The Board has the ability to demand security be posted in order to issue a Certificate of Tax Clearance allowing the escrow to proceed with the transfer of the business and the liquor license.

The need may also arise to consider the issuance of a jeopardy determination so a withhold may be placed on the transfer to thwart an imminent seizure of the license by the Internal Revenue Service or its demands against escrow proceeds where its lien priority would be senior to that of the Board. Jeopardy determinations should not be used to establish final liabilities in the normal course of events.

There should be no need for a withhold when the notice of transfer indicates a "self" incorporation, that is, an individual or partnership holding the license is incorporating since, generally, the corporation is considered a successor to the original holder of the license and will be billed as such. Should the corporation then sell the license while still owing a successor's liability, the withhold is in order.

MISCELLANEOUS INFORMATION — LIQUOR LICENSE WITHHOLD 748.070

If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than $25, shall be deposited in the General Fund. The balance of this amount shall be credited to any taxes due from an applicant under other state laws, where applicable, and the remaining portion shall be returned to the applicant.

From time to time, the necessity to expedite a release of a liquor license withhold by a telephone call to ABC headquarters in Sacramento may arise. Districts, after assuring the rush release is mandatory, will contact the Headquarters Special Procedures Section. An authorized person from the Headquarters Special Procedures Section will call ABC and the license will be released.

REMINDER TO THE DISTRICT OFFICES — LIQUOR LICENSE WITHHOLDS 748.080

The following information is included as guidelines for districts considering the placing of withholds against liquor licenses.

Withholds are not placed against renewals of liquor licenses.

After considering all factors, including application of cash deposits, withholds will not be requested on balances less than $100.

A withhold should not be requested unless all or part of the liability or delinquency arose from the operation of a business requiring the holding of a liquor license.

No withhold on the transfer of a liquor license will be made unless there is an application for the transfer on the license.

No withhold on the transfer of a license will be made unless a reporting delinquency or final liability exists.

BANKRUPTCIES INVOLVING LIQUOR LICENSES 748.090

Normally, penalty and post-bankruptcy interest are charges that are not allowable in bankruptcy claims. However, if the bankrupt was the holder of a liquor license that has been sold by the trustee, a withhold will be placed against the transfer and will not be removed until the total liability, including all penalty and interest to the date of payment, has been paid, regardless of the amount included in any bankruptcy priority claim previously filed. If the amount realized from the sale of the license is inadequate to pay the total amount due, release of the withhold must be given on the basis of the sales price of the license rather than the amount of the tax liability.

ESCROWS 748.100

Under the withhold procedure, a claim is made directly upon funds held in escrow pending transfer of the liquor license. Demand and release instructions (Forms BOE–872 and BOE–872–A) are made directly to the escrow agent who, upon payment of the demand, will send the Release of Withhold to Headquarters, ABC, Sacramento.

If escrow funds are inadequate to pay in full the claims of all agencies that have withholds against the license transfer, Headquarters Special Procedures Section will be contacted to arrange a prorate of available funds. The information required includes the total selling price of the license, amount of escrow fee, which other agencies have claims in the escrow, and the name and address of the escrow company.

INSTALLMENTS — LIQUOR LICENSE WITHHOLDS 748.110

Under no circumstances should an installment proposal be accepted when the debtor is the transferor. The transferor is receiving a consideration for the sale of the license and the liability should be paid out of the proceeds.

If the delinquent taxpayer is the transferee and an investigation discloses an inability to pay the obligation, even though acquiring a license, a report and recommendation should be forwarded to Headquarters Special Procedures Section. In certain unusual situations of this kind, the acceptance of a proposal for payment will be in order since the license represents an asset that might, at a later date, be helpful in clearing the account. In such cases, a withhold will not be removed unless a substantial initial payment has been received.

PAYMENT FOR RELEASE OF WITHHOLD — LIQUOR LICENSE 748.120

Payment by personal check should not be accepted to release a license. An escrow check or a check from a source representing funds held in trust would be acceptable.

INTERNAL REVENUE SEIZURE AND SALE — LIQUOR LICENSE 748.130

The Internal Revenue Service can seize and sell the liquor license of any person who is delinquent in the payment of federal taxes. To transfer the license once the license has been sold, the Internal Revenue Service and the buyer must open an escrow account with a bona fide escrow holder. The transfer of the license must be processed through ABC. The buyer and the details of the transfer must meet the same requirements as in any other liquor license transfer. District offices will be notified by Form BOE–871 of these pending transfers in the same manner as in the transfer of other licenses.

When a district becomes aware of the fact the Internal Revenue Service has seized the license, a withhold on the transfer of the license will be requested when application for transfer is made providing a reporting delinquency or delinquent liability exists. After the district has been notified of the pending transfer by Form BOE–871, the release and demand forms, Forms BOE–872 and BOE–872–A, will be sent to the escrow holder. A release and demand will never be deposited with the Internal Revenue Service even though they may be requested.

ABC DAILY TRANSMITTALS 748.140

All ABC district and branch offices daily type a transmittal that shows new license requests, transfer applications (including name and address of transferor and transferee) and temporary applications.

This information is sent to ABC Headquarters in Sacramento for immediate forwarding to the Board's Headquarters Special Procedures Section (see Subsection 748.040, Transfer Withholds). Some Board district offices formerly received copies of the transmittals directly from their neighboring ABC district office. This will no longer officially occur since Headquarters Special Procedures Section will forward copies of the transmittals to districts when received from ABC Headquarters.

ABC district/branch offices are at the following locations:

Northern California

Fresno
Oakland
Sacramento
San Francisco
San Jose
Salinas
Santa Rosa
Eureka
Stockton
Yuba City
Redding

Southern California

Bakersfield
El Monte
Inglewood
Long Beach
Los Angeles/Wilshire
Rancho Mirage
San Bernardino
Indio
San Diego
Santa Ana
Santa Barbara
San Luis Obispo
Van Nuys

REVOCATION 751.000

GENERAL 751.010

The revocation procedure, when used properly and with due impressiveness, can be a very useful collection aid (see Subsection 360.000 et seq.). If delinquent taxpayers realize they will not be permitted to operate after revocation, there will be, in most cases, a stronger inclination to pay the amount due. On the other hand, if the representative, in dealings with the taxpayer, treats the revocation process lightly, the taxpayer will be encouraged to do likewise.

Unless the debtor is made to understand the seriousness of the revocation, the action will be meaningless and wasted. Additionally, if there is a consistent failure to enforce the revocation, the apathy, in this respect, can become a matter of common knowledge among taxpayers and thereby add to the over-all burden of obtaining compliance.

REASONS FOR REVOCATIONS 751.020

Whenever any person fails to comply with any of the provisions of the law under which a permit or license is held, the Board, upon hearing for which 10 days notice has been given, may revoke the permit or license. The responsibility for conducting the hearings is delegated to the business taxes administrators or their representatives. Hearings are held at the district or branch office. Causes for revocation include failure to file and pay tax return(s), failure to pay a balance, failure to post required security, failure to keep or make available proper records, or failure to surrender permit for cancellation when not actively engaged in business as a seller of tangible personal property, or for violation of any provision of the applicable law.

INITIATION OF REVOCATION ACTION 751.030

In cases of failure to file and pay returns, the revocation action is an automated process. For a cause other than failure to file a return(s), i.e., security, failure to comply, etc., the revocation action is initiated by district office personnel through the Delinquency subsystem.

Reference: CPPM Section 550.040

BALANCE REVOCATION REQUESTS 751.040

If the reason for the revocation must be changed from failure to file returns(s) to a balance revocation, the change must be done prior to revocation notices being produced for the list number in which the account was cited for failure to file return(s). This date can be determined by referring to the Calendar of Sales Tax Functions. Copies of the calendar are sent to each district office annually. The Delinquency 0 display of BTCIS also shows the process dates of the next revocation list. All delinquency on-line transactions must be processed prior to 5:00 P.M. on the date revocations are produced.

MINIMUM AMOUNTS 751.045

Unless there are extenuating circumstances present, accounts will not be routinely scheduled for revocation unless the amount owing is $1,000 or more. When districts request revocation action on an account owing less than $1,000, the circumstances that warrant the action should be explained in the request.

HEARING NOTICES 751.050

All hearing notices are mailed by Headquarters. These cite the taxpayer to appear for a hearing before the appropriate person in the district office to show cause why the permit or license should not be revoked for the cause specified in the notice.

Each of the laws that provide for this method of revocation require the person be given 10 days notice in writing, of the time and place of hearing. Notice is served by placing the notice in the mail addressed to the taxpayer's address of record.

EFFECTIVE DATE OF REVOCATIONS 751.060

Revocations are effective on the dates set forth in the Calendar of Sales Tax Tax Functions. For those business taxes where an effective revocation date is not shown, the effective date of revocation will be 60 days following the mail date of the hearing notice as required by the Taxpayer Bill of Rights. If the cause of revocation is cleared in its entirety on or before the effective date of revocation, and the information is available in Headquarters, the notice will not be mailed. If the notice is mailed, the revocation will be considered inoperative upon receipt of notification to the taxpayer from the district office on Form BOE–16, Notice of Inoperative Revocation.

EFFECT OF REVOCATION 751.070

Upon service of the revocation notice, all of the rights or privileges granted under a particular law are revoked or suspended until the license or permit is properly reinstated. Operation after revocation constitutes a misdemeanor. Taxpayers or officers of a corporation who continue operations after revocation are liable for prosecution.

REVOCATIONS — INITIAL CLEARING PROCESS 751.075

Revocations should be worked inside initially, and only those cases that require personal contact should be taken to the field. If there is an existing assignment on an account that is currently being handled in the field, or if file history shows inside clearance attempts would be nonproductive, the revocation should immediately be taken to the field for clearance.

On those revocations initially worked in-house, a telephone call should be made to attempt contact for the purpose of informing the taxpayer of the consequences of operating with a revoked permit, the requirements to reinstate the permit and to obtain a commitment to perform. Timely follow-ups must be maintained.

If the taxpayer is contacted on the first telephone call but fails to perform, a second telephone call, followed with a Notice to Appear within one week, is recommended, unless there is prior indication that the taxpayer will not respond to this type of action.

Additional telephone calls are recommended if there is no contact with the permit holder on the first call. These calls would be to the business, to the residence, or to any other leads you may have.

Special, irregular hours may be required to reach taxpayers who are not available during normal business hours.

The new "Current Revocation List" should be reviewed by a supervisor to identify chronic accounts for priority handling and immediate field action. The current and aged revocation lists should be used to monitor the revocation program on a monthly basis. All aged revocations should be regularly reviewed by a compliance supervisor with the compliance person who is assigned the case. Staff meetings to discuss any particular problems with accounts or procedures are recommended as a supplement to the monthly review.

PROSECUTIONS, OPERATING AFTER REVOCATION 751.080

When all other remedies have been exhausted, aid of the court may be required to bring about compliance.

CONDITIONS OF REINSTATEMENT 751.090

By the time hearings are held, each taxpayer will have had a sufficient period of time in which to have paid any amount due. Therefore, do not clear delinquency records on the basis of a mere promise to pay or to start paying at a future date.

To reinstate a revoked account, the taxpayer must:

a. Clear the cause for revocation.

b. File all delinquent returns and pay the taxes, penalty and interest due.

c. Pay all self-assessed delinquent balances due according to the records of the Board.

d. Pay, or enter into an installment payment agreement, for audit determined accounts receivables.

e. Post required or additional security on sales tax accounts. Arrangements may be accepted in lieu of security at district discretion.

f. Pay the reinstatement fee and complete any required forms.

The taxpayer may be requested to comply with any other provisions of the laws or regulations such as keeping adequate records or reporting tax liability according to prescribed rulings.

If the revocation is to be cleared on the basis of a payment agreement, supervisory approval and a substantial initial payment should be obtained. The amount of the payment and terms of the agreement should be documented on Form BOE–407, *Installment Payment Agreement*. Unless payment and acceptable arrangements are received, the account should remain revoked.

When all conditions for reinstatement are met and the reinstatement fee has been collected, the permit or license will be reinstated. A fee must be collected for each location that is active at the time of reinstatement. A fee is not to be collected for sub-locations that are closed out Code 8 and not active at the time of reinstatement. If an inactive sublocation, identified with a close-out Code 8 in IRIS should reactivate at any time in the future, the reinstatement fee will be due at the time of activation.

If the taxpayer files bankruptcy, the account will be reinstated without any of the above conditions being met. Form BOE–16 will be prepared as outlined in Section 360.130. A bankruptcy withhold will be added to the account by district office personnel through the use of the Delinquency On-line System. This does not restrict efforts to clear delinquent periods.

After reinstatement, should the taxpayer fail or refuse to respond to any demand for compliance with the law or regulations, revocation proceedings should again be instituted, citing expressly in the show-cause notice of hearing the particular causes for which the permit is proposed to be revoked.

REINSTATEMENTS AFTER REVOCATION — FEES 751.100

Reinstatement after revocation requires a $50 fee under the provisions of the Sales and Use Tax Law for each seller's permit. In the case of sales and use tax consolidated permits, the district will determine the number of active subpermits to be reinstated and collect a $50 fee for each. The total amount of fees will be entered on Form BOE–400 REIN.

REINSTATEMENT — FORMS REQUIRED 751.110

To reinstate a revoked sales tax permit the use of the application Form BOE–400–REIN is mandatory. The BOE–400–REIN is then sent to Headquarters Cashier with the reinstatement fee and the revocation is cleared via the On-Line Delinquency program. Care should be taken to verify there has been no change of ownership.

PAYMENTS RECEIVED DURING REVOCATION 751.120

While the revocation is in force, the district should attempt to obtain cash, certified or cashier's check or money order in payment of liabilities and reinstatement fee(s). However, Government Code Section 6157 requires the State to accept personal checks if the person issuing the check furnishes proof of California residence and the check is drawn on a California banking institution, except where the Board has previously been given a check that was returned by the banking institution without payment.

If the taxpayer insists on providing a personal or business check, or one is mailed to the district office and the taxpayer does not have a history of returned checks within the previous 36 months, we will accept the check. If the taxpayer has given us a check in the past 36 months which was returned without payment, a compliance supervisor may approve or reject acceptance of personal checks on a revoked account based upon their knowledge of the taxpayer and the likelihood of the current check clearing the bank.

When return(s) and a personal or business check needed to clear a revocation have been mailed to headquarters, the taxpayer normally should not be required to stop payment on the check and pay in certified funds. Such a delay could result in the assessment of additional penalty and interest charges (see Subsection 510.150). If the taxpayer's prior record does not justify immediate reinstatement, Form BOE–404 *Reinstatement Fee Action* should be processed.

INOPERATIVE REVOCATIONS 751.130

A revocation for failure to file and pay a return is considered inoperative only if the return and all taxes owing for a particular period are paid on or before the effective date of the revocation. Revocation of a permit is considered inoperative if the person has terminated his/her operations before the effective date of revocation. In this case the on-line closeout process will clear the revocation from the Board's records. The revocation is considered valid only when the revocation notice is mailed to the taxpayer's address of record. If there has been a change in the business location and the notice of revocation was mailed to the former address, the revocation can only be considered inoperative if the Board received notice of the move prior to the effective date of revocation. Letters informing the Board of the change, Post Office Department Form 3573 sent to the Board, and returns with the address crossed out (and the forwarding address has been inserted) are all considered to be notices of a move. If the Board did not receive notice of the move prior to the effective date of revocation, then the revocation is operative and the conditions of reinstatement must be met.

INOPERATIVE REVOCATIONS (CONT.) 751.130

Inoperative revocations occur because the taxpayer's action to clear the cause of revocation, although prior to the effective date of the revocation, is too late to prevent the recording of the revocation and the mailing of the notice. If the taxpayer is shown as revoked on the delinquent record, the district office will notify the taxpayer the revocation is inoperative through the use of Form BOE–16, Notice of Inoperative Revocation. However, the duplicate copy will no longer be sent to the Registration and Security Control Team in LRAS.

Reference: CPPM Section 550.070

An inoperative revocation will be generated when the taxpayer files bankruptcy. At the same time the BOE–16 is done, a BOE–143 should be done, if appropriate, and the bankruptcy withhold should be placed on the account via the Delinquency On-line System.

The inoperative revocation can be cleared from the computer through the Delinquency On-line System. Processing the revocation clearance transaction will clear the revocation and place a one-month withhold on the account. Detailed instructions concerning the Delinquency On-line System can be found in the Delinquency On-line User's Guide.

FORM LETTERS TO SUPPLIERS OF REVOKED ACCOUNTS AND SWAP MEET OPERATORS 751.140

Form BOE–570–A advises the supplier a taxpayer's seller's permit has been revoked and a resale certificate may no longer be accepted from the specified taxpayer. The letter is particularly useful when dealing with revoked service stations, bars, restaurants, hotels, franchised businesses (fast foods, convenience stores, etc.) and other sellers having only one or a limited number of principal suppliers. This letter should only be sent to principal suppliers of the specified taxpayer. This letter should not be sent to a taxpayer's competitor unless there is evidence that the competitor is a principal supplier. What happens, in a good number of cases, is the person's supply source is cut off. Form BOE–570–B references Form BOE–570–A and advises the supplier they may again accept a resale certificate. Form BOE–570–B is mailed when the reinstatement is completed. It is extremely important the Form BOE–570–B letter be executed promptly when the revocation is cleared.

These form letters should be used in-lieu of district forms of the same nature. The letters should be used in selected cases and not as replacement to normal procedures in clearing revocations.

PRE-PROSECUTION HEARING 751.150

Prior to prosecution of a revoked account, you should attempt compliance through the use of a pre-prosecution letter and hearing (see Exhibit A).

The following guidelines apply to the use of this procedure:

(1) Use only when failure to comply will result in actual prosecution by the city/district attorney.

(2) When a corporation is involved, send a letter to all corporate officers at their home address, as well as to the corporation.

(3) Each letter should be individually typed.

(4) No more than one week should be allowed for the taxpayer to appear.

NOTICE OF PRE-PROSECUTION EXHIBIT A

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX
TELEPHONE (916) XXX-XXXX
FAX (916) XXX-XXXX
www.boe.ca.gov

[Taxpayer]

[Address of Record]

[City], [State], [Zip]

Account Number: [SR KH 99–999999]

NOTICE OF PRE-PROSECUTION HEARING

Section 6071 of the Revenue and Taxation Code states that any person who engages in business as a seller of tangible personal property in this state after a permit is revoked, and each officer of a corporation that so engages in business, is guilty of a misdemeanor.

Your seller's permit was revoked; you were personally notified on _____ __ and evidence of sales of tangible personal property was obtained on _____ _____. These sales constitute unlawful acts and are punishable by prosecution under the penal provisions of the Code.

Therefore, you are hereby requested to appear to show cause why you should not be prosecuted, at the State Board of Equalization [insert address of office], [city], [state], [zip] at [date and time and room number].

Sincerely,

Business Taxes Compliance Supervisor

GE:tt

cc: Deputy District Attorney

BANKRUPTCIES, ASSIGNMENTS, RECEIVERSHIPS, AND PROBATES 754.000

GENERAL 754.010

To receive payments from the assets available in bankruptcy, assignment, receivership, and probate estates, formal claims must be filed by all creditors including taxing agencies. Claims for taxes that are filed against estates have priority over certain other claims. Therefore, when a taxpayer becomes involved in one or more of these types of proceedings and owes a liability, a claim should be filed in the estate. If through error no claim is filed, collection in most cases will be difficult or impossible.

District offices have the ultimate responsibility for discovering legal proceedings involving taxpayers that are required to have an account with the Board. This information may be obtained from various publications that furnish this type of information. The information might also be obtained from the taxpayer, business associates, other creditors, or through other informal sources.

All formal claims, where collection of the tax is the responsibility of the Board, are prepared and filed by the Headquarters Special Procedures Section based upon information furnished by the district office. Generally, claims for tax and pre-petition interest over $500 will be filed in any proceeding. The Headquarters Special Procedures Section is responsible for following these claims, with the assistance and cooperation of the district offices. The Headquarters Special Procedures Section will notify the districts when to proceed with collection action.

Preparation, filing and follow-up of all formal claims for gasoline (motor vehicle fuel) taxes are the responsibility of the State Controller.

GLOSSARY OF BANKRUPTCY TERMS 754.020

TERM DEFINITION

Assets Abandoned by Court The trustee in bankruptcy may decide not to include certain assets of the bankrupt as part of the estate. For example, the debtor may not have sufficient equity in certain property to make inclusion of the property in the estate worthwhile. The trustee would then petition the court for abandonment of the assets and, if approved, they are released from the estate.

Automatic Stay "General protection from any form of collection activity instituted at the time the bankruptcy petition is filed. Collection action is stopped or ""stayed"" as an operation of law."

TERM	DEFINITION
Bar Date	The date by which a claim must be filed.
Case Closed	Administration of the Estate is complete.
Chapter 7	Liquidation.
Chapter 9	Reorganization (Municipality).
Chapter 11	Reorganization.
Chapter 12	Adjustment of Debts of a Family Farmer with Regular Annual Income.
Chapter 13	Adjustment of Debts of an Individual with Regular Income.
Claims in Bankruptcy	Notification to the court of amounts owed by the debtor.
Confirmed Plan of Reorganization	Court ordered plan that generally revests all assets of the Estate to reorganized court.

GLOSSARY OF BANKRUPTCY TERMS (CONT. 1) 754.020

TERM	DEFINITION
Date of Order for Relief	The date of filing of any voluntary petition that operates as the decree date of a bankruptcy court.
Debtor	The subject of a bankruptcy case.
Debtor in Possession	A taxpayer who remains in control of his/her business or assets during a Chapter 11 or Chapter 13 case. A Debtor in Possession has the same power and authority as a court appointed trustee.
Discharge	The release of a debtor from all of his/her dischargable debts in bankruptcy (See Section 754.150). The act whereby certain debts are forever forgiven.
Dismissal	Equivalent of a cancellation. Places the parties in the same condition as if no bankruptcy had been made.
Dividend	Monies received from the bankruptcy estate as a result of a claim.
Expense of Administration Claim	A claim filed in a bankruptcy proceeding having a higher priority than a proof of priority claim for tax liability incurred during the administration of the estate.
Gap Period Claim	A creditor's claim that arises in an involuntary case in the ordinary course of the debtor's business after the petition is filed but prior to the appointment of a trustee and the order for relief.
Involuntary Bankruptcy	A petition filed by creditors seeking an order for relief when: 1. The debtor is generally not paying its debts as they mature, or 2. A custodian was appointed or took possession during the 120-day period preceding the filing of the petition. (If a custodian of all or substantially all of the property of the debtor has been appointed, the debtor's creditors have an absolute right to have the liquidation proceed in the bankruptcy court.) "Three or more creditors must file a petition. The amount owed to all of them must aggregate $10,000 more than the value of any lien securing their claims unless all creditors total less than 12, in which case, one or more creditors may file petition provided the claim or claims total $10,000 or more. The Bankruptcy Reform Act of 1994 increased the amounts necessary to commence an involuntary case against the debtor from $5,000 to $10,000. Section 303 of the Bankruptcy Code covers involuntary bankruptcies and should be referred to when dealing with these types of cases. When the situation involving an involuntary case arises, Section 303(f) becomes very important. This section says in part ""...except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced."" When dealing with an involuntary petition for a Chapter 7 Case, complete the legal claim case screen and transmit to Special Procedures. Enter BI7 in the type field."

GLOSSARY OF BANKRUPTCY TERMS (CONT. 2) 754.020

TERM	DEFINITION
No Asset Case	Chapter 7 cases where assets may exist but there are no assets available for distribution to the creditors. In these cases, the assets only pay the expenses of the case (trustee, attorney, etc.).
Order for Relief	A determination, whether by decree or by operation of law, that a person is a bankrupt.
Petition	A pleading that commences a case under the Bankruptcy Code.
Plan of Reorganization (Chapter 11)	Any plan for settlement, satisfaction, or extension of the time of payment of the debtor's unsecured debts upon any terms.
Priority of Claims	1. Expense of Administration Claim 2 Gap Period Claim. 3. Wages and commissions not exceeding $4,000 earned within 90 days prior to petition. 4. Certain contributions to employee benefit plans arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first. 5. Certain claims of producers of grain and U.S. fishermen. 6. Consumer creditors who have paid money for the purchase or rental of property or a service that has not been delivered, not to exceed $1,800 for each individual. 7. Allowed claims for alimony and child support. 8. Allowed unsecured claims for taxes legally due and owing the United States, any state or subdivision thereof. The Bankruptcy Reform Act of 1994 made several amendments to section 507 of the Bankruptcy Code. Wages and commissions were increased from $2,000 to $4,000. Consumer creditors claims were increased from $900 to $1,800. A new priority claim for alimony and child support was created and given priority 7. This change reduced allowed unsecured claims for taxes to priority 8.
Trustee in Bankruptcy	Court officer appointed by the court who assumes control of all assets of debtor and administers the estate. Sometimes the trustee will personally operate the business when this is practical to conservation of assets (see Section 754.155 concerning need for a permit).
Voluntary Bankruptcy	Taxpayer files petition.

NOTIFICATION TO SPECIAL PROCEDURES — LEGAL CASES 754.030

Promptly upon learning the estate of a taxpayer is involved in bankruptcy, assignment for benefit of creditors, probate, or receivership proceedings, the district office will obtain the required information and complete the legal claim case screen on-line. This screen is to be used for all taxes administered by the Board. Care must be taken to ensure all required information is entered on this screen.

In bankruptcy cases, the information can generally be obtained from the trustee, records of the bankruptcy court, or the attorney for the debtor.

In probate and receivership cases, complete information can be obtained from the court records available in the county in which the estate is being administered.

In cases of general assignments for the benefit of creditors, information can be obtained from the assignee, from the debtor's attorney, or the debtor. The only information other than the general information required in all legal cases is the name and address of the assignee and the date of the assignment. Frequently, if information is not complete from the original source, the remaining information can be obtained through a telephone call to appropriate offices or persons, thereby making time-consuming field assignments unnecessary.

The legal claim case screen should be prepared for Chapter 7 cases even if the court has indicated the case is a no asset case. However, the district must insure that the 'Y' indicator is entered in the No Asset Case field in the legal claim case screen to prevent erroneous claims being filed.

Bankruptcy notices are sent to the Registration and Security Control Team in LRAS by the eleven California courts. The Registration and Security Control Team in LRAS will screen these bankruptcy notices on a priority basis, including notices of conversion from one chapter to another. All notices indicating assets or the probability the debtor holds a permit with the Board will be searched for account numbers. Notices developing a permit number will be sent to the district for their immediate action., The legal claim case screen, including BAR DATE, if available, will be completed and transmitted by the district to Headquarters Special Procedures Section as quickly as possible so a legal follow up may be established on the account. This follow-up will generally set a date one-month prior to the last date (the Bar Date) a claim can be filed. Headquarters Special Procedures Section will review the account and cause a claim to be prepared for filing in the debtor's estate.

Districts must have all delinquencies cleared, audits completed, and the figures made available to Headquarters Special Procedures Section not less than 30 days before the final date to file claims (Bar Date). If delinquent returns are received within six (6) weeks of the Bar Date, a copy of each return must be sent directly to the Headquarters Special Procedures Section after the appropriate "NR" or "PR" comments have been entered.

No follow-up will be made by Headquarters Special Procedures Section regarding clearance of delinquencies, completion of audits, etc. The acceleration of time in which to file claims precludes such inquiry.

PROCEDURE WHEN AUDIT IS TO BE MADE — LEGAL CASES 754.040

In all cases where an audit is intended, the Audit Approval section of the legal claim case screen must be completed. Once completed, the legal claim case screen will be transmitted to the Headquarters Special Procedures Section promptly so a proper control can be established for the timely filing of a claim. When referring a case to the audit section, a notation should be made that the deadline for the receipt of the audit in headquarters is one month prior to the Bar Date. For bankruptcy petitions filed on or after October 22, 1994, it is not a violation of the automatic stay for the Board, or any other governmental unit, to conduct an audit to determine a tax liability.

In all cases where an audit is to be made, it is important to determine the location of the records. This will expedite the audit process in as much as the auditor will not have to locate the books and records. The person who has possession of the records should also be notified whether or not an audit is intended.

PROCEDURE WHEN NO AUDIT IS TO BE MADE — LEGAL CASES 754.050

The legal claim case screen should be completed for all legal claim types including Chapter 7 No Asset cases. Completion of the Audit Approval section of the legal claim case screen for a Chapter 7 No Asset case is optional. If a Chapter 7 No Asset case is later redesignated by the court to an Asset Case, then the Audit Approval Section of the legal claim case screen must be completed.

PRE/POST PETITION (SPLIT) RETURNS NOT YET FILED — LEGAL CASES 754.055

After transmitting a legal case from the legal claim case screen ensure all pre-petition returns have been filed. In many cases, a Financial Obligation (FO) and return needs to be split.

A FO is established at the time the tax return is addressed for mailing.

- If at the time the legal claim is entered on the legal claim case screen, and the system has not yet established a FO, the system will automatically split the FO. Split returns will be mailed to the taxpayer by the system. Time constraints may require creating a periodic FO prior to return addressing (e.g. yearly account, that files in the middle of the year).
- If a return for the full reporting period was filed without full payment, Special Procedures will prorate the difference for purpose of filing the claim.
- If the FO for the entire period has been established but the return has not been filed, the district will need to manually split the FO. This will create a pre-petition and a post-petition return. District staff will then print and mail the returns to the taxpayer. It is the district's responsibility to obtain the returns and establish follow-ups.

When pre-petition returns cannot be obtained with adequate time (two weeks) for Special Procedures to file a claim, preparation of a Compliance Assessment (CPPM 540.200) should be considered.

DISPOSITION OF SECURITY – LEGAL CASES 754.060

When disposing of security at the time of close-out in bankruptcy, assignment, receivership and probate cases, the security must be returned in care of the representative who is entitled to receive it, even though the checks are made payable to the entity that posted the security.

In bankruptcy cases, when the account is closed out with no delinquencies or liabilities pending or otherwise, the security should be returned in care of the bankruptcy trustee. This procedure will also be followed when the security was posted by a partnership and not all the members of the partnership are bankrupt.

When the taxpayer continues to operate as a debtor in possession in Chapter 11 cases, the amount posted will be retained as security for the account, and a claim will be filed for the full amount of the liability. When the account is closed, and there is no liability, no audit, and all returns have been filed and paid, the security should be returned to the trustee or debtor in possession.

In assignment cases, return of security, if warranted, will be made in care of the assignee. In receivership cases, it will be made in care of the receiver.

In probate cases, the security will be returned in care of the attorney representing the estate of the deceased taxpayer. If the security was posted by a partnership and one of the partners is deceased, the security will be returned in care of the surviving partner or partners.

FINAL CLAIM DATES — BANKRUPTCIES 754.070

Chapter 7 (Liquidation)

A. Bar Date — The Board's claim must be filed within 180-days after the filing of the debtor's bankruptcy petition. Caution: not all courts are honoring the 180-day period. A careful review of the bankruptcy notice should be made to ensure that the correct bar date is determined.

B. The Board may file a late claim as long as it is filed before the trustee makes any distribution.

C. If the case was originally designated as a no asset case and the Board did not file a claim, **the court** will serve notice if the subsequent payment of a dividend appears possible. The court shall fix the time for filing these claims. The fixed Bar Date must be noted in the Legal Claim Type pop-up window from within the legal claim case screen. The Bar Date must never be estimated and only included if the specific date is known.

Chapter 11 (Reorganization)

A. Bar Date — The Board has 180-days to file a proof of claim. However, the Board's claim and amendments to the claim should be filed prior to approval of the disclosure statement. Caution: not all courts are honoring the 180-day period.. A careful review of the bankruptcy notice should be made to ensure that the correct bar date is determined. **The court may fix a different bar date for the filing of claims on appropriate notice.**

B. If scheduled by the debtor, a claim may be filed within 30 days after the date of mailing notice of confirmation, but will not be allowed for an amount in excess of that set forth in the debtor's schedules (must be scheduled as undisputed, not contingent, and liquidated as to amount).

C. A proof of claim is considered filed if it appears in the schedules of the debtor unless scheduled as disputed, contingent, or unliquidated.

D. A trustee or debtor may file a claim on behalf of the Board.

E. An equity security holder (surety) may file a claim on behalf of the Board.

Claims filed by trustees, surety, or scheduled by the debtor should be checked and amended if necessary and timely.

Chapter 13 (Adjustment of Debts of an Individual with Regular Income)

A. Bar Date — The Board's claim must be filed within 180-days after the filing of the debtor's bankruptcy petition. Caution: not all courts are honoring the 180-day period. A careful review of the bankruptcy notice should be made to ensure that the correct bar date is determined.

B. The time period shown in A may be extended by application to the court. The court may, for good cause, grant a reasonable, fixed extension of time for the filing of a claim by the state. (Application must be made within original 180-days.) To gain this extension, the matter must be referred to the office of the Attorney General. The need for an extension would probably be recognized rather late in the 180-day interval. This makes the referral and the Attorney General's ability to respond in a timely manner difficult. These extensions will not be requested if the delay is due to the Board's failure to expedite handling of the case.

Rules of Bankruptcy

The Rules of Bankruptcy Procedure set the time limits, the form, and the procedure for filing claims. Any questions should be referred to the Headquarters Special Procedures Section. A close inspection of each bankruptcy notice must be made by the district office to ensure bar dates are set properly. **No bar dates should be calculated by the district.**

FINAL CLAIM DATES – ASSIGNMENT FOR THE BENEFIT OF CREDITORS 754.080

Since an assignment for the benefit of creditors can be considered an act of bankruptcy, the assignment proceedings are required to remain open for at least four months. Although tax claims filed with assignees may be honored after the four-month period, there is always the risk funds might be disbursed promptly after the passage of the minimum amount of time. Therefore, in every assignment case, claims should be filed within four months from the date of the assignment.

The district office should attempt to determine promptly the full liability in each case after an assignment has been made, and have this information transmitted to Headquarters Special Procedures Section in sufficient time to file a timely claim, should one be necessary.

FINAL CLAIM DATES — RECEIVERSHIP 754.090

The policy of the Board is to always strive to have any receivership claim placed on file within four months from the date the receivership is ordered by the court. Although tax claims filed with receivers may be honored after the four-month period, there is always the risk funds might be disbursed promptly after the passage of the minimum amount of time. Therefore, in every receivership case, claims should be filed within four months from the date of the court order creating the receivership.

FINAL CLAIM DATES — PROBATE 754.091

The Probate Code requires claims against the estate of a decedent for taxes due under the laws administered by the Board be mailed within four months after such written request for a determination is received in a form required by the Board. This request must be made by the fiduciary of the estate or trust, or the fiduciary's attorney.

The four-month period within which a Board claim for taxes must be filed does not start to run until the receipt of the written request from the fiduciary for the issuance of a determination. If the request for prompt determination is received in the district, the request will be forwarded to Headquarters Special Procedures Section. The policy of the Board is to always strive to have any probate claim placed on file within four months from the date of the first publication of notice to creditors, whether a written request is received or not. Therefore, the district should promptly determine the full liability in each probate case and forward the information to Headquarters Special Procedures Section in sufficient time to file a timely claim.

Receipt of Form BT–1382, Request for Prompt Determination, does not replacethe need to complete the legal claim case screen. This screen will be completed and transmitted to Headquarters Special Procedures Section for accounts where an estate is under probate. The legal claim case screen need not be completed and transmitted to Headquarters Special Procedures Section in the case of the death of a taxpayer whose estate will not be probated.

SUSPENSION OF COLLECTION EFFORT — LEGAL CASES 754.100

When a taxpayer is found to owe a delinquent balance while in bankruptcy, assignment, receivership or probate proceedings, the general policy is to suspend all collection activity against the person(s) involved during the pendency of the proceedings. Under no circumstances should any summary action be attempted against any of the assets that constitute a part of the estate. However, since October 22, 1994, the Board can make demand for returns, make assessments, issue determinations, and demand for payment on all post-petition periods. Liens still cannot be filed, nor can any collection activity be pursued, except for the determination and demand for post-petition payment. If not all of the members of a partnership are involved in legal proceedings, collection effort may be continued against those members not involved.

Demands on sureties or guaranties will not be made while these cases are being litigated.

CONFIRMATION DATE ON CHAPTER 11 BANKRUPT ACCOUNTS 754.101

A delinquency withhold is automatically placed at the account level when the legal claim case screen is transmitted to Special Procedures. This withhold suspends all citation and revocation action on all periods. However, the taxpayer is liable for any delinquencies occurring after the confirmation date. The confirmation date is the date the bankruptcy court approves the taxpayer's Plan of Reorganization of the business.

Special Procedures Responsibility

Special Procedures will enter the confirmed status (CNF) and its effective date in the legal claim case screen. The account level hold will automatically be removed and the system will place permanent periodic withholds on all pre-confirmation periods. Citation and revocation action can resume on post-confirmation periods.

When requested, Special Procedure will also issue a demand billing for all post-confirmation periods on those accounts that the system will not automatically issue a demand. Special Procedures will ensure that the lien notification as required by the Taxpayer's Bill of Rights is included on the initial demand notice.

Any questions concerning bankruptcy confirmation dates should be directed to the Headquarters Special Procedures Section.

District Responsibility

If the district becomes aware of a confirmed plan before Special Procedures, the district will notify Special Procedures.

Post-Confirmation bankrupt accounts may be cited for failure to post security, failure to pay a balance, or failure to comply, when these actions occur after the confirmation date of the court approved reorganization plan. The district can cite the account for delinquencies. A compliance supervisor should be advised before any bankrupt account is cited.

BANKRUPTCY REFORM ACT OF 1994 754.102

The Bankruptcy Reform Act of 1994 was signed into law on October 22, 1994.

As a result of the act, there are basically four amendments to the Bankruptcy Code that will have significant impact on how the Board proceeds with bankrupt accounts. The automatic stay exception has been broadened to permit taxing agencies to take the following post petition actions:

A. Audit to determine a tax liability;

B. Issue to the debtor a notice of tax deficiency;

C. Demand delinquent tax returns;

D. Make an assessment for any tax and issuance of a notice and demand payment of such an assessment when final.

Liens can not be filed nor can any collection activity be pursued, except for the determination and demand for payment on all post-petition periods.

The other major change is that government units are allowed 180-days (The Bar Date) to file proofs of claim and, in Chapter 7 cases, a late claim is valid as long as it is filed before the trustee makes any distribution. This is a privilege not to be abused. Caution: not all courts are honoring the 180-day period. Check with Special Procedures for the bar date being used at specific courts. The current follow-up procedures will be maintained.

NOTIFICATION TO PROCEED WITH COLLECTION — LEGAL CASES 754.110

General

The Headquarters Special Procedures Section will maintain follow-up contacts with legal representatives of estates and will determine when no dividend or no further dividends can be expected.

Districts will be notified when to proceed with collection or write-off. Districts should also continue to periodically monitor the bankruptcy courts and other resources for their bankruptcy accounts that remain in the ACMS "Bankruptcy" state for indications that an account has been removed from legal status, even though that change in status may not be reflected on-line due to temporary system interface or other problems in IRIS or ACMS. If a collection account's bankruptcy case has been discharged, closed or dismissed, Special Procedures should be notified and they will remove the account from legal status on the IRIS Legal Subsystem and enter notes in ACMS history.

ACMS will then pick up this change in account status from IRIS and will route the account to the appropriate "Awaiting Call" state. Liabilities under $250.00 on active accounts and under $500.00 on closed-out accounts, will be routed to the "Low Balance Follow-up" and "Low Balance Close-out Review" states, respectively. The collector must send a balance statement to the taxpayer. If no response is received from the taxpayer, an attempt to contact the taxpayer by telephone must be made. Only after those two collection actions are taken may summary collection action begin, unless a jeopardy situation exists.

Revenue & Taxation Code Section 7097 (part of the Taxpayer's Bill of Rights) requires a preliminary notice be sent to taxpayers at least 30 days prior to the filing or recording of a lien. Therefore, it is imperative that before a lien is filed the taxpayer has been given the required 30-day notice.

Balances remaining due after the probate case is closed will be written off automatically by the Headquarters Special Procedures Section and no demand for payment will be issued.

Chapter 7

The Board cannot pursue collection of amounts due from Chapter 7 debtors until either a discharge has been granted, or the case has been dismissed or closed. However, districts can make a demand for delinquent returns, as well as issue determinations and make request for payment on post petition periods prior to a discharge.

At the time of discharge, collection action may resume. Assets of the bankruptcy estate remain under the protection of the court. Collection action may therefore, only be taken against those assets belonging to the taxpayer (e.g., after acquired assets, exempted or abandoned) and not those of the estate. Once the bankruptcy case is closed or dismissed, collection action may resume against all assets.

There has historically been no uniformity by the courts for scheduling a discharge hearing and granting a discharge in Chapter 7 cases. For the most part, bankruptcy courts in California are now granting "automatic" discharges without hearing not more than 100 days after the petition date in a "No Asset" Chapter 7 unless: (1) A creditor files an objection to the discharge, or (2) the court ordered a hearing.

In the absence of a Notice of Objection to Discharge and Hearing or Notice of Hearing, districts may generally proceed with collection action against debtors, in Chapter 7 "No Asset" cases, 100 days past the petition date. Care must be taken to ensure that the object of the collection is not an asset of the estate.

Chapter 11 — Debtor in Possession

Under Chapter 11, a debtor may file with the court a petition for reorganization. In these cases, the assets of the debtor come under the jurisdiction of the court and are not subject to seizure. Trustees may be appointed or the debtor may be allowed to retain possession of his business and assets while under the jurisdiction of the court.

The debtor in possession, or trustee, who continues with the operation of the business, is required to comply with the requirements of the law to file and pay tax returns as they come due. Any liability, that accrues subsequent to the date of the petition, represents an expense of administration and as such is entitled to priority over all other claims. Should the debtor later convert to a Chapter 7, liquidation proceeding, or cease business operations, this liability would provide the basis for an expense of administration claim that the Headquarters Special Procedures Section would file.

Districts may obtain payment information contained in the Plan of Reorganization by contacting the debtor, debtor's attorney, bankruptcy court, or Special Procedures.

The Board cannot pursue collection of pre-petition amounts due from Chapter 11 debtors, unless it fits the criteria under **Default of Debtor Subsequent to a Confirmed Plan of Reorganization.** However, the Bankruptcy Code requires all post-petition taxes to be paid when due. Contact the debtor and make demand for all post-petition returns and payment. If the debtor fails to comply, a request can be made to the U.S. Trustee to convert the case to a Chapter–7.

District Responsibility

District offices, when notified by the Special Procedures Section, will treat these cases as any other collection matter. If no payment is received all collection procedures are available to the collector in attempting to clear the case. This includes citing the account for revocation.

The guidelines to follow in determining what liabilities can be pursued through normal collection procedures are:

1. Once a plan is confirmed, all collection procedures can be used to clear post-confirmation liabilities and delinquencies.
2. Once the plan is confirmed and the debtor fails to follow the conditions of the plan in making payment to the Board, all collection procedures can be used to clear pre-petition and post-petition pre-confirmation liabilities.

Warrants and Levies Subsequent To A Confirmed Plan of Reorganization

If a sheriff or other levying officer is reluctant to serve our warrants he/she should be referred to the appropriate Bankruptcy Code sections, In re Herron, 60 B.R. 82, and shown the confirmed plan. The confirmed plan means the property of the bankruptcy estate has revested to the debtor, the automatic stay is lifted and the debtor is discharged.

DEFAULT OF DEBTOR SUBSEQUENT TO A CONFIRMED PLAN OF REORGANIZATION (CHAP. 11) 754.120

Special Procedures Responsibility

The Headquarters Special Procedures Section will continue to receive and review all confirmed plans. If the plan calls for payment of the Board's claim in one payment, or a series of payments, at some time before the running of the plan, the Special Procedures Section will follow the case for payment. If a payment is not made, the Special Procedures Section will send a letter to the debtor requesting immediate payment and advising the debtor of the possible consequences should payment not be forthcoming.

If payment is not received within thirty days from the date of the letter to the debtor, the Special Procedures Section will do the following:

1. Remove the account from bankruptcy status.
2. Issue a demand billing if appropriate.
3. Advise the district office of the default by making notes in ACMS.
4. Provide copies of relevant portions of the plan, all letters, and direct the district to take appropriate action.

The Special Procedures Section, when requested, will assist the district office in determining whether summary collection procedures should be used in attempting to clear liabilities on a Chapter 11 account. As with any other collection matter, the assignment should be discussed with the district office supervisors prior to contacting the Special Procedures Section.

Chapter 13

When the debtor files for protection under a Chapter 13 the assets of the debtor come under the jurisdiction of the court and are not subject to seizure. However, the Bankruptcy Code requires all post-petition taxes to be paid when due. Contact the debtor by telephone or mail, and request all post-petition items be cleared. If the debtor fails to comply, contact the debtor or debtor's attorney to obtain compliance. If compliance can not be obtained, referral to the Attorney General may be necessary.

PENALTY AND INTEREST, ASSIGNMENT, PROBATE, AND RECEIVERSHIP CASES 754.130

Penalty and interest charges are a part of assignment, receivership and probate claims and increase the amount required to be paid by their accruals. These claims cannot be considered paid in full until the total amount of these charges that accrued through the date of payment have been received. If for any reason these charges or any portion thereof are not paid from the estate, they remain the personal liability of the taxpayer who has made an assignment or has been involved in a receivership proceeding. These charges are also the personal liability of the partners of any deceased taxpayer whose estate has been in probate.

PENALTY AND INTEREST — BANKRUPTCY CASES 754.140

The Headquarters Special Procedures Section, at the time of completing a bankruptcy claim, will make the decision as to what penalty and/or interest charges will be included in the claim.

In Chapter 7 cases, after a discharge has been granted or denied, all penalty and interest charges due on an account are subject to full collection effort at the same time and in the same manner as any non-dischargable tax. Liens, levies, withholds and warrants are used as necessary to collect these accounts and all amounts of penalty and interest still legally owing will be included and shown in these documents.

Chapter 11 and 13 priority claims that are fully paid may have remaining penalty and interest for the claim periods that are dischargable. This penalty and interest should be adjusted off by Special Procedures prior to resumption of collection activities. The districts will make no collection effort regarding unpaid items without first consulting the Headquarters Special Procedures Section. The Headquarters Special Procedures Section will ascertain the rights of collection permitted under the chapter proceedings and will advise of the action to be taken.

TAXES DISCHARGED IN BANKRUPTCY 754.150

The law provides all taxes where the due date of the return, including extensions, occurred more than three years before bankruptcy, are discharged by bankruptcy proceedings except those taxes that are exempt from discharge (see Bankruptcy Code Sections 507, Priorities, and 523, Exceptions to Discharge).

In brief, taxes “exempt from discharge” are:

1. Taxes for a period ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, within three years before the date of the filing of the petition.
2. Sales taxes assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition.
3. Taxes not assessed before, but still assessable by law or agreement, subsequent to the petition date (these taxes must be for other than failure to file a return; late filing of a return within two years of the petition date; and filing a fraudulent return.)
4. Taxes required to be collected or withheld and for which the debtor is liable.
5. Excise taxes on transactions occurring before the date of the filing of the petition and for which a return is due, including extensions, within three years prior to the petition date.

6. Taxes with respect to which:
   A. A return not filed.
   B. A return was filed after the date the return was last due and after two years before the date of the petition.
   C. The debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

If there is any question regarding whether any taxes should be discharged, contact Special Procedures.

If, there is a perfected lien for discharged taxes, the Board may then proceed only against any assets held by the taxpayer prior to bankruptcy and subsequently abandoned or exempted by the bankruptcy court after noticing the taxpayer of pending collection action. In such cases, the district must contact the bankruptcy court to determine if any assets were abandoned or exempted prior to seizing the asset or submitting a Form BT–479, Request for Discharge from Accountability.

After the bankruptcy stay is lifted, the collector should contact the taxpayer and solicit voluntary payment prior to taking collection action.

APPLICATION OF TAX ON SALES ORDERED BY FEDERAL COURTS 754.155

In 1951, in California State Board of Equalization v. Goggin 191 F.2d 726, the Ninth Circuit Court of Appeals held California sales tax did not apply to liquidation sales of personal property made by a bankruptcy trustee pursuant to court order. In the California State Board of Equalization v. Sierra Summit Inc. case, the Supreme Court overruled the 1951 Goggin decision.

The Sierra Summit Inc. decision states the trustee in a bankruptcy case is not acting as a representative of the Federal government, but is instead a representative of the debtor. The court decision goes on to say a liquidation sale by the trustee is a taxable sale for sales and use tax purposes. All taxable bankruptcy liquidation sales, by trustees or their representatives, occurring on or after June 13, 1989, will be subject to the Sierra Summit Inc. decision.

The Board will follow the rule of three or more sales in any twelve-month period, in each bankrupt estate, in deciding if a particular liquidation sale is taxable. If, in any single estate sale, the trustee sells the assets in less than three transactions, the sales are not taxable. The trustee could have many liquidation sales within any given twelve-month period, however the rule of three will apply for each individual estate.

If the trustee in a Chapter 11 proceeding sells some of the assets of the business, in addition to making normal retail sales, the asset sales are taxable. If, however, the Chapter 11 case converts to a Chapter 7 case, a new estate is created and the retail sales made by the trustee in the Chapter 11 proceeding do not apply when determining taxable sales in the Chapter 7 case.

The Board will also follow the rule of three or more sales in any twelve-month period, in each bankrupt estate, when determining if sales by auctioneers/liquidators, acting as representatives of the trustee in liquidating assets of the estate, are taxable sales.

APPLICATION OF TAX ON SALES ORDERED BY FEDERAL COURTS (CONT.) 754.155

If an auctioneer/liquidator is selling the assets of several estates at a single auction, the rule of three or more sales must be applied individually to the sale of assets of each estate. Therefore, if the assets of one of the estates are sold in three or more sales and the assets of the other estates are sold in less than three sales, only the estate assets sold in three or more sales are taxable.

Sales of vehicles, vessels, or aircraft are not counted when determining if there have been three or more sales in a given estate. However, sales of vehicles, vessels, or aircraft, made by the trustee, auctioneer, or liquidator, are subject to the use tax whether or not three or more sales have been made in a single estate.

Headquarters Special Procedures Section will extend their review of bankruptcy legal notices to identify liquidation sales by trustees or their representatives. Notices of Chapter 7 bankruptcies, and other chapter bankruptcies involving liquidation sales, will be sent to district offices for their action. The follow-up for each of these cases will be the sole responsibility of the district of control.

The district offices will extend their review of bankruptcy legal notices, bulletins and newspapers to identify liquidation sales by trustees or their representatives. Account numbers will be issued by the district office if the estate does not already hold a seller's permit (Chapter 11 trustee, etc.), or if the trustee will not have an auctioneer/liquidator sell the assets. Accounts will be issued for each estate where there will be taxable liquidation sales by a trustee who does not hold a valid seller's permit for the estate. Arbitrary accounts are being used because they will not create delinquencies leading to the revocation of the trustee's account.

At the time of registration, the district office will provide the Trustee with a tax return and information pertaining to the taxability of the liquidation sale and the completion of the return. The district office will also issue an Arbitrary account to the Trustee on-line. In the "Reason for Issue" field, you should enter "Bankruptcy, Liquidation." In the "Cross Reference" field, you should enter the debtor/predecessor's account number.

The district office is responsible for the control of these accounts to ensure the trustee files the tax return when taxable liquidation sales occur.

When a trustee uses an auctioneer/liquidator to sell the assets of the estate in a Chapter 7 liquidation bankruptcy, do not issue an arbitrary permit to the trustee. The taxes are to be reported and paid by the auctioneer/liquidator. For control and possible future audit purposes, a copy of the notice of sale should be placed in the file of the debtor and the file of the auctioneer/liquidator cross-referencing the two accounts.

The effective date of payment on all remittances received from the bankruptcy court/trustee on taxable liquidation sales will be the date the court approves the payment. Administratively, this is the best way for these payments to be handled. All additional interest, that has accrued from the time payment is approved by the court to the time the Board actually receives the money, will then be backed out.

There will be no changes to the permit procedures as they pertain to Chapter 11 bankruptcies. If the case is a debtor-in-possession, the debtor's account continues. If a trustee is appointed by the court, the debtor's account is closed-out and the trustee is issued a permit to operate the business. If the case converts to a Chapter 7 and the trustee does not have a permit for the estate, follow the steps identified above and issue the arbitrary account if appropriate.

FILING OF EMERGENCY BANKRUPTCY CLAIMS BY THE DISTRICT OFFICES 754.160

The Headquarters Special Procedures Section normally prepares and files all claims in bankruptcy. Occasionally, however, a district office must file its own claim in a bankruptcy proceeding in order for the claim to be timely.

In these cases, Special Procedures will fax a copy of the claim to the district office. The district will photocopy the fax onto bond paper, and have the claim signed by the appropriate BTCS II. The district will then be responsible for filing the claim with the court.

When the situation arises where an emergency bankruptcy claim needs to be filed for a district not located near the bankruptcy court, Special Procedures will fax a copy of the claim to the district office located closest to the court handling the proceedings to photocopy, sign, and file the claim with the court. In these instances, a copy of the claim will be sent to the district that maintains the account by Special Procedures.

BANKRUPTCY NOTICES CENTRALIZATION 754.170

The California Bankruptcy Courts have been contacted and have agreed to send the bankruptcy notices directly to the Board. The notices are directed to the Registration and Security Control Team in LRAS where the alpha search of bankruptcy notices has been centralized. All Chapter 11 notices are sent directly to Special Procedures.

The Out-of-State District will send all bankruptcy notices received from out-of-state courts to the Registration and Security Control Team in LRAS.

After the Registration and Security Control Team in LRAS obtains an account number, the original bankruptcy notice will be sent directly to the district of control.

All secondary notices will be returned to the Headquarters Special Procedures Section for their review. The Headquarters Special Procedures Section will then forward these notices to the districts.

The district offices will follow through with their normal investigation and bankruptcy procedures, as the only step being taken in headquarters is a review for account numbers.

LEGAL STATUS ON DIFFERENCE ITEMS 754.180

Generally, a code is imprinted to identify each difference. Any period with a difference, that is subsequent to the date of the petition or the effective date, will carry the identification code **'B'**.

The codes for periods prior to the petition date are as follows:

Status Indicator	Status
BØ7	Bankruptcy Chapter 7
BI7	Bankruptcy Chapter 7 (Involuntary)
BØ9	Reorganization (Municipality)
B11	Bankruptcy Chapter 11
B12	Bankruptcy Adjustment of Debts of a Family Farmer with Regular Annual Income
B13	Bankruptcy Chapter 13
PRB	Probate
ASN	Assignment for Benefit of Creditors
REC	Receivership

Post confirmation periods on Chapter 11 bankruptcies will have no identification code.

On Difference Summary screen, the code will appear under the "Legal" field located directly to the right of each difference. On Difference Detail and the Maintain Difference screen, the code will appear immediately to the right of the DBA and taxpayer's name fields. Once a status is entered on the record, it will also appear on any later issued billing for any additional pre-petition periods.

When there is a change of status, i.e. from Chapter 11 to Chapter 7, the Chapter 7 indicator code will be added to the Chapter 11 code.

All bankruptcy status indicators will be removed when the account is removed from legal (bankrupt) status.

BANKRUPTCY PROCEEDINGS — VALID SERVICE UPON THE BOARD 754.190

The Rules of Bankruptcy Procedure (RBP) and the Federal Civil Rules of Procedure (FCRP) are very specific in reference to what constitutes valid service. Service need not be accepted unless it complies with these rules.

There are numerous types of proceedings and documents in bankruptcy, and there are special rules for many of them. For Board purposes, the principal rules are as follows:

1. Summons and Complaint: If the Board has not filed a claim in the case, service must be made upon the Executive Officer or Chairman of the Board, either by personal service or by mail. RBP 704(c). This is the same rule as for summons and complaint in state actions. See BEAM 7701. FCRP(4) provides that personal service may be made on the chief executive officer of the state agency, or service as prescribed by state law.
2. Notice to Creditors: This service is by mail, to the address shown on the Board claim. RBP 203.
3. Adversary Proceedings: Service is the same as for summons and complaint. FCRP Rule 5. However, if the Board has filed a claim or if the Attorney General has already appeared in the action, service by mail upon the Attorney General or upon a Board office is acceptable as a practical matter.
4. All Cases in Which The Board Has Filed a Claim: Service by mail is accepted whether mailed to Headquarters, to a district office, or to the Attorney General. This is for practical reasons; otherwise, time would be wasted in setting aside actions taken against the Board by default.

When in doubt, contact the Headquarters Special Procedures Section for clarification. If a waiver of invalid service will be advantageous to the Board or to the Attorney General, this fact should be noted.

APPLICATION OF PAYMENTS RECEIVED – LEGAL CLAIMS 754.200

Except as authorized by the Supervisor of Special Procedures, payments received in response to our claims (bankruptcy, assignment, receivership, and probate) will be applied to the amount of the claim in the order of (1) to tax, (2) to interest, and (3) to penalty.

Application of proceeds from the sale of a liquor license, security deposits, and different priority claims will be determined by Special Procedures.

NOTICES OF STATE TAX LIENS, ABSTRACTS OF JUDGMENT AND LIENS 760.000

GENERAL 760.010

On the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus penalties, interest and costs, under the following laws:

Sales and Use Tax, Section 6757

Motor Vehicle Fuel License Tax, Section 7872

Use Fuel tax Law, Section 8996

Cigarette and Tobacco Products Tax, Section 30322

Alcoholic Beverage Tax, Section 32363

Emergency Telephone Users Surcharge Law, Section 41124.1

Energy Resources Surcharge Law, Section 40158

Hazardous Substance Tax Law, Section 43413

Solid Waste Disposal Site Cleanup and Maintenance Law, Section 45451

Underground Storage Tank Maintenance Fee Law, Section 50123

The law regarding state tax liens is now in Government Code Section 7150, et seq.. Section 7170 states,"the lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property belonging to such person and located in this state."

The lien is in force for ten years and may be extended by rerecording the lien with any county or rerecording with the Secretary of State within the ten-year period, a Notice of State Tax Lien.

The lien attaches to all property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. However, Section 7170 requires action in order for the lien to be valid against specific interests in the same property, as follows:

> As to real property, a Notice of State Tax Lien must be recorded in each county where the taxpayer's real property is located prior to the time that the four classes of persons listed in Section 7170(b) perfect their right, title, or interest in the property, in order for the lien to be valid against the property.
>
> As to personal property, the prior filing of a Notice of State Tax Lien with the Secretary of State defeats the claims of three classes of persons listen in Section 7170 (b), but cannot defeat the claims of numerous other classes of persons listed in the section.

An additional method of recording a lien against real property under the Sales and Use Tax Law and the Alcoholic Beverage Tax Law, is to follow the summary judgment procedure of Sections 6736, et seq., and 32361, et seq., of the Revenue and Taxation Code respectively, and record an abstract of judgment in any county where the person owns or may be expected to own real property. From the time the abstract is filed it has the force, effect, and priority of a judgment lien and is effective for ten years from the time of filing with the county clerk for recordation unless sooner released by the Board. The time limitation for applying for summary judgment is within three years after an amount becomes delinquent.

Revenue and Taxation Code (R&TC) Section 6702 requires that notices to withhold (Form BT–465 or current form) must be issued not later than three years from the date a payment becomes delinquent or within ten years after the last recording of an abstract of judgment or the recording or filing of a Notice of State Tax Lien. R&TC Section 6776 stipulates that all warrants be handled in the same manner, i.e., issued within three years from date of delinquency or within ten years from the last lien recordation date. A certificate of lien (Notice of State Tax Lien) may be filed or recorded in any county or with the Secretary of State at any time during the ten-year automatic or statutory lien period established by R&TC Section 6757, following the date of delinquency. In order for the Board to take court action against a debtor, such as A.G. referral for an out-of-state judgment, the lien must have been filed or recorded within three years from the delinquency date (see R&TC Sec. 6711). For this reason, current policy is to make sure that liens are filed or recorded within this three-year period. Liens may be renewed twice, each for ten-year terms, after the initial ten-year lien has expired (see Government Code Sec. 7172). The chart in Subsection 760.020 provides a quick reference for the time periods within which all of these summary procedures may be used. It should be noted here that the Board's Legal Department has long held that no three-year restriction applies to the issuance of levies pursuant to R&TC 6703, as long as there is at least the statutory lien in place from the operation of law per R&TC 6757.

LIMITATION PERIODS FOR SUMMARY PROCEDURES 760.020

<table>
<tr><th>REVENUE LAW</th><th>PERIOD WITHIN WHICH NOTICE TO WITHHOLD MAY BE USED</th><th>PERIOD WITHIN WHICH WARRANT MAY BE USED</th><th>EFFECTIVE PERIOD OF LIENS AND ABSTRACTS</th></tr>
<tr><td>Sales and Use Tax</td><td rowspan="3">After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last recording (see subsection 712.030).</td><td>While an amount is delinquent but not later than three years after the payment became delinquent, or within ten years after the last recording..</td><td rowspan="4">Ten years (Renewable) Reference 6757 Gov. Code and 7172 Sales and Use Tax Law</td></tr>
<tr><td>Cigarette and Tobacco Products Tax</td><td rowspan="3">Reference 6776 Sales and Use Tax Law</td></tr>
<tr><td>Use Fuel Tax</td></tr>
<tr><td>Alcoholic Beverage</td><td>Reference 6702 Sales and Use Tax Law</td></tr>
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TYPE OF RECORDATION ALLOWED BY STATUTE 760.030

REVENUE LAW	NOTICE OF STATE TAX LIEN	ABSTRACT OF JUDGEMENT
Sales and Use Tax	Allowed	Allowed
Cigarette and Tobacco Products Tax	Allowed	Not Allowed
Use Fuel Tax	Allowed	Not Allowed
Alcoholic Beverage	Allowed	Allowed

RESPONSIBILITY FOR RECORDING AND FILING LIENS 760.040

The notice of state tax lien or abstract of judgment is prepared and forwarded to the appropriate county recorder or to the office of the Secretary of State by the Headquarters Special Procedures Section. A copy of the document is mailed to the taxpayer.

EXTENSIONS OF LIENS 760.050

Before the expiration of the period of time for which a lien is effective, the original lien may be extended by recording a new notice or abstract of judgment in any county or by filing an extension notice with the office of the Secretary of State if a statewide personal property lien was previously acquired and is to be extended. The Headquarters Special Procedures Section has the responsibility for filing extensions the same as it has for original filings.

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN 760.060

The use of the Notice of State Tax Lien has proven to be an effective collection aid resulting in the clearance of many accounts that would have been otherwise impossible or more difficult to collect. The recordation of a lien will be made in the county in which the business was located and in any other county in which the taxpayer may own real property. Generally, a lien will not be filed on liabilities that do not include tax because an adjustment or request for relief may be pending. Board policy is to routinely record a Notice of State Tax Lien for accounts with delinquent amounts of $2,000 or more in the appropriate county(ies):

- 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination, or
- 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment, or for penalty and interest because of late payment, or
- 180 days after a successor's billing is issued

If the delinquent amount exceeds $5,000, a lien will also be filed with the office of the Secretary of State at Sacramento upon receipt of a request for such action by the district office or if the Headquarters Special Procedures Section review of the file indicates such action is appropriate. A lein will be filed with the Secretary of State in all Attorney General referrals for intervenor actions.

If a valid business reason is shown to protect the State's interests per Section 7097 and documented in IRIS or ACMS notes, the lien may be filed thirty days after the taxpayer has been sent a notice that the Board may file a lien. That notice is generally on the Demand Notice, which is sent approximately 15 days after the liability becomes final. A request to file a lien in less than 180 days must be accompanied by a supervisor's comment/approval in ACMS.

If the need for an earlier recording or filing arises or if the lien covering real property should be extended to other counties, an appropriate request should be forwarded to the Headquarters Special Procedures Section by the referring office. Also, the referring office should request a new lien if they discover the existing lien was filed prior to July 1, 1983 and a homestead exemption was previously recorded on the property. (See Subsection 760.120)

If a taxpayer is a multiple-outlet business, SR Y for example, the referring office should request the Headquarters Special Procedures Section to record liens in any county in which real property is found. If no real property is found, a lien will be recorded only in the county where the "master" is located. If an out-of-state taxpayer qualifies for a lien but owns no California property, a real property lien should be requested to be filed in Sacramento County.

For taxpayers in bankruptcy, liens can not be filed until after the automatic stay has been lifted. Post-petition liens on pre-petition liabilities will only be filed in cases where the debtor filed in Chapter 7 of the Bankruptcy Code and has been discharged or the case dismissed.

Abstracts are no longer recorded routinely. Their recording is now limited to renewals of previously recorded abstracts prior to their expiration date to extend the lien acquired by the original recording.

The Headquarters Special Procedures Section is responsible for the timely recording of renewals of abstracts.

REQUESTS TO WITHHOLD RECORDING OR FILING 760.070

This Section is obsolete. Refer to CPMG 140.060

PRIORITY OF LIENS 760.080

A lien on real or personal property created by a delinquent liability, or by the recording of a notice of state tax lien or an abstract in a county recorder's office, or a lien on personal property created by the filing of a notice with the office of the Secretary of State has priority over any other encumbrances on the property only as to the time when the liability became due and payable or time of recording or filing in relation to the recordation or filing date of other encumbrances. (Re: Section 760.010, for rights, titles, and interests not encumbered).

Generally, the rule "first in time is first in right", including federal liens under Government Code Section 7170.5, applies. Some exceptions to this rule are, a purchase money trust deed and a prior negotiated but later recorded deed. A purchase money trust deed generally is first in priority even though recorded subsequent to the Board's lien date or recording of an abstract. A deed delivered prior to the lien date or abstract but which is subsequently recorded, generally has priority since the effective date is considered to be the date the instrument was delivered. In these cases, a thorough investigation should be made to be sure a subterfuge is not being attempted to overcome the effect of the Board's lien.

Also, the language of this Board's lien laws has no defense against purchase money security interests no matter when they are filed. U.C.C. Section 9107 defines "Purchase Money Security Interest" as:

"A security interest is a "Purchase Money Security Interest" to the extent that it is (a) Taken or retained by the Seller of the collateral to secure all or part of its price; or (b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used."

Government Code Section 7170(c)(4) establishes the priority; to quote, "(4) Any person, other than the taxpayer who, notwithstanding the prior filing (emphasis ours) of the notice of the state tax lien:...(E) is a holder of a purchase money security interest."

Thus, the Board's lien against personal property where the taxpayer gives a secured interest to a creditor loses priority to the extent of the secured interest.

HOMESTEAD EXEMPTIONS 760.100

Homestead exemptions protect a portion of the homestead from forced sale. If a homestead declaration has been recorded, the protection also extends to voluntary sales. The portion protected is one of the following:

One hundred twenty five thousand dollars ($125,000) if the judgment debtor or spouse is 65 years of age or older or; 55 years of age or older with a gross annual income of $15,000 (single) or $20,000 (married); or is unable to be employed due to a physical or mental disability

Seventy five thousand dollars ($75,000) for the head of a family

Fifty thousand ($50,000) for any other person.

(See Sections 704.720, 704.730, 704.950, 704.960 and 704.965 of the Code of Civil Procedure.)

A tax lien only attaches to the homestead in the amount of any surplus over (1) prior liens and encumbrances on the homestead, and (2) the amount of the homestead exemption. As an example, where the property has a sale value of $85,000 and the amount of the exemption is $75,000 and there is a prior mortgage of $10,000, the two items would consume the total proceeds if $85,000 were realized from the execution sale. In this situation, the property would need to sell for more than $85,000 before any benefit could be derived from the Board's lien, provided there were no other prior encumbrances.

A person or married couple is limited to a single homestead at one time.

DECLARED HOMESTEAD 760.110

A dwelling in which an owner or owner's spouse resides may be selected as a declared homestead by recording a homestead declaration. (Section 704.910 et seq., Code of Civil Procedure.) A declared homestead can only be recorded on real property.

If a declared homestead is voluntarily sold, the proceeds are exempt in the amount of the exemption for 6 months after the date of the sale; (Section 704.960, Code of Civil Procedure), if the owner invests the proceeds in a new homestead declaration. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

On and after July 1, 1983, a state tax lien attaches to a dwelling regardless of the prior recording of a homestead declaration. (Section 7170, Government Code.) Therefore, if a delinquent taxpayer's file indicated the Board's lien was filed prior to July 1, 1983, on previously homesteaded property, you should request a new lien. Additionally, you should be alert to any oversight by title companies in not recognizing the Board's lien. If the Board is not notified of the sale in escrow and the escrow company releases all funds, a course of action may be maintained against escrow and the title company on the policy of title insurance.

HOMESTEAD EXEMPTION (AUTOMATIC) 760.120

Whether or not a homestead declaration is recorded, the Code of Civil Procedure (Sections 704.710 et seq.) provides for a homestead exemption for dwellings in the same amounts as outlined in CPPM Section 760.100. Unlike the declared homestead, this exemption also applies to mobilehomes and boats in which the debtor resides. Proceeds from involuntary transfers of a dwelling (execution sale, or condemnation for public use, insurance proceeds from damage or destruction of the homestead) are exempt in the amount of the homestead exemption for six months after the debtor receives the proceeds. The proceeds are not exempt if the debtor or debtor's spouse apply the homestead exemption to other property within the six-month period. Proceeds from the voluntary sale of the dwelling are not exempt (Section 704.720 Code of Civil Procedure).

INTERVENOR ACTION 760.130

In cases where a delinquent taxpayer either files a civil action against another person to recover a sum of money or is the defendant in the action and files a cross-complaint, there is a possibility for the Board to intervene and secure a lien on the cause of action and any judgment subsequently recovered by the taxpayer. To accomplish this, the matter must be referred to Special Procedures, with all of the details, so appropriate action can be taken before judgment is entered (see 760.140). No case should be considered for referral if the liability is less than $500.

If the Intervenor Action is successful, a lien will be granted on the cause of action, that will also attach to the judgment rendered in favor of the plaintiff if the plaintiff prevails in the suit. The lien on the cause of action has priority as of the date that it is filed in the civil action. If the attorney representing the taxpayer has a written fee agreement which provides that the taxpayer grants the attorney a lien on any proceeds of the lawsuit to pay the attorney fees and costs incurred in the lawsuit, the attorney has a lien as of the date the agreement is executed. In most cases, the written fee agreement will create a lien senior to the Board's, entitling the attorney to offset all attorney fees and costs (Cetenko v. United California Bank (1982) 30 Cal.3d 528).

INFORMATION NECESSARY 760.140

If a civil action is filed by a delinquent taxpayer to recover money, and the taxpayer owes the Board $500 or more, Form BOE–708, Request for Notice of Lien on Cause of Action, should be completed and forwarded to the Headquarters Special Procedures Section. Referrals should not be forwarded when our tax debtor is the defendant in the case, unless a cross complaint has been filed.

When preparing Form BOE–708, Item 1 {DAG}(Deputy Attorney General), should be left blank. Items 2 through 10, listed below, must be accurately completed.

Item 2:	Court
Item 3	Case name (always give complete title of case per court records)
Item 4	Case number
Item 5	Taxpayer (complete name or names)
Item 6,7,& 8	Total unpaid amount and interest information
Item 9	Parties to serve (include the name and address of the attorneys for all parties. If no attorneys are known, give the name and address of the party to which notice may be given. If substitute attorneys are listed in court records, show their names and addresses.)
Item 10	Nature of suit and cross complaint

Prompt action in reporting the matter to the Headquarters Special Procedures Section should be taken since the Attorney General must give notice of the state's lien to all parties in the action.

COLLECTION ACTION TO CONTINUE 760.150

The fact a taxpayer who has filed a civil action is making installment payments or has promised to make full payment at some future date should not be reason to refrain from attempting to create a lien on the cause of action. This should be considered as only one of the cumulative remedies to be used while other appropriate efforts are continued.

REPORTS TO THE DISTRICT OFFICE 760.160

After the Attorney General has completed his/her action and notification has been received by the Headquarters Special Procedures Section on the results of the efforts, the information will be passed on to the district office. Regardless of whether the Attorney General was successful, other efforts to collect should be continued.

ACTION WHEN FULL PAYMENT RECEIVED 760.170

If full payment is received in the district office on a case referred to the Attorney General, whether before or after a lien has been granted, a report of the collection will be forwarded promptly to the Headquarters Special Procedures Section so the information can be conveyed to the Attorney General.

DISTRICT OFFICE FOLLOW-UP 760.180

As frequently as deemed necessary, district office personnel should follow-up on these cases to maintain current status. Court records should be checked or the attorneys should be contacted. Any significant changes in the case should be reported to the Headquarters Special Procedures Section.

Keeping abreast of the current status of a case is important since the action of the Attorney General consists only of obtaining the lien and not of maintaining a follow-up or further collection action.

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RELEASES, PARTIAL RELEASES AND SUBORDINATION OF LIENS 763.000

GENERAL 763.010

The Board may, at any time, release all or part of any taxpayer's real property from the effect of its lien or liens acquired under any of the revenue laws that it administers. The Board may also subordinate any lien to other liens or encumbrances if it is determined the amount due is sufficiently secured by a lien or other property, or collection will not be jeopardized by the subordination.

Full releases are furnished to taxpayers only after full payment has been made or, if amounts are still due, they may be furnished to escrow agents or title companies along with a statement of payment and conditional release requirements which must be met prior to the use of the release. All full releases are prepared and mailed by the Headquarters Special Procedures Section. Releases may also be issued if it is in the best interest of the state or to facilitate payment.

ROUTINE RELEASES OF LIENS 763.020

When full payment not accompanied by a request for a release is received, the release will be furnished routinely in approximately 90 days from the date of payment. Releases will be mailed directly to the taxpayer and the county where the lien was originally filed. The Board will pay the fee required by the County Recorder to release the lien.

REQUESTS FOR RELEASES OF LIENS 763.030

Requests for releases to be mailed to escrow agents, title companies, or the taxpayer to enable the conveyance of property, will be handled as expeditiously as possible. If the request is received by a district office, it will be forwarded to the Headquarters Special Procedures Section within one day. When requests are received in the Headquarters Special Procedures Section, whether from a district office or direct, every effort is made to mail the release within one day.

If the release mailed to an escrow agent or title company requires payment be made prior to its use, the Headquarters Special Procedures Section will maintain a proper follow-up to ensure payment is received or the unused release is returned. Title companies and escrow agents who record releases without making payment in violation of the Board's written instructions become liable for the amount they fail to pay.

PAYMENTS BY PERSONAL CHECK — RELEASE OF LIEN 763.040

Upon payment of a liability by personal check, no release will be furnished for 30 days from the date of payment, unless the taxpayer can present for examination his/her cancelled check used in making the payment. If the release is to be delivered to the taxpayer at the time payment is made, such payment must be in cash, money order, certified check or cashier's check. Company checks of escrow agents or title companies are also acceptable.

RELEASE OF LIENS ACQUIRED THROUGH ERRONEOUS RECORDINGS 763.050

The release of liens acquired through erroneous recording of certificates or abstracts is the duty of the Board. An example of a certificate or abstract recorded in error is where the recordation took place after full payment had been made. In these cases, the Headquarters Special Procedures Section will prepare a release clearly showing that the document was recorded in error and the release will be forwarded to the county recorder to be recorded without fee.

SUBORDINATION OF LIENS 763.060

Subordination of real property liens are usually requested for the purpose of acquiring property on which a trust deed is to be executed which is to become a first lien or for the purpose of placing a new encumbrance on property that already stands in the taxpayer's name.

Subordination should not be issued merely as a convenience to the taxpayer or without proper investigation to determine the merits of the request. In most cases, the position of the state will not be worsened by issuing a subordination since property is to be acquired or presently owned property will be retained.

In cases of refinancing currently owned property, the taxpayer will have money coming to them at the close of escrow. In these cases, a subordination will not be given unless there are extenuating circumstances or unless the taxpayer has agreed to have the surplus funds remitted directly to the Board.

In all cases where a subordination is requested, the district office will make a written recommendation including supporting reasons to the Headquarters Special Procedures Section, accompanied by the taxpayer's written request stating the reason the subordination is desired. Also forwarded will be the following:

(a) The date and amount of the deed of trust to be executed.

(b) The names of the parties executing the deed of trust as those names will appear on the instrument.

(c) The name of the trustee.

(d) The name of the party in whose favor (beneficiary) the deed of trust will be executed.

(e) Copy of the preliminary title report.

(f) The legal description of the property as it will appear on the deed of trust (required only if this description is different than the description contained in the preliminary title report).

(g) Schedule of proposed disbursement of funds by the escrow holder.

(h) Printout of TRW REDI Property (DAMAR) real property search report.

(I) Lender's appraisal report or statement of property value.

Every such request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay, no subordination will be issued.

PARTIAL RELEASES OF LIENS 763.070

A partial release of lien, when recorded, has the effect of removing a lien from only the particular real property described in the partial release, while allowing the liens effect on other real property in which the taxpayer has an interest to remain undisturbed. Partial releases are given at the discretion of the Board and their issuance is not mandatory. Releases of this type are usually requested in those cases where the taxpayer does not have available funds to pay the amount due, but does own more than one parcel of real estate, and is selling at least one, but not all parcels of property owned.

Partial releases might also be requested when the taxpayer is selling his/her only parcel of real property and the surplus funds are insufficient to pay the entire tax liability. The taxpayer must then agree to have the surplus money from the sale remitted directly to the Board.

PARTIAL RELEASES OF LIENS (CONT.) 763.070

Partial releases are generally not given merely as a convenience to the taxpayer. They are given only when such action will not jeopardize collection of the remainder of the account or where the lien on other property provides adequate security. Since the reason a partial release is given is to permit the taxpayer to convey real property, all amounts, that would normally be paid to the taxpayer and which are above the amounts due prior lien holders plus the costs of the sale, will be paid directly to the Board.

All requests for partial releases shall be transmitted to the Headquarters Special Procedures Section. In order for the Headquarters Special Procedures Section, in conjunction with the legal staff, to consider the request properly, the following is required:

(a) Cover memo including recommendation and reasons in support of recommendation.

(b) Taxpayer's/escrow's written request stating the reason the partial release is desired.

(c) Lender's appraisal report or statement of market value.

(d) Copy of preliminary title report.

(e) Schedule of proposed disbursement of funds by the escrow agent.

(f) Printout of TRW REDI Property (DAMAR) real property search report.

Every request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay in full, no partial release will be issued.

RELEASES OF LIENS WHEN BOARD RECORDS ARE DESTROYED 763.080

It is not unusual for the Board to receive requests for release of liens in cases where records have been destroyed. If, when requests are received, the district office finds its records are destroyed, it can be assumed that the Headquarters Taxpayer Records records are also destroyed. When this situation occurs, district offices should secure either from the escrow agent, title company, or from the office of the county recorder, all of the data necessary for the preparation of the release. This information should then be forwarded to the Headquarters Special Procedures Section as promptly as possible along with the request for the release. The required information is as follows:

(a) Certificate number.

(b) Name of person or persons against whom recorded, including dba, if any.

(c) Amount of certificate.

(d) County in which recorded.

(e) Date, book and page of recording.

In every case where a request for a release is received and records are destroyed, it must definitely be ascertained that the certificate for which a release is requested was recorded by the Board. Failure to do so will result in unnecessary work, as well as delay for the taxpayer, if it is later discovered the certificate was recorded by another agency.

LIENS AFFECTING PERSONS OTHER THAN TAXPAYERS 763.090

On occasion, a person with the same or very similar name as a Board of Equalization taxpayer may be affected by a Board lien. The person generally becomes aware of the lien when it appears on a credit report or title report. Such persons will likely contact the Board to request assistance in resolving the problem.

When this situation arises, district staff should first verify the person is not, in fact, the Board's taxpayer. To verify that the person contacting the Board is not the Board's taxpayer, request the person to appear in one of the Board's field offices (when a person is unable to appear at a field office, they should be instructed to contact the Special Procedures Section for assistance) with:

- his or her driver license or verifiable picture ID, such as from a place of employment, and
- social security card, or
- copies of other documents which show the social security number (e.g., payroll documents, income tax returns).

If the above documents do not conclusively demonstrate that the person is not the taxpayer in question, other evidence must be submitted. District office staff has the latitude and responsibility to work with the person to determine the documentation which will verify that he or she is not our taxpayer.

Once the above is obtained, district staff should photocopy the documents and prepare a cover memo, with recommendation, that includes:

- the person's name,
- the person's mailing address,
- the persons's telephone number,
- a brief description of how the person discovered the error (e.g., credit report, title report)
- any other supporting documents

The memo and the photocopies of the documents should then be sent to the Special Procedures Section. Special Procedures staff will prepare a notarized letter ("wrong person" letter) stating the peson is not our taxpayer. A cover letter is sent to the person with this notarized letter suggesting that the person provide the notarized letter to credit reporting companies and others who may question the lien. The letter should mitigate any future concerns or issues regarding the lien.

COLLECTION FROM SURETIES 766.000

EFFECTIVE PERIODS AND LIABILITY 766.010

A surety can be held liable for an amount that its principal failed to pay only if the liability results from transactions that occurred during the effective period of the bond. Each bond shows an effective date and remains in force from that date until 30 days after receipt, by the Board, of a notice of termination from the surety. It is the period between these two dates that constitutes the effective period.

The liability of the surety extends to tax, penalty and interest regardless of the location or locations at that the liability was incurred.

NOTIFICATION TO SURETIES 766.020

When a demand for payment is issued against a taxpayer whose security is in the form of a surety bond, notification of the delinquency is generally sent by the Headquarters Special Procedures Section to the surety.

In order to keep sureties informed of the status of the accounts of their principals, they are also notified when the Headquarters Special Procedures Section files claims in bankruptcies, assignments, or probates, and in certain cases, when installment proposals are accepted.

DEMANDS ON SURETIES, DISTRICT RECOMMENDATIONS 766.030

If the liability exceeds $50 and investigation discloses payment from the taxpayer cannot be expected, there is no corporate officer personal liability, and there are no assets upon which to levy, the district's responsibility is to recommend demand on the surety. The recommendation should be made as soon as it is apparent payment cannot be expected.

DEMANDS ON SURETIES, CORPORATE ACCOUNTS 766.035

Section 2845, Civil Code, states, "A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power that the surety cannot pursue, and that would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced". The Board must therefore exhaust all collection avenues and investigate all other remedies available prior to making demand upon a surety bond unless the surety has similar remedies. If a bond is indemnified by the corporate officer(s) who would also be the individual(s) billed by the Board, similar remedies exist.

In view of the above, the following procedures will be followed when a surety bond secures liability on a corporate account.

1. If collection cannot be made from the corporation, the corporate officers become the indemnifier of the bond and the liability for the secured bond does not exceed the penal sum of the bond plus $500 (normal minimum amount of liability required to issue dual determination), a request for demand on the bond is in order.
2. If the liability for the secured period exceeds the penal sum of the bond by more than $500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed, and demand on the bond deferred, until the potential for collection from the individual(s) has been thoroughly explored.

INTEREST CHARGES ON DEMANDS 766.040

If the amount of liability for that demand is made is less than the penal sum of the bond, the demand will provide for prevailing interest on the tax at the rate established pursuant to the Revenue and Taxation Code. If the liability exceeds the penal sum of the bond, the demand will provide for additional legal interest at the prevailing per annum rate on the full penal sum of the bond.

APPLICATION OF PAYMENTS FROM SURETIES 766.050

Except as authorized by the Supervisor of Special Proceduress, any payment received from a surety will be applied to the liability that was incurred during the effective period of the bond in this order: (1) to tax, (2) to interest, and (3) to penalty.

LIMITATION PERIODS FOR DEMANDS 766.070

The legal staff of the Board is of the opinion the limitation period for a surety bond or guaranty is within ten years from the date a tax liability becomes due, or within ten years from the effective date of termination by the surety or guarantor, whichever is earlier. It is the responsibility of the Headquarters Special Procedures Section to take appropriate action prior to the expiration of the limitation period. The Headquarters Special Procedures Section will make demand sufficiently in advance of the expiration of the limitation period to allow for the filing of a suit, if necessary, or obtain a waiver of the limitation period.

If the surety will not furnish a waiver and has not made its payment, the Headquarters Special Procedures Section will refer the matter to the Attorney General for suit if the amount of liability warrants. To prevent the running of the statute of limitations, suit must be filed against the surety or guarantor prior to the expiration of the limitation period.

DEMANDS INVOLVING MORE THAN ONE SURETY 766.080

If there is more than one surety on an account, demands will be made on each surety for the amount of liability incurred during the effective periods to the extent of the penal sum of each bond. If there is an overlap of the effective periods, the liability due for the overlap period will be prorated between the sureties. Each surety, in cases of overlap, however, is liable for the full amount incurred during the overlap period.

COLLECTION FROM GUARANTORS 766.090

The provisions applying to collection from guarantors in relation to effective periods, limitation of liability, notification, demands, interest charges, application of payments due, and limitation periods for demands are the same as those applying to sureties.

OFFERS IN COMPROMISE 772.000

GENERAL 772.010

An Offer in Compromise (OIC) is a proposal made by the taxpayer to the Board to pay less than the amount due to settle liabilities that they cannot pay in full. In order to participate in the Board's Offer in Compromise Program, the following conditions must be satisfied:

- The liability to compromise must be a final liability and not in dispute.
- The tax or fee account must be closed and the taxpayer must not be involved in the operation of the same business or same type of business that generated the tax or fee liability that is proposed to be compromised.
- The taxpayer does not have the means to pay the liability in full within a reasonable period of time, in most cases between five and seven years.

As of January 1, 2003, the BOE has statutory authority to accept an OIC for Sales and Use Tax, Section 7093.6, for Use Fuel Tax Section 9278, and for the Underground Storage Tank Fee, Section 50156.18 of the Revenue and Taxation Code. Offers will be accepted when it can be clearly shown that accepting the offer is in the best interest of the state. Generally, an offer will be accepted if it represents the most that the Board can expect to collect within a reasonable period of time. To make this determination, an evaluation is made on the taxpayer's ability to pay (consideration is given for the potential for change in financial circumstances).

For all other tax and fee programs, the Board does not currently have the statutory authority to accept an OIC. To accomplish an OIC in these situations, a complaint must be filed with the Superior Court for the amount to be compromised. To resolve the complaint, a Stipulated Judgment is filed in which both parties, the taxpayer and the Board, agree that the offered amount will fully satisfy the liability.

FRAUD 772.020

Offers for liabilities with a fraud penalty will require a minimum offer of the tax and fraud penalty. The minimum offer can be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. This situation applies to partnership accounts where the intent to commit fraud can be clearly attributed to another partner.

Offers will not be entertained in situations where the taxpayer has been convicted of criminal fraud for fraudulent behavior during the audit period.

PROCESSING OF OFFERS 772.030

For processing, all OIC proposals must be filed on Form BOE–490, *Offer in Compromise Application*, or BOE–490–C, *Offer in Compromise Application for Corporations, Limited Liability Companies, Partnerships, Trusts, and Unidentified Business Organizations*, and forwarded to the OIC Section for evaluation. The applications may be downloaded via the Internet at http://www.boe.ca.gov/sutax/staxforms.htm

The taxpayer is required to complete and sign the application. Supporting documentation must be provided to enable the Board to evaluate the merits of the offer. The taxpayer should mail the completed application to the local office that administers the account. The taxpayer's signature must be on the application when received by the Board.

The district office should review the application and request the taxpayer to provide any additional information required (as outlined on page 2 of the BOE–490) within 30 days. The district office should strive to gather all the supporting documentation necessary for the OIC to be evaluated. The district office should prepare a summary of the account status as outlined in number 3 below. OIC applications, supporting documentation and the summary should be forwarded to the OIC Section within 30 days after the offer is received in the district, whether or not the package is complete.

The taxpayer will need to continue making periodic payments as agreed upon in any existing installment payment agreement or any existing Earnings Withholding Order (EWO) payments while the OIC Section is reviewing the offer. The OIC Section will monitor the payments and inform the taxpayer when he/she can terminate the agreement if appropriate. In most cases, if there is no existing installment payment agreement or EWO, collection action should be suspended. Offsets from other state agencies will continue during the OIC process.

Some OIC proposals may involve a partnership. If only one partner has requested an OIC, the district office should suspend summary collection action for the partner who has requested the OIC. The name of the requesting partner should be removed from all summary collections other than offset.

If delaying collection activity jeopardizes the Board's ability to collect the tax, the district may proceed with collection efforts after notifying the OIC Section of their intentions to pursue collection.

The district office is required to forward all offers and is not authorized to reject an offer based on its review. Referral of an OIC to the Headquarters' Offers in Compromise Section should include:

1. The completed Form BOE–490 or BOE–490–C, which must indicate an offered amount and include the taxpayer's signature.
2. Documentation supporting the offer, which is outlined on the second page of the Form BOE–490 or BOE–490–C.
3. A memo summarizing the account status for each of the following points below (please indicate "not applicable" or "not available" if the points do not apply)
   a. How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?
   b. How old is the liability? What collection actions have been taken and what were the results? Has the account been written-off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history which includes answers to these questions.
   c. What is the source of the funds offered in compromise? Is the taxpayer taking out a loan, borrowing from a family member, etc.?
   d. What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgments, etc. If the taxpayer is currently on an installment payment agreement, what is the payment amount and what is the due date? If there is an Earnings Withholding Order in place, what is the amount the Board is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?
   e. Is the taxpayer still involved with the business that generated the liability? Did he incorporate? Did he transfer the property to a spouse or relative and is still involved with the operation of the business?

f. Is the taxpayer located inside or outside of the state? If the taxpayer is located outside of the state, is the Board receiving voluntary payments? If so, how much and what is the due date of the payment?

g. What is the taxpayer's age, physical condition, and earning ability?

h. If the offer is from a corporation, has a dual determination under Revenue and Taxation Code Section 6829, Personal liability of corporate officer, been explored? Is there a possibility of a corporate suspension dual determination? Are there any personal guarantees?

i. Did the taxpayer file bankruptcy? If so, what was the result of our claim? Did the taxpayer receive a discharge? Please include the chapter filed,; petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.

PRROCESSING OF OIC APPLICATIONS BY THE OIC SECTION 772.040

The OIC Section will send a written acknowledgement of all Offer in Compromise applications to the taxpayer within 12 working days of receipt in the OIC Section. The district of control will receive a copy of the acknowledgement letter and other correspondence that indicates the status of an offer. The OIC Section will assume control of the account in the Automated Compliance Management System (ACMS) while the offer is under consideration, unless there are partners not involved in the offer. If the account has been transferred to the OIC Section through ACMS, the district should have submitted adequate documentation of the due date of payments. If a payment is delinquent, the account may be referred back to the district of control if collection action is warranted. The average length of time to process an offer and make a recommendation is approximately 180 days from receipt of an OIC application package, when all of the supporting documentation is in the OIC Section.

SECURING THE OFFEREDAMOUNT 772.050

The taxpayer is not required to submit a deposit of the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when the funds should be submitted. However, if funds are received with the application, they should be processed as an "OIC deposit" (Refer to CHRD Bulletin #53). The district will continue to accept, apply, and refund "OIC deposits." In many instances, funds for the offered amount are provided by relatives or friends not associated with the business entity. These deposits should be processed as third-party deposits. The deposit of the offered amount in most cases will be available for refund if the offer is denied. The deposit will not be refunded if the payment comes from an equity loan where a lien subordination or partial release of lien was issued by the Board to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.

PROCESSING ACCEPTED OFFERS 772.060

All funds must be received prior to forwarding a recommendation to management for approval to accept the offer. Recommendations to accept offers will be forwarded to the Chief, Taxpayers' Rights and Equal Employment Opportunity Division, and then to the Legal Division for review. Offers over $50,000 require the review and signature of the Executive Director. Offers that are $5,000 or more are then forwarded to the Attorney General's office for final approval.

Once an Acknowledgment of Satisfaction of Judgment is filed with the court, the OIC process is complete. Adjustments will be made to the taxpayer's accounts receivable and liens will be released. For partnership or husband and wife co-ownership accounts where only one party has their offer accepted, a single party release of lien will be issued.

Court filing fees are required with the offered amount. The court-filing fee should be posted separately as an "OIC deposit" to be later applied as "costs of collection."

For offers of $5,000 or more, the Attorney General's office will request the court filing fees from the taxpayer.

For sales and use tax accounts, the OIC Section will make a comment on Taxable Activity Registration (TAR) System and ACMS to indicate when a partner's offer has been accepted. The OIC Section will also initiate the process to remove the claimant from the active account record as of a specific end date. The taxpayer name will be retained in account history and comments. The district should make adjustments when taking collection action by removing the relieved taxpayer's name from FTB offsets, lien requests, levies, warrants, and any other collection remedies that would adversely affect the relieved partner.

PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS 772.070

If the offer is rejected, denied, or withdrawn, the taxpayer will receive a letter with a copy to the district office. Any deposit that was posted may be applied to the liability at the written request of the taxpayer. The effective date of the payment will be the date the funds were received. If a third party has posted the deposit, the OIC staff must get written permission from the third party to apply the deposit. No credit interest will be granted on returned deposits.

In some cases, the OIC Section makes a recommendation to the district for account resolution, typically, a payment arrangement. The recommendation is based on information pertaining to the taxpayer's financial status. To finalize the arrangement, the district must obtain a completed Form BOE-407 from the taxpayer. The OIC Section notifies the taxpayer that the district may re-evaluate the payment agreement in six months.

APPEALS 772.080

There is no formal appeal process for offers in compromise that have been rejected or denied. However, the taxpayer may informally appeal a denied offer in compromise with the OIC Section Supervisor and the Taxpayers' Rights Advocate.

Director.For offers of $7,500 or less in reduction of tax, the Executive Director and Chief Counsel, or their delegates may compromise the liability. For offers greater than $7,500 reduction in tax, the Board may compromise the liability. For certain tax and fee programs, it is no longer necessary to use the courts to effect an OIC

For tax and fee programs that do not have the compromising statutory authority for the Board,a complaint must be filed with the court and a Stipulated Judgment accepting the offered amount to compromise the total liability is subsequently filed.

PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX 775.000

GENERAL 775.010

It is unlawful for a transferee (successor) of a business to operate the business without a permit issued in his/her name. Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his/her permit to the Board for cancellation. To be acceptable, the notice of transfer must be received in one of the following ways:"

(a) Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the Board, if lost, destroyed, or is unavailable for some other acceptable reason.

(b) Receipt of the transferee's (successor's) application for seller's permit.

Notice to another state agency of a transfer does not in itself constitute notice to the Board.

Unless a transferor of a business notifies the Board of the transfer, or delivers his/her permit to the Board for cancellation, he/she is liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the transferor's actual or constructive knowledge uses the transferor's permit in any way, e.g., by displaying transferor's permit in transferee's place of business, issuing resale certificates showing the number of the transferor's permit thereon, or filing returns in the name of the transferor and under the latter's permit number. The liability shall continue and shall include all liability incurred up to the time the Board receives notice of the transfer.

When it is evident that the predecessor did not notify the Board of the business transfer, a request for the issuance of a Notice of Determination in the name of the predecessor should be made to the Headquarters Special Procedures Section supported by an explanation of the circumstances involved. The Notice of Determination, when issued, is a formal notice informing the predecessor of his/her liability, and collection action can be taken upon its finality.

If the predecessor claims that the Board has received constructive notice of transfer to the successor, the information in support of such claimed notice should be referred to the Headquarters Special Procedures Section.

Initial collection efforts should be made against the successor. However, if it appears that delaying action against the predecessor will jeopardize the collection of the liability, full collection efforts should be instituted against the predecessor.

DUAL DETERMINATIONS AGAINST PREDECESSOR FOR SUCCESSOR'S LIABILITY 775.015

We have encountered various collection problems due to the lapse of time between the determination of liability against the successor and the dualing of the predecessor. For example, since there has been no record of the liability established on the predecessor's account at the time of close-out, the predecessor's security deposit, if any, will most likely have been refunded prior to the issuance of the dual determination, thus precluding the application of security to the liability. In addition, collection activities may be further impeded since there is the possibility that the predecessor's file, along with possible collection leads, may have been destroyed prior to the issuance of the dual determination. Additionally, the predecessor is not immediately informed of a tax liability that he/she shares equally with the successor.

DUAL DETERMINATIONS AGAINST PREDECESSOR FOR SUCCESSOR'S LIABILITY (CONT.) 775.015

When a predecessor's liability is involved, three determinations may result. First, a separate determination should be issued against the predecessor for any period that he/she actually operated the business. A second determination should be issued against the successor for the period during which he/she has operated the business. Lastly, a dual determination should be issued against the predecessor concurrent with the issuance of a determination against the successor. The dual determination should be issued to the date on which the Board first had knowledge of the change in ownership. Periods beyond this date may not be included as they would not be legally assessable against the predecessor.

This procedure will fully implement Regulation 1699(e) that asserts: "...Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he/she will be liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way;...."

While three determinations may result, only two audit reports need to be prepared. One audit report should be prepared for the period the predecessor actually operated the business and the other for the period the successor operated the business. The audit report for the successor should include a request for a dual determination against the predecessor up to the date that the Board first had knowledge that the business ownership had changed.

The front of Form BOE–414–A or Form BOE–414–B prepared for the period involving the dual determination must include the following notation in the lower portion of the analysis of measure section: "Attention Audit Review — Dual Determination Requested." In addition, the auditor will comment on the back of Form BOE–414–A or Form BOE–414–B giving the reason for the dual determination: the name, address and permit number of the predecessor against whom the determination is to be made; and the period for which the dual determination is requested.

Example:

> DUAL DETERMINATION — Predecessor's liability for the period April 1, 1974, to June 30, 1976. Predecessor is John Jones and Harold Smith; 3216 Langdon Blvd., Van Nuys, CA 91405. Permit number is SR AC 13–362185.

A copy of Form BOE–414–A1 should be transmitted to headquarters with the audit reports. In addition, the audit reports should be transmitted to headquarters together.

Current practices applying to dual determinations will be adhered to. The only exception would arise if a 25% fraud penalty is applied to the successor's tax liability. Regulation 1699(e) specifically states that the predecessor is not liable for any fraud penalties. In this instance, the fraud penalty will be replaced by a 10% negligence penalty on the dual determination issued against the predecessor.

FIELD COLLECTIONS — RECEIPTS 778.000

RECEIPTS, FORM GA–602 778.010

An official receipt, Form GA–602, will be issued for all payments in any form collected by any representative in the field.

Receipts are prepared in sets of three with the original (white) delivered to the taxpayer. The yellow and white copies are retained by the Board. Ball-point pens should be used to write the receipts with care taken that all copies are legible.

Each representative assigned a receipt book is personally responsible for the book and all the receipts therein until they are used or the book and the remaining receipts are surrendered. Each receipt must be used in numerical sequence. For details on the procedures to be followed when a receipt book is lost or stolen, see Subsection 778.050.

ENDORSEMENT OF CHECKS 778.020

Immediately on acceptance of checks, money orders, cashier's checks, etc., in the field by any Board representative, the instrument will be restrictively endorsed by writing on the back "For deposit only to State Board of Equalization".

RECEIPT PREPARATION 778.030

Refer to Section 810.000 et.seq.

OVERNIGHT RETENTION OF FUNDS — FIELD REPRESENTATIVE 778.040

Cash collection in excess of $500 should not be retained by field representatives overnight. The action taken should be in accordance with the availability of the following sources for disposition or protection of funds:

(a) Turn the money in to the office.

(b) Purchase a cashier's check payable to the Board. (In many instances, there will be no charge when purchased from a branch of the Bank of America.)

(c) Purchase a money order payable to the Board. (The cost of the cashier's check or money order will not be deducted from either the cashier's check or money order but will be paid from the representative's own funds. The tax representative will then claim reimbursement on his/her travel expense claim.)

(d) Deposit the cash in a night depository providing the deposit bag and the deposit are sealed in the presence of two Board employees who will sign the agency copy of the deposit slip indicating that they have verified the coin and currency (cash) portion of the deposit.

In any instance not covered by items a, b, c,d, the field representative will take whatever action necessary to protect the cash collected. Under all circumstances, the representative will be expected to exercise good judgment and use every precaution to prevent loss.

LOST OR STOLEN RECEIPT BOOKS 778.050

Lost or stolen receipt books should be reported immediately by the representative to his/her supervisor. The district administrator should then direct a memorandum to the Headquarters Cashier advising of the loss or theft, with copies for the Chief of Field Operations and Deputy Director, Administration, and the Chief, Internal Security and Audit Division. The memo should name the person to whom the book was issued, the date lost, the inclusive numbers of the unused receipts, a description of conditions leading to the missing book and a recommendation by the administrator on how future occurrences of this type could be avoided.

The Headquarters Cashier will then make this information known to the Board staff and ask them to be alert for receipts bearing the missing numbers.

ACCOUNTS RECEIVABLE, SPECIAL MAILING 781.000

GENERAL 781.010

Semiannually, the Board makes a special Statement of Account mailing to selected sales and use tax accounts having final accounts receivable balances. The mailings include closed-out and Consumer Use Tax accounts.

DISTRICT RESPONSIBILITY AND PROCEDURE 781.020

The majority of the billings are delivered as addressed; however, a portion is returned to headquarters by the postal authorities. The returned billings will be sent to the respective districts for a better address.

If a better address is available, the old address should be lined out, the new address added, and the registration record corrected.

If a new address is not available or practical (skips, recently paid in full, etc.), the reason should be noted on the billing.

The above two groups should be kept separate and forwarded to Headquarters Special Procedures Section in batches mailed no more frequently than weekly. All billings should be returned within 30 days of receipt in the district.

Headquarters Special Procedures Section should be notified whenever the district becomes aware of an accounts receivable address change. Continuous attention to these accounts will keep the undeliverable mail to a minimum.

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MISCELLANEOUS 799.000

REWARD PROGRAM 799.005

Under the Tax Penalty Amnesty Legislation of 1984 (AB 3230, Chapter 1490, effective 9/14/84), the Board was granted authority to establish a reward program for information leading to the collection of unreported or underreported sales and use taxes. In 1984, the Board considered and deferred the matter of establishing a reward program. In 1987, the Board again considered this matter and the staff was directed to develop a package that would enable them to implement the program. The resultant package consisted of a proposed reward regulation, an application for the reward, and procedures for implementing the program. After reviewing this package, the Board again decided to defer establishing this program because of the lack of sufficient funds. The Board again discussed this issue in 1991 with no action taken to implement the program.

Assembly Bill 3665 (Chapter 671, Statutes of 1992) amended Section 7060 of the Revenue and Taxation Code, providing, in part, that rewards paid pursuant to this section shall be paid from amounts appropriated by the Legislature for that purpose. No funds have been appropriated to date.

If an individual indicates he or she has information that would enable the Board to recover sales tax revenues, they should be advised that while the statutes do provide for a reward program, it has not been funded by the Legislature. However, attempts to obtain the information should be made by appealing to that person's duty as a good citizen and equal treatment/payment of taxes for all.

PAYMENT APPLICATION DOCUMENTS 799.015

The following procedures are to be used when providing payment application information to the district office cashier:

A. Using PAY BD Printouts

1. Type DIF DA and account number and press enter.
2. Type "T" next to each difference where a payment will be applied and press Enter.
3. Press F17 to Take.
4. Confirm the effective date of payment.
5. Input the remittance amount and payment amount(s).
6. Press Enter.
7. Print screen and submit to cashier.

This procedure can be utilized for as many differences as exist on an account. To accomplish this, the user places a "T" next to each difference and then presses enter. The selected differences will be highlighted and the "Differences Selected for Payment" field will display the total number of differences selected. Pressing F17 will take the user to the PAY BD screen and display all differences that were selected at the DIF DA screen.

This procedure should also be used when a Fixtures and Equipment Assessment has already been created and the difference exists on the system. A BOE–1043 should NOT be prepared and sent to HQ Cashiers.

B. Using DIF DA Printouts

1. Print DIF DA screen.
2. Write the Notice ID, Difference ID or FO ID on the lower half of the screen print.
3. Give to the cashier.

C. Using Notices

1. Write the effective date, and amount of payment in the appropriate boxes.
2. Give the Notice to the cashier.

Payment from Security

If the payment is from security, print in large bold letters across any of the above Payment Application Documents "PAID FROM SECURITY".

Payment Intended For Specific Difference Not Yet Created

1. Type DIF DA and account number and press Enter.
2. Print screen.
3. Write the remittance amount, effective date, and either the FO ID, if available, or the words "Apply to A/R" on the printout if no difference exists (this will be unapplied). If a difference does exist, a FO must be created to avoid application of payment to existing differences.

Payments applied at the FO level will have an automatic hold to avoid application to any existing differences. Payment will then be matched when the difference is created.

Reinstatement After Revocation

Prepare BOE–400–REIN and include the revocation period code (MMYY) at the top of the document, and give to the cashier.

Advice of Miscellaneous Receipts

Prepare GA–904 and include Difference ID, if available, for collection costs at the top of the document. If the remittance amount is greater than the collection costs balance, include an additional transmittal document specifying the difference(s) to apply the remainder of the payment(s).

Form BOE–424, Advice of Payment

Form BOE–424, Advice of Payment should be used only when the IRIS system is off-line for an extended period. If a Notice ID, or Difference ID is known, it should be written at the top of the form. If no ID is known, write "NO DOCUMENT" on the top of the form. Payments will be applied at the account level. If the ID becomes known before the end of the cash day, the BOE–424 should be replaced with the proper transmittal document shown above.

STANDARD RULE FOR APPLICATION OF PAYMENT 799.030

The standard rule for application of payment is in the following sequence:

1. As directed by the taxpayer at the time of voluntary payment.
2. The reimbursement of advance fees and collection costs - after being billed. In the case of warrants, advance fees will be on AR from inception, but won't be eligible to receive payments other than a warrant payment, until billed. The advance fees and collections costs won't be billed until we get the warrant back (and funds) from the sheriff.
3. Self-assessed tax liabilities which have been established but are not yet due.
4. Tax liabilities on non-final determinations which have not been dualed, excluding petitioned liabilities.
5. Tax liabilities on non-final determinations which have been dualed, excluding petitioned liabilities.
6. Most current delinquent tax liability (by billing date), which has not been dualed or successored.
7. Delinquent tax liability, which has been dualed.
8. Delinquent tax liability, which has been successored.
9. Most current delinquent interest liability (by billing date) for which the taxpayer is primary.
10. Delinquent interest liability, which has been dualed.
11. Delinquent interest liability, which has been successored.
12. Most current delinquent penalty liability (by billing date), for which the taxpayer is primary.
13. Most current penalty liability, which has been dualed.
14. Most current penalty liability, which has been successored.
15. Non-final petitioned liabilities.
16. As directed by the district.
17. Headquarters Special Procedures Section may, in accordance with Board policy and Civil Code §1479, change the application as provided in numbers 2 through 15 above.

Security payments will be applied first to establish liabilities designated as "pending security". Any excess will be applied in accordance with the standard rule for application of payments.

APPLICATION OF PAYMENTS – PRIMARY AND SECONDARY ACCOUNTS. 799.035

A Primary account is where the Difference originates. The Secondary account(s) is based on the Difference from the Primary account. For example:

- A Primary account is the corporate account and the Secondary account is the dual determination on the corporate officer. If more than one corporate officer is billed, then more than one Secondary account would exist.
- A predecessor account is the Primary account. Any billed successor(s) would be the Secondary account(s).
- A partnership account is the Primary account. Any partner(s) not named on the original application could be billed on Secondary account(s).

When a payment is received for a Difference where Primary and Secondary accounts exist, the payment should be applied to the taxpayer's account that made the payment. For example, if a payment is made by a successor (secondary account), the money should be applied to the successor's Difference, not to the Difference on the predecessor's (primary) account. Improper application of the money could result in the taxpayer not receiving proper credit.

REFUNDS OF EXCESS OR ERRONEOUS AMOUNTS RECEIVED 799.040

The Board may receive funds from an enforced collection action that are in excess of the liability due because the funds are determined to be remitted in error or otherwise not due. Such instances include, but are not limited to:

- Funds from an escrow for an account where the liability was paid but a release of lien had not been recorded.
- Amounts billed, such as a successor's or predecessor's liability, innocent partner or spouse, which are determined not to be due.
- Funds not subject to or exempt from levy, such as a vacation trust fund or amounts over the maximum allowed by law for a wage garnishment.

When a taxpayer files a claim for refund with the district office for funds that have been paid to the Board, both a recommendation from the Principal Compliance Supervisor for approval or denial and the taxpayer's written refund request must be sent to the Refund Section in Headquarters for processing.

SUBPOENAS DUCES TECUM 799.050

1. Authority and Use. The State Board of Equalization is authorized by Section 15613 of the Government Code to issue a subpoena for the attendance of witnesses or the production of books, records, accounts and papers. A subpoena requiring a person to bring books, records, accounts and papers with him/her is called "a subpoena duces tecum." When in the course of a field audit or investigation of a taxpayer's business, the Board's representative is denied access to business records that are necessary in order to carry out the functions of the Board, the subpoena power may be invoked.

2. Information Needed. A request to the legal staff to draft a subpoena duces tecum must be authorized by the district administrator, approved by the Chief of Field Operations, and should include the following information:

   (a) The purpose for which the records are needed.

   (b) The date, time of day and place where the person will be ordered to appear.

   (c) The name and position title of the Board representative before whom the person will be ordered to appear.

   (d) A list of the records sought and the period of time to which the records relate.

   (e) The name, nature and location of the business to which the records relate and the name, address and relationship to the business of the person who has custody and control of the records.

   (f) A statement indicating the specific reason, or reasons, why examination of each of the records sought is material and necessary to the audit or investigation.

   (g) A statement showing that demands have been made for the records and the response to such demands.

   (h) Any additional information that will disclose the full circumstances of the situation requiring the use of a subpoena.

   The above-mentioned information is necessary in order that the subpoena and the declaration of materiality under penalty of perjury supporting the issuance of the subpoena may be prepared with the degree of particularity necessary to ensure against infringements of the taxpayer's constitutional guarantees relating to unreasonable search and seizure and due process of law. A subpoena, embodying an omnibus order, commanding a person to bring all of his/her records, or those of a corporation, would probably be held to be unreasonable and unenforceable if court action later became necessary to enforce the subpoena. It always is necessary that the documents sought be described in a way that they are identified clearly. The reasons why their contents are necessary and material to the work of the Board in carrying out its duties must be specified.

3. Preparation and Service of Subpoena and Declaration. Upon request, and receipt of the necessary factual information, the legal staff will draft the subpena duces tecum and the declaration of materiality. A request for the issuance of a subpoena should allow ample time for drafting of the subpoena and declaration of materiality, their service in the field, and a reasonable time for the witness to appear. Service is made by showing the original subpoena duces tecum to the person required to appear and by delivering to him/her personally at that time a copy of the subpoena together with a copy of the declaration of materiality. The person serving the subpoena should then execute a proof of service, in the form of a declaration under penalty of perjury that is attached to the original subpoena. After service is made, the original subpoena, proof of service and declaration of materiality are to be returned to headquarters for filing in the master file of the taxpayer.

   In the case of serving a financial institution (that is a bank, savings and loan association, trust company, industrial loan company, or credit union) for the records of a customer, the California Right to Financial Privacy Act has made additional requirements. In addition to the normal service on the financial institution, the Privacy Act requires (1) that the customer affected also be served with a copy of the subpoena and (2) that the customer shall have a ten-day period in which to notify the financial institution of his/her intention to move to quash the subpoena. (see Subsection 135.073.)

4. Sample Documents. See Legal Information Bulletin #75.

MOBILEHOME DEALER REPORT OF SALE BOOKS 799.080

Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement that allows for mutual notification when a dealer terminates his/her business.

When HCD finds that a mobilehome dealer is out of business or has not renewed his/her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board. When the Board has no further need for the books, they will be returned to:

Department of Housing and Community Development
Division of Codes and Standards
Occupational Licensing Section
P. O. Box 31
Sacramento, CA 95801

If the Board does not require the Report of Sale books, they will be subsequently destroyed by HCD.

When HCD is reviewing dealer Report of Sale books and finds evidence of noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.

When this Board finds that a mobilehome dealer has closed out or sold his/her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323–9803 or ATSS 8–473–9803. If Report of Sale books are required, they can be requested at this time.

The Board will also provide the close-out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.

To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts.

1. A mobilehome dealer has an outstanding liability that requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:
   (a) Based on the audit, it does not appear the business is properly financed to clear the probable liability.
   (b) There is factual information produced through our audit that the business is in financial trouble.
   (c) The district administrator approves the telephone call. A notation that HCD has been contacted should be entered on the compliance or audit assignment.

CONTROLLED SUBSTANCES 799.090

Assembly Concurrent Resolution (ACR) 143 deals with the illegal sales of narcotics and other illegal drugs (Controlled Substances). Under this program, the Board will be contacted by FTB and will issue determinations when there are assets being held by the arresting authorities or some other third party that can be levied upon or when FTB has monies to refund to the taxpayer because FTB has reduced the amount of its liability.

The ACR–143 program is controlled through headquarters and the Sacramento District Office. This procedure, however, should not deter you from issuing determinations on controlled substances and following-up with collection action on those cases where your office identifies a cause or is contacted directly by a FTB field office, local police authorities, or some other source.

If a loss of assets is probable through regular determination procedures, existing jeopardy determination procedures should be utilized. Headquarters should be contacted immediately and the levy initiated for collection on a same day basis when possible. Experience with these types of cases has shown that any delays in levying upon the assets results in the loss if the assets to attorneys or other third parties. If the assets are going to be retained by the arresting authorities as evidence, a levy should still be served to establish the Board's priority lien.