

Audit Manual

Chapter 1

General Information



Business Tax and Fee Department
California State
Board of Equalization

AUDIT MANUAL

GENERAL INFORMATION
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GENERAL INFORMATION**0100.00****INTRODUCTION****0101.00****MISSION AND PHILOSOPHY****0101.03**

The mission of the State Board of Equalization (BOE) is to serve the public through fair, effective, and efficient tax administration.

The BOE is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. The BOE's audit program is one of many ways in which we provide assistance and information to the public while, at the same time, providing a fair and firm enforcement program that ensures that taxes are reported properly.

PURPOSE OF AUDIT MANUAL**0101.05**

The Audit Manual (AM) is a guide in conducting sales and use tax audits. It incorporates procedures and techniques that have evolved over a period of years and have proved to be sound and practical. Tax auditors should carefully study this manual to conduct audits and prepare reports in a uniform manner consistent with approved tax auditing practices.

This manual, however, is not a substitute for experience, training in accounting and auditing, good judgment and active supervision. The procedures outlined in this manual are not inflexible. *However, all sections of Chapter 2, Field Audit Reports, and the italicized portions of the other chapters are to be followed exactly. The audit supervisor must approve any deviation from these instructions.*

AUDIT MANUAL REVISIONS**0101.10**

Procedures have been developed to afford the Board Members (Board) the opportunity to review proposed changes to this manual and to ensure that taxpayers, taxpayers' representatives and other interested parties are notified of changes in BOE policies and procedures that may affect them. AM revisions are generally made to incorporate existing guidance to staff from management, to enhance clarity or to correct errors. All revisions undergo a clearance process. Board approval is obtained via the Business Taxes Committee (BTC) process or via the Board's Administrative Agenda.

Clearance Process

Drafts of suggested revisions to AM chapters will complete a two-step clearance process, consisting of a preliminary review by all affected BOE units and a selection of district offices, and a final review by Business Tax and Fee Department (BTFD) management. At least one district office from each Equalization District will participate in the preliminary clearance process.

Board Approval — BTC Process

If the proposed AM revisions involve policy or procedure modifications that would significantly impact the public, a recommendation will be made to the BTC Chair to place the matter on the BTC agenda as a separate topic in order to ensure participation by interested parties in discussing the change. This process will include the customary discussion and issue papers and interested parties meetings.

Board Approval — Administrative Agenda

AM revisions that do not involve policy or procedure modifications that would significantly impact the public will be provided to Board Member staff and posted for two months to the BOE's Internet website located at <http://www.boe.ca.gov/sutax/staxmanuals.htm>. A "pending approval" icon on the website manuals page will identify chapters with pending revisions, and a cover letter attached to the proposed revisions will explain the origin and need for the revisions and invite public comment on these revisions only. Staff will acknowledge and address all comments, and once the final revisions are approved by management, will then schedule the revisions for approval on the Board's Administrative Agenda. The materials provided to the Board Members will include a summary of the comments received and actions taken in response to the comments.

TAX AUDIT POLICIES**0101.20**

Field auditing is of great importance in efficient administration of self-assessed taxes such as those provided by the California business tax laws. It assists in ensuring uniform enforcement and detects and aids in the timely correction of reporting errors. The BTFD audit program has resulted in the correction of tax underpayments and overpayments of many millions of dollars. In addition, there are educational benefits to the taxpayer which cannot be readily measured in terms of dollars but which undoubtedly are responsible for a large portion of the self-declared tax that would not otherwise be paid. On November 17, 1954, the BOE by resolution adopted the original version of the following statement of tax audit policies (A-E below). It should be noted that this resolution has accurately reflected the intent and direction of the BOE from 1954 through the present.

A. Purpose of Tax Auditing

Because most of the taxes administered by the BOE are self-assessed by the taxpayers, an audit program is essential in providing for the following objectives:

- To assure all citizens of the state that the tax is being enforced uniformly;
- To deter tax evasion and carelessness in self-assessments; and
- To promote accuracy in self-assessments through aid extended to taxpayers with respect to the interpretation of the law and rules and regulations adopted thereunder.

B. Relationship of Taxpayer and Tax Auditor

Consistent with the purpose of tax auditing as outlined above, there is no occasion for the tax auditor to harass taxpayers or to give the impression that the object of the audit is to find errors in the taxpayers' self-assessments. The taxpayer should be assured that the tax auditor's function is to determine whether the amount of tax has been reported correctly. The tax auditor should aid the taxpayer in gaining a correct understanding of the law and demonstrate that we are as willing to recommend a refund of an overpayment as we are to propose a deficiency determination. Care should be taken to inform taxpayers regarding taxpayers' rights and privileges in connection with such determinations. The tax auditor should constantly keep in mind that it is our policy to administer the law fairly and uniformly, with minimum annoyance and interference in taxpayers' business affairs, as well as at the lowest cost consistent with good tax administration.

C. Professional Status of Tax Auditors

Tax auditors are engaged in professional assignments. They are called upon to exercise their highest skill and best judgment throughout the performance of their official duties. All audits should be made in accordance with approved auditing and accounting principles. Sound professional judgment must be exercised in making tests that are representative in scope and character to ensure that the results are representative of the actual business operations during the audit period.

Tax auditors are expected to observe the rules of conduct of their profession and the BOE's guidelines set forth in the pamphlet, *Ethics: Guidelines for Professional Conduct*, available in the BOE's intranet website (eboe) located at <http://eboe/docs/Forms/pub336.pdf>. Tax auditors are also expected to perform their duties with dignity and courtesy regardless of the industry being audited, the size of the business, the sophistication of the records, or any other consideration. The BOE can maintain the public's confidence only to the extent that all of our official activities and contacts with the public reflect the highest ethical and moral standards. Tax auditors must perform their duties with integrity and propriety, and do all in their power to ensure that their words or actions cannot be interpreted otherwise.

D. Evaluation of a Tax Auditor's Skills

In determining the skills of a tax auditor, the quantity and quality of the work will be evaluated in relation to these questions:

- Is the tax auditor accurate and efficient in the analysis of taxpayer's records to determine whether tax liability has been reported correctly?
- Does the tax auditor explain to the taxpayer in clear terms the amounts of overpayment or underpayment identified by audit and provide a complete set of audit work papers so that the taxpayer is afforded a good understanding of what constitutes correct tax reporting?
- Does the tax auditor use sound professional judgment and exercise alertness to determine the most appropriate type of audit for a specific assignment?

A tax auditor's skill is not measured by the additional understatements and overstatements disclosed in his or her audits. Under no circumstances will a tax auditor's performance be rated upon the basis of recovery, which is prohibited by law. Additionally, aged audits and other audit program-level performance measurements established by BOE management to evaluate district offices are not designed nor should be used for evaluating a tax auditor's performance. This does not mean that a tax auditor may waste time on assignments by using ineffective audit techniques and performing nonessential tasks and still receive a satisfactory rating. It does mean that if the tax auditor works diligently, uses the kind of verification methods best fitted to the particular assignment, and performs a professional job with a reasonable expenditure of time, the work performance will be satisfactory.

E. Implementation of Auditing Policy

The Chief, Tax Policy Division, Deputy Director, Field Operations Department, and District Administrators have the responsibility to effectively carry out the policy set forth in this statement. They will issue such instructions as it is deemed necessary to implement this policy.

STANDARD OF PROOF**0101.22**

Pursuant to Revenue and Taxation Code (RTC) section 6091, it is presumed that all gross receipts are subject to tax until the contrary is established. The effect of this rebuttable presumption is to impose upon the taxpayer the burden of proving that its gross receipts are not subject to tax. Similarly, with respect to transactions subject to use tax, the taxpayer bears the burden of proving that tax does not apply. (See, e.g. RTC § 6241, 6248.) In cases where civil tax fraud is not involved, the BOE applies the preponderance of evidence standard of proof. This is the burden of proof as specified by Evidence Code (EC) section 115 and applied by the courts in sales and use tax matters not involving civil tax fraud. (See *Maganini v. Quinn* (1950) 99 Cal. App. 2d 1, 7-8, and *Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal. App. 3d 739,748-749.)

The “preponderance of evidence” standard relates to the probability of truth, and can be defined as, “such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth” or, more succinctly, “more likely to be true than not true.” (1 Witkin, Cal. Evidence (4th ed. 2010) Burden, § 35; CACI 200.) The preponderance of the evidence standard does not require that the existence or nonexistence of a fact be proven by clear or convincing evidence or beyond a reasonable doubt; rather, it simply requires proof that the existence or nonexistence of a fact is more probable than not.

“Evidence” means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact (EC § 140). A “presumption” is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence (EC § 600).

Pursuant to RTC sections 7053 and 7054, it is the responsibility of the taxpayer to maintain and make available for examination all records and other pertinent documents necessary to determine the correct tax liability. In performing an audit or other examination, staff should communicate with the taxpayer and/or its authorized representative to the fullest extent possible in an effort to establish facts that are relevant for sales and use tax audit purposes. When applying the preponderance of evidence standard, it is important that staff view all evidence in an objective manner, focusing on the quality of the evidence (i.e., original source documentation) and its probable truth or accuracy, and not only on the quantity of evidence produced. There should be no preference assigned to evidence supporting the application of tax over similar evidence which weighs against the application of tax, unless the auditor has a reasonable basis for considering it to be more persuasive.

For transactions determined to be taxable by the auditor, the auditor must make detailed comments in the audit workpapers describing the evidence reviewed and his or her conclusions. If the auditor has a reasonable basis to believe that certain evidence is not credible, the auditor must also make detailed comments in the audit work papers in support of his or her conclusion in that respect. The failure to include such comments does not deem the evidence credible and has no evidentiary impact. However, the auditor may later be required to support his or her conclusions.

A. Ability to apply the following basic knowledge to practical situations:

- Thorough knowledge of accounting principles and systems.
- Thorough knowledge of auditing procedures and techniques.
- A general knowledge of business law, practices and procedures.

B. Ability to apply the following special knowledge to practical situations:

- Knowledge of the California Revenue and Taxation Code (RTC) as it pertains to sales and use tax.
- Thorough knowledge of the authorized rules and regulations of the BOE.
- Knowledge of established administrative policies.
- Knowledge of special techniques peculiar to tax auditing and sales and use tax administration.
- Effective use of tools, manuals, annotations, memorandum opinions and directives.

C. Ability to prepare professional audit reports with particular reference to:

- Use of computers.
- Completeness of reports.
- Clear and concise, well-organized comments with headings and captions.
- A working paper technique which is readily understood by others.
- Use of auditing procedures consistent with acceptable standards.
- Accuracy in comments, facts, and calculations.
- Ability to make decisions commensurate with duties and responsibilities.
- Ability to clearly explain and support, verbally and in writing, audit procedures and findings. Such explanations must be readily understood by supervisors, reviewers, Appeals Division attorneys, taxpayers, and taxpayers' representatives (i.e., accountants, attorneys, etc.).

D. Judicious use of time such as:

- Proper use of audit short-cut techniques.
- Good organization and planning of work.
- Recognition of the "Concept of Materiality" in making audit decisions.

E. General work habits:

- Good general and business-like appearance.
- Promptness in keeping appointments.
- Promptness in completing and submitting assignments.

F. Attitude:

- Enthusiasm in work.
- Willingness to learn.
- Open-minded approach to assignments.
- Ability to accept responsibility.
- Ability and willingness to accept direction.

G. Use of initiative, inquisitiveness, and ingenuity:

- Ability to adapt working habits and audit practices to differing environments.
- Alertness to recognize situations involving possible tax liability even though not directly concerned with a specific assignment.
- Willingness and ability to do research work on complex audit problems.
- Willingness and ability to develop alternative approaches to particular problems.

H. Relationship with people:

- Ability to get along and work with fellow employees, supervisors, and staff from other districts and units.
- Ability to get along and work with taxpayers and taxpayers' employees, accountants, attorneys and other representatives.
- Ability to instill confidence.
- Ability to maintain an atmosphere of dignity and professionalism consistent with the auditing profession.
- Ability to discuss with the public such things as:
 - o The structure, history, mission, philosophy, and functions of the BOE.
 - o A general overview of the various tax programs.
 - o Taxpayer benefits from tax revenues.
 - o Some background knowledge of legislative intent in enacting law changes, exclusions, and exemptions.

KNOWLEDGE OF THE LAW

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Tax auditors must be familiar with the provisions and requirements of the laws they are assisting to administer, which are:

- Division 2, Part 1, of the RTC, known as the Sales and Use Tax Law.
- Division 2, Part 1.5, of the RTC, known as the Bradley-Burns Uniform Local Sales and Use Tax Law.
- Division 2, Part 1.6, of the RTC, known as the Transactions and Use Tax Law.
- Division 2, Part 1.7, of the RTC, known as the Additional Local Taxes Law.

REGULATIONS AND PUBLICATIONS OF THE BOE

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Regulations promulgated by the BOE interpret the laws the BOE administers and have the force and effect of law. The BOE also publishes a number of publications designed to assist taxpayers with tax questions. Publication 51, *Guide to Board of Equalization Services*, contains a complete list of BOE publications, many of which are available at www.boe.ca.gov.

BUSINESS TAXES LAW GUIDE

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Tax auditors are provided copies of the Business Taxes Law Guide (BTLG) that contain, in loose-leaf form, the laws, regulations, court decisions and summaries of the conclusions reached in selected legal rulings of counsel (annotations). The BTLG is also available on CD ROM and at www.boe.ca.gov.

The hardcopy of the BTLG is the property of the BOE and its safekeeping is the tax auditors' responsibility.

USE OF ANNOTATIONS**0101.47**

When using an annotation to clarify BOE's position regarding a statute or regulation, a review of the annotated legal opinion is often helpful. In addition to the online Business Taxes Law Guides, a complete list of annotated opinions is available by subject area on the Sales and Use Tax Annotated Legal Opinion Letter web page at <http://www.boe.ca.gov/sutax/annotations/menu.htm>. This page also provides a link to the redacted copy of the annotated opinion, if available. If the electronic annotated opinion is not posted, use the online request form to receive a copy of the legal opinion. Suggestions and comments regarding published annotations may be submitted using the same online request form.

Annotations do not have the force or effect of law, but are intended to provide guidance regarding the interpretation of the Sales and Use Tax Law with respect to specific factual situations. Annotations may be revised or deleted. Opinions supporting deleted annotations should not be retained in section or district libraries, reference files, or files maintained by BOE employees.

For more information regarding annotations, refer to Regulation 5700, Annotations.

TERMINOLOGY**0101.50**

The term "taxpayer" includes "seller" or "retailer" as defined in the Sales and Use Tax Law, as well as the person upon whom use tax is imposed.

See Exhibit 1, *Tax Code Table*, for a listing of common sales and use tax program codes used to assign tax code account number prefixes. A complete listing of account characteristic codes can be found in Compliance Policy and Procedures Manual (CPPM) section 325.030.

TAX AUDITORS NOT TO SIGN TAXPAYERS DOCUMENTS**0101.55**

Tax Auditors will not sign stipulations, agreements, or other documents offered by taxpayers or taxpayers' representatives. BOE printed forms or facsimiles thereof will be used.

ACCEPTANCE OF PAYMENTS BY TAX AUDITORS**0101.57**

Tax Auditors must not accept payments in the office or field. If a taxpayer in the office wishes to make a payment, the taxpayer must be taken to the office cashier for processing of the funds. In instances where a taxpayer in the field insists on making an immediate payment of an *audit liability*, the auditor should call the field office and request that a tax representative contact the taxpayer and arrange for payment of the liability.

TAXPAYERS' BILL OF RIGHTS**0101.60**

The Harris-Katz California Taxpayers' Bill of Rights, enacted on January 1, 1989, added RTC sections 7080 through 7099 and section 7156. Effective January 1, 1999, RTC sections 6593.5, 6832, 6964 and 7094.1 were added. The law guarantees that the rights, privacy, and property of taxpayers are protected during the course of assessment and collection activity. Tax auditors should be familiar with the provisions of the law. Publication 70, *Understanding Your Rights as a California Taxpayer*, which explains procedures, remedies, rights, and obligations of taxpayers and the BOE, must be provided to taxpayers at the beginning of every audit. This publication is available at www.boe.ca.gov.

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER
REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION****0101.65**

The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibit BOE staff from disclosing confidential taxpayer and feepayer information to any unauthorized persons regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. (This includes information contained in form BOE-1164, *Audit Memorandum of Possible Tax Liability*, see AM section 0401.20.) In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests before the BOE. [See Compliance Policy and Procedures Manual (CPPM) section 135.074 for detailed information on the IPA.]

Confidential information contained in BOE records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the BOE. Requests for information of a confidential nature should be referred to a supervisor. (See CPPM, section 140.000, *Exchanges of Confidential Information*.)

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, status of permit (i.e., active/inactive), and tax area code. This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides in part that the BOE may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the RTC.) Account numbers for individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) are considered confidential because an individual's account number when input into the resale verification function on BOE's website would reveal an individual's name and address, which is considered confidential. Staff should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

The procedures for handling public requests for information, including requests for Statements of Economic Interests (SEI) — Form 700, are addressed in Publication BOE-20, *What You Need to Know About Requests for Information*, available on eBOE. Requests by a taxpayer's representative for information and records under the IPA and the California Public Records Act (PRA) will be guided by the following policy:

A taxpayer's representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

Conditions for Disclosure of Information

Generally, a written authorization such as a valid power of attorney (see AM section 0403.15) is required to provide information about a taxpayer's account or to discuss a taxpayer's account with an authorized taxpayer representative. However, there are some situations where exceptions to this general rule are permitted.

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in IRIS and, if applicable, the Automated Compliance Management System (ACMS). Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

Verbal Authorization by the Taxpayer

Verbal authorization by a taxpayer to discuss his or her case with an authorized representative may be accepted by BOE staff over the telephone or in person. In either situation, proper identification must be furnished by the taxpayer to the BOE.

If the authorization is by telephone, staff must first verify the identity of the taxpayer by use of a driver's license or social security number through IRIS and/or ACMS before accepting the verbal authorization. If the authorization is in person, staff must ask for identification such as driver's license, Department of Motor Vehicles identification card, or any other document which establishes his or her identity.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information documented in IRIS and, if applicable, ACMS:

- Name, address, telephone number of the authorized representative,
- Specific subject matters that may be discussed with the representative, and
- Duration of the authorization.*

***NOTE:** Staff should inform the taxpayer that the verbal authorization will be limited to 30 calendar days, unless the taxpayer requests a shorter period of time. Staff should advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization for longer than 30 calendar days.

It is important to clearly establish what subject matter may be disclosed to the authorized representative. For example, if a taxpayer that has a seller's permit as a sole proprietor calls a BOE staff member regarding a bank levy that attached community property funds in the spouse's separate bank account and authorizes staff to discuss the circumstances relating to the levy with the spouse, staff may explain the reason for the levy and general information regarding levies and community property laws but may not provide any other confidential information to the spouse (e.g., the accounts receivable balance, payment history, delinquencies) without specific authorization by the taxpayer.

Before providing confidential taxpayer information to an authorized representative over the telephone, staff should verify the identity of the caller by requesting the name, address, and telephone number and matching it with the information provided by the taxpayer and noted in IRIS and, if applicable, ACMS. When the authorized taxpayer representative appears in person at a BOE office, their identity must be verified by examining their driver's license, Department of Motor Vehicles identification card, or other such identification document and compared to the information noted in IRIS and, if applicable, ACMS.

Authorization by Possession of Agency Forms, Documents, or Correspondence

Pursuant to Civil Code section 1798.24(c), confidential taxpayer information for accounts registered to individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) may also be provided to a person representing the taxpayer if it can be proven with reasonable certainty through the representative's possession of agency forms, documents, or correspondence that this person is the authorized representative of the taxpayer. Agency forms, documents, or correspondence may include, but are not limited to notices of determination, collection or delinquency notices, taxpayer's copy of a notice of levy, or other forms or correspondence addressed to the taxpayer.

However, before releasing confidential taxpayer information, staff should attempt to verify the person in possession of the forms, documents or correspondence is the taxpayer's authorized representative. This verification can be done through a review of BOE records (e.g., IRIS, ACMS) or by telephoning the taxpayer. If staff is unable to contact the taxpayer and is unsure whether a person is in fact an authorized representative, including the spouse of a taxpayer, staff should request that the person provide written authorization from the taxpayer. If there is any doubt, confidential taxpayer information should not be provided. The following two scenarios are provided as examples:

1. A person visits a BOE office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by the BOE in the taxpayer's name. The person states that certain payments made by the taxpayer were not credited to the taxpayer's account and requests a record of all payments made during the last three months on the taxpayer's account. If, there is no record in IRIS or ACMS indicating the person is an authorized representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, staff should not provide the information.
2. The same situation as above, except BOE staff is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has knowledge of the account and the documentation is sufficient to indicate the person is the authorized representative of the taxpayer (sole proprietor).

Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter of the taxpayer's issue(s), their business name and/or account number, but who may not have been asked by the taxpayer to represent them. An example of a speculative inquiry is a caller who knows the taxpayer's account number, but asks to verify the taxpayer's address or reported gross sales for the previous quarter. Assuming there is no record the taxpayer is being represented by the caller, the reported gross sales information cannot be provided, and if the account is coded S (Sole Proprietorship), M (Husband and Wife Co-ownership), or N (Registered Domestic Partnership), the address information also cannot be provided to that person.

Confidential taxpayer information should not be provided in response to questions that are unrelated to the actual forms, correspondence or documentation in the possession of the person, without written or verbal authorization of the taxpayer. For example, information relating to amounts reported on tax returns or matters related to an audit cannot be provided to a person claiming to be an authorized representative based on the person's possession of a delinquency notice addressed to a taxpayer. All requests should be carefully examined and/or analyzed before inferring with reasonable certainty that the person is the authorized representative of the taxpayer.

Information Requiring Written Authorization

Requests by taxpayer representatives to examine or receive copies of taxpayer account information, correspondence, or other documents require written authorization by the taxpayer, except under the following circumstances:

1. A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing the information, however, staff should check IRIS or ACMS to ensure the representative was not terminated by the taxpayer.
2. Taxpayer directed – Written authorization is not required when supplying copies of audit working papers to the taxpayer's bookkeeper or accountant when the taxpayer directed the BOE to contact the taxpayer's bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
3. Oral inquiries – Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by the BOE to represent the taxpayer. Most oral requests are for an informal review of working papers before the audit is transmitted to Headquarters – generally when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer's business name or account number, but have not been asked by the taxpayer to represent them. Staff should check the taxpayer's file and the appropriate IRIS screens to verify the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)
 - Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or CPA's relationship with the taxpayer. If the only information available on IRIS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.
 - Requests for copies of district, appeals, and central files must be obtained in writing.

**DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER
REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION**

(CONT.4) 0101.65

Without written authorization from the taxpayer, a person purporting to represent the taxpayer should not be permitted to close a taxpayer's account or change a taxpayer's address or ownership information. Only under limited circumstances may federal tax information be provided to a taxpayer representative with a power of attorney. Staff must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

REPORTING BREACHES OF CONFIDENTIAL INFORMATION

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In accordance with the Information Practices Act (Civil Code section 1798 et seq.) and Board of Equalization policy, any loss, compromise, or theft of taxpayer information must be immediately reported by staff to their supervisor or manager.

The format in which information is maintained is immaterial to this reporting requirement, but common examples of how taxpayer information may be stored includes but is not limited to:

- Hard copy (e.g., audit working papers, IRIS printouts, taxpayer forms)
- Computer hard drive
- USB or other data storage device

In addition, any detection or suspected breach of computerized data by any unauthorized person(s) must be reported promptly to supervisors or managers.

In each instance, management will report the loss, compromise, theft, or breach to the Disclosure Officer in the Legal Department's Settlement and Administration Division. When necessary, the Disclosure Officer will notify the Chief Counsel, and a determination as to the appropriate action will be made after review of all pertinent facts.

Following are applicable references that may also contain additional reporting requirements:

- Board of Equalization Administrative Manual (BEAM) section 2205 – Lost, Stolen or Destroyed Property, and section 8025 – Lost, Stolen or Destroyed Computer Equipment
- Audit Manual section 0101.65 – Confidential Information
- State Administrative Manual (SAM) section 5300 – Information Security
- Budget Letter (BL) 05-32 – Encryption of Portable Computing Devices
- Budget Letter (BL) 03-03 – Notification of Information Technology Incidents and Computer Crimes
- Civil Code section 1798.29

AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA**0101.67**

The BOE collects and stores confidential taxpayer or feepayer information and has a responsibility to protect this information from unauthorized access, use, and disclosure. BOE employees with a business need to transmit confidential or personal information electronically outside the BOE may not do so without protection (encryption) of that information. However, the taxpayer or feepayer may consent to the electronic transmission of confidential or personal information without encryption by signing a completed form BOE-82, *Authorization for Electronic Transmission of Data* (BOE-82). The BOE-82 may be obtained only by BOE employees with a business need to transmit unencrypted confidential or personal taxpayer or feepayer information outside the BOE. The form must be completed and signed by the taxpayer or feepayer, or an authorized representative who holds a power of attorney, before any confidential information is transmitted.

The completed BOE-82 must be maintained in the taxpayer or feepayer's file. For audit cases, the receipt of the BOE-82 must be documented on form BOE-414-Z, *Assignment Activity History* using the 414-Z Program and a scanned copy maintained in the *Forms* subfolder of the audit case folder (See AM section 0302.20). The authorization will remain in effect, until rescinded in writing, for the current assignment only and not future or prior assignments.

In addition, the following statement must be included at the top of each electronic transmission of confidential information:

Confidential information of the California State Board of Equalization (BOE) – unauthorized use or disclosure is strictly prohibited by law. If you receive this e-mail in error, please immediately notify the BOE by return e-mail and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

Confidential information includes, but is not limited to, the Audit Engagement series of letters (BOE-80s), and any other form that may indicate a taxpayer or feepayer is under audit. Confidential data also includes email correspondence during an audit. *For example:* Form BOE-122, *Waiver of Limitations*, references audit, but does not specifically say the taxpayer or feepayer is under audit. Although not specifically referenced, this form is used almost exclusively for audit purposes and should be considered confidential.

If a BOE-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer or feepayer. However, BOE staff must not encrypt files before transmitting via e-mail if the taxpayer or feepayer's internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, BOE employees must either obtain the BOE-82 or provide the data to the taxpayer in hard copy.

Additionally, BOE staff, taxpayers and/or their representatives can transfer large amounts of data (i.e. audit data, statistical sample data, sales data, payables data, etc.) using Secure File Transfer (SFT). SFT is a way to share documents with someone inside or outside the BOE without using email to send it. It is encrypted and secure. By using SFT two users with two separate logins can access the same secured folder and can securely upload and download files. There is a Take 5 video available that explains how to use the SFT service at <http://eboe/eboe3/sutd/training/sft.cfm> and an information sheet.

For assistance in encrypting files, BOE employees must contact their PC or LAN Coordinator.

TAXPAYER CORRESPONDENCE IN GENERAL**0101.70**

Correspondence to taxpayers, organizations, and the general public will be on the BOE's letterhead. All such correspondence will contain the signature, typewritten name, working title and appropriate telephone number of the authorized signer. In accordance with State Board of Equalization Administrative Manual (BEAM) section 7600, all incoming correspondence (including e-mail correspondence) will be responded to or acknowledged within 12 calendar days of receipt.

Taxpayer correspondence must serve as a complete source of the questions asked, the facts presented, and the answer given. The facts and the taxpayer's question(s) should be restated or briefly summarized. Any additional facts obtained from the taxpayer after receipt of the original letter should be included in the response and should be identified as to the source. Appropriate modification or rescission letters should be sent to the taxpayer when it is determined that the tax advice as applied to the facts given by the BOE was incomplete or incorrect. District Administrators and Headquarters' Supervisors will review all letters involving tax questions written by their staff to ensure that the information is correct and in the proper format.

Taxpayers who verbally request tax information are to be advised that, although information is being provided, the taxpayers may also wish to put such request in writing to receive from the BOE a written response that may serve as basis for RTC section 6596 relief.

MISCELLANEOUS GUIDELINES AND PROCEDURES**0103.00****REPORTING SUSPECTED COUNTERFEIT GOODS****0103.05****GENERAL**

This section outlines procedures for staff to follow when they encounter a business that appears to be selling counterfeit goods during an audit, field call, or visit to a business. Pursuant to Revenue and Taxation Code sections 6007 and 6009.2, when a person is convicted of trafficking counterfeit goods, all of their sales and purchases of those goods are considered taxable. The BOE may bill the convicted seller for unpaid sales or use tax within one year after the last day of the calendar month following the date of conviction.

PROCEDURES**REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**

When an auditor encounters a person who appears to be selling counterfeit goods, they must report the suspected activity to the Tax Recovery and Criminal Enforcement Task Force (TRaCE) by completing the *Report a Crime* electronic form available on the BOE's TRaCE webpage. Auditors must check the Other box and identify themselves as "BOE Staff" in the *What is your relationship to the suspect? Check all that apply* section located at the bottom of report form. TRaCE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

REPORTING CONVICTED TRAFFICKERS OF COUNTERFEIT GOODS

When an auditor receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media) they must send a referral directly to the Investigations Division. Staff should address the referral memo to the Chief of Investigations and Special Operations Division and include, at a minimum:

1. Auditor's name and contact information,
2. Any pertinent information about the convicted trafficker (e.g., taxpayer's name, business DBA, permit information if available), and
3. The source of the information.

DESTRUCTION OF EVIDENCE PURCHASED WITH STATE FUNDS**0103.10****GENERAL**

During audits or investigations of bars, liquor stores, mini-marts, or other retail establishments, undercover purchases may be necessary to substantiate a taxpayer's selling prices. Generally, the purchase(s) consists of soda, alcohol, cigarettes, over-the-counter medication, etc. If State funds are used to make the evidence purchase or an employee's out-of-pocket expenses are reimbursed, the evidence must be destroyed using the following procedures.

PROCEDURES

In most cases, the receipt is used as evidence in the audit or investigation and not the item itself. However before destruction, a photograph should be taken of the items purchased and retained with the purchase receipt if warranted. The receipt and photograph (if applicable) should be scanned and included in the digital audit report.

Once the items of evidence are no longer needed, a BOE employee will destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. *For example*, alcohol or soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle. The supervisor or manager should document the destruction of the evidence on the BOE-414-Z for the respective audit.

DIGITAL SIGNATURES**0103.15**

This section clarifies the policy for accepting digital signatures on documents received by BOE staff. The California Government Code allows the use of digital signatures provided they meet certain requirements. As long as the requirements below are met, BOE staff may accept digital signatures on documents such as waivers of limitation, claims for refund, powers of attorney and resale certificates.

California Government Code Requirements

A "digital signature" is an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. California Government Code section 16.5 explains that a digital signature has the same force and effect as a manual signature if it has the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State.

DIGITAL SIGNATURES**(CONT.) 0103.15**

The Secretary of State regulations state that for a digital signature to be valid, it must be created by an acceptable technology. The regulations list the acceptable technologies, which currently include Public Key Cryptography and “Signature Dynamics.” (See California Code of Regulations, Title 2, Sections 22000-22005.)

Accepting Digital Signatures

Staff should be aware of who is authorized to sign a document.

For example:

A taxpayer emailed form BOE-122, *Waiver of Limitation*, to the auditor that was digitally signed using Adobe Acrobat software. The digital signature includes the date, time, name of signer, email of signer and company name. The file, once digitally signed by the taxpayer, cannot be changed. The auditor has verified the signer is authorized to sign the waiver and the email address is valid. The auditor also followed-up with a phone call and recorded the contact on the BOE-414-Z. Therefore, the auditor may accept the waiver with a valid digital signature.

STATE ISSUED CELLULAR TELEPHONES**0103.20**

This section provides guidelines for the use of state issued cellular telephones (cell phones) which includes BOE issued smartphones. SUTD’s policy is that the use of cell phones for text messages is prohibited. However, exceptions may be made for emergency text messaging as warranted.

BOE employees with state-issued cell phones must follow Board of Equalization Administrative Manual (BEAM) section 5363.3, *Cellular Telephone Guidelines*, and the data security provisions in BEAM 8670, *Encryption of Electronic Storage and Computing Devices* and BEAM 8605, *Active Content (Mobile Code)*.

Additionally, the following guidelines should be observed:

- Music should not be downloaded to the device from any source, this includes ring tones.
- Any pictures and videos taken with a state-issued cell phone should only be for business purposes. The pictures or videos should only be transferred via email or a direct download to the auditor’s computer and then moved to the LAN. Pictures of taxpayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. When taking pictures of taxpayer records is not conducive (i.e. voluminous amount of records), staff must issue a properly completed BOE-945, *Receipt for Books and Records of Account*, when a scanner or photocopier is unavailable.
- The state-issued cell phone is to be used for BOE email only. Staff must not place personal email accounts on the device.
- Instant messaging between BOE employees is not allowed because these messages are not securely maintained.
- Do not connect to Wi-Fi using the state-issued cell phone as it is not a secure connection. All connections to the state-issued cell phone must be through secure means.

GUIDELINES FOR RTC SECTION 6596 RELIEF**0105.00****GENERAL****0105.02**

Revenue and Taxation Code (RTC) section 6596 provides authority for the Board of Equalization (BOE) to relieve taxpayers of tax, interest, and penalty where the BOE finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the BOE. Generally, a claim for refund cannot be based on a claim of erroneous advice under section 6596. Section 6596 only applies when there has been a failure to make a timely return or payment; thus a claim for refund cannot be based on erroneous written advice received *after* the return has been filed or payment has been made.

In general, claims of reliance on erroneous advice are ruled upon by the Board Members (Board). On September 30, 1992, the Board approved a Statement of Action delegating to the BTFD Deputy Director the authority to relieve taxpayers of tax, interest and penalty as provided by RTC section 6596. The BTFD Deputy Director's authority to grant RTC section 6596 relief is limited to cases where the district office and the taxpayer are in full agreement that RTC section 6596 relief applies.

The guidelines provided in this manual apply only in cases where RTC section 6596 relief falls within the limited authority delegated to the BTFD Deputy Director. This is an internal procedure when the district office and the taxpayer are in full agreement that RTC section 6596 relief applies. When the district office does not recommend relief, the taxpayer's request for relief shall follow the normal appeals process (see publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, available at www.boe.ca.gov.)

When providing written advice, Property and Special Taxes Department (PSTD) staff should cite the comparable statute for the tax or fee program for which they are providing written information. PSTD disclaimer language should be the same as the examples contained within this section of the Audit Manual. However, the disclaimer must include reference to the comparable statute for the tax or fee program. Additionally, for PSTD programs, delegation of 6596 relief has not yet been granted to the Property and Special Taxes Deputy Director. All 6596 relief requests for PSTD accounts must be submitted to the BOE for approval.

General Correspondence

The BOE receives and responds to numerous taxpayer inquiries received via letter and email. Responses prepared by BOE staff to email inquiries, whether sent by email or by letter, qualify as written tax advice. Therefore, written responses to taxpayer inquiries via email or letter should contain the appropriate section 6596 disclaimer language.

QUALIFIED ERRONEOUS ADVICE**0105.04**

The erroneous advice must have been provided in writing, either in response to the taxpayer's written inquiry or in a prior audit, and must meet the criteria for qualified "written advice" set forth in Regulation 1705, *Relief from Liability*. Special Taxes and Fees accounts have similar "written advice" criteria noted in Regulation 4902, *Relief from Liability*.

Staff should emphasize that taxpayers should obtain written advice with respect to the questions they may have regarding the application of tax to a particular type of transaction. The taxpayer should be given a copy of BOE-8, *Get It in Writing* or a reference to the BOE-8 link on the BOE website.

Tax Advice Provided in a Written Communication

Written advice by the BOE to a taxpayer in response to a taxpayer's specific written inquiry or from the taxpayer's representative seeking a written opinion will constitute written advice that can be relied upon for relief in accordance with RTC section 6596 and similar provisions for Special Taxes and Fees. To be considered a specific written inquiry, the taxpayer or the taxpayer's representative must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer's representatives where the name of the taxpayer is not provided, BOE staff should ask that the representative provide the name and account number of the taxpayer in order for the BOE to provide a response that may be relied upon. This will also enable the BOE to maintain appropriate records with respect to the information provided. The taxpayer's name and account number will be referenced in the BOE's response.

Tax advice provided to trade/industry associations that do not identify their members, franchisors that do not identify their franchisees, taxpayer's representatives failing to identify their clients, and/or taxpayers whose written inquiries are vague or general in nature must include the following statement:

The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under Revenue and Taxation Code section [insert appropriate RTC section].

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596, or similar provisions, by the written advice to the taxpayer. Written advice prepared by BOE staff, including email responses, must include the following statement if the written tax advice indicates any part of the transaction is exempt from tax:

Revenue and Taxation Code (RTC) section [insert appropriate RTC section] sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for advice from the BOE. Provided the facts and circumstances of the activity(ies) or transaction(s) discussed below are complete, accurate, and verifiable by audit, [state taxpayer's name] may generally rely on this response for purposes of RTC section [insert appropriate RTC section]. If the taxpayer provides this letter to its customers, vendors, or other third parties, those persons may not rely on the contents of this letter for the purpose of relief under RTC section [insert appropriate RTC section]. It is the responsibility of a taxpayer seeking relief under RTC section [insert appropriate RTC section] to furnish a copy of the taxpayer's original written inquiry to the BOE, or that of its legal or statutory predecessor, along with a copy of the written response received from the BOE.

If a taxpayer cannot locate its own copy of the original written inquiry and/or the BOE's written response and requests a copy from BOE records, staff will make a reasonable effort to locate and provide copies of the documents to the taxpayer.

QUALIFIED ERRONEOUS ADVICE**(CONT.2) 0105.04**

If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. If staff is unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written tax advice may be relied upon for relief under the appropriate RTC section. Written advice to taxpayers that include staff's assumptions must also include the following statement:

Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section [insert appropriate RTC section]. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, [state taxpayer's name] may rely on this response for purposes of RTC section [insert appropriate RTC section].

Written tax advice indicating the transaction is subject to tax, rather than exempt from tax, need not include any of the above statements regarding relief under RTC section 6596, or similar statutes.

Review – Tax Advice Provided in a Written Communication

FOD District Administrators and Headquarters Section Supervisors must report the number of written inquiries received and responded to electronically on SharePoint. Written inquiries received and responded to must be reported by the 7th of the month following the quarter end. For example, written inquiries received and responded to in 4th quarter 2013 must be reported by January 7, 2014.

Copies of all BTFD and FOD written responses confirming transactions of an exempt nature, modification/rescission letters, and the taxpayer's original written inquiry will be forwarded to the Audit and Information Section (MIC 44) for final review of the accuracy of the written response. Any written response requiring adjustment will be returned to the originating party for modification or to rescind the written tax advice. Correspondence that advises a transaction is taxable should *not* be forwarded to the Audit and Information Section. All written responses, regardless of whether or not the written tax advice provides that the transactions are exempt or subject to tax, should be filed in accordance with existing policy.

PSTD Division Chiefs are responsible for maintaining a file of all original written requests regarding transactions/activities of an exempt nature. They are also responsible for ensuring all written responses are accurate. Additionally, all written responses confirming exemptions, along with any subsequent modifications/rescissions should be maintained as well.

Written Tax Advice Provided in a Prior Audit

Presentation of a taxpayer's books and records to a tax auditor for examination is considered a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence that demonstrates the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the BOE." The facts and conditions in the current situation at hand must be the same as those during the prior audit. Audit comments, schedules, and other writings prepared by the BOE that become part of the AWP's which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding of relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

A person will be considered to have shared accounting and common ownership and may rely on the advice given in the audit if the person:

1. Is engaged in the same line of business as the audited person.
2. Has common verifiable controlling ownership of 50% or greater ownership or is a common majority shareholder with the audited person, and
3. Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation,
 - Shared accounting staff or an outside firm who maintains books and records and prepares sales and use tax returns.
 - Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The following are examples of qualified written advice provided in a prior audit:

1. A prior audit's examination of sales invoices, whether on an actual or a sample basis, qualifies as written advice with respect to the charges on the invoices examined.
2. Prior audit comments or schedules that state that a specific item or charge is exempt or was properly reported constitute written advice with respect to that item or charge.
3. Markings on a no-change audit report indicating the examination of a specific type of transaction generally qualify as written advice with respect to that type of transaction.

The following do not qualify as written advice:

1. Written comments, other than audit comments, that indicate the BOE staff provided erroneous advice during a conversation with the taxpayer, either over the phone or in person. Such advice is not in response to a written inquiry from the taxpayer and is verbal, with or without documentation of such conversation.
2. A sales and use tax return accepted by the BOE that contains an erroneous deduction is not written advice, whether or not the taxpayer was asked to explain the deduction or provide supporting documentation. To qualify as written advice, the BOE staff must have responded in writing to specific facts and circumstances of the deduction in question, as described in writing by the taxpayer.
3. Waiver of an audit does not constitute written advice for RTC section 6596 purposes.
4. Acceptance by the BOE staff during an audit, of the percentage used by the taxpayer in reporting taxable or exempt portion of a sale is not misinformation when a different percentage is deemed more appropriate in the succeeding audit. When the taxpayer reports on an estimated basis, the accuracy of that estimate will be tested as part of every audit.
5. The use of, or failure to use, a percentage of error from a prior audit (AM section 0405.33) does not create a basis for a claim for relief under RTC section 6596 in

REASONABLE RELIANCE ON WRITTEN MISINFORMATION**0105.06**

To qualify for RTC section 6596 relief, the taxpayer must have reasonably relied upon erroneous written advice. Such reliance must have caused either of the following:

1. The taxpayer did not charge or collect sales tax reimbursement or use tax for the transaction in question.
2. The taxpayer did not pay use tax on the storage, use, or other consumption in this state of tangible personal property.

RESCISSION OF ERRONEOUS ADVICE**0105.08**

When a district office determines that erroneous written advice was provided in the prior audit and agrees that the taxpayer is entitled to RTC section 6596 relief, the district office shall notify the taxpayer of the proper application of tax by one of the means described below.

1. Notification by means of a separate letter to the taxpayer specifically stating the correct application of tax to the transactions. The letter may notify the taxpayer of the provisions of RTC section 6596 and the procedures for requesting relief. This separate letter to the taxpayer is the preferred method of notification provided the tax auditor is sure of the correct application of tax and it will be more than one month before a request for RTC section 6596 relief memo will be sent to the BTFD Deputy Director.
2. Notification by means of a copy to the taxpayer of the district administrator's request for relief memo that is sent to the BTFD Deputy Director, provided this memo clearly explains the correct application of tax to the transactions.

The date of the written notification establishes the last day that relief applies. However, for enforcement purposes, a reasonable period should be allowed for the taxpayer to adjust to reporting tax correctly. The period will vary depending on the size and complexity of the taxpayer's operations.

The district office shall send a copy of the written notification to the Taxpayer Records Unit (MIC 36). If the district office is not certain of the application of tax to the transactions in question, the district office shall seek guidance from the Chief, Tax Policy Division prior to notifying the taxpayer by one of the above means.

Written advice may also be invalidated by a change in statute or constitutional law, a change in the Sales and Use Tax Regulations, or a final decision of a court, rendering the BOE's earlier written advice invalid.

REQUEST FOR RELIEF**0105.10**

When the request for relief falls within the authority of the BTFD Deputy Director as described in AM section 0105.02, the District Administrator must submit a memorandum directly to the BTFD Deputy Director. The memorandum shall include, but not be limited to, the following information:

1. Opening paragraph: Taxpayer's name, current audit period, general description of the transaction in question, and the basis of relief.
2. Background: Type of business in which the taxpayer is engaged, detailed description of the transaction(s) in question, and comment regarding consistency in the taxpayer's business operations and applicable laws and regulations. If there were changes in the laws and regulations affecting the taxpayer's business, explain how such changes affect the application of tax to the transaction in question.
3. Current Audit: Findings in relation to the subject of the request for relief, and the measure of tax subject to relief, if available. Attach sample documents from the current audit.
4. Prior Audit: Evidence of misinformation, including, but not limited to, pertinent prior audit comments, sales invoices or paid bills examined in the prior audit, and any other documents that support misinformation. Include audit and test periods. Attach copies of sample documents and pertinent comments and schedules from the prior audit.
5. Application of Tax: Discussion of application of tax. State references, i.e., section of the law, regulation, annotation, etc.
6. Recommendation: District recommendation for RTC section 6596 relief and the date the taxpayer was notified, in writing, of the proper application of tax. Confirm that a copy of the notification letter has been sent to the taxpayer's file in the Taxpayer Records Unit (MIC 36), and that the RTC section 6596 issue will be discussed in the next staff meeting.

See Exhibit 2 for a sample of request for relief memo.

The BTFD Deputy Director will have the request for RTC section 6596 relief and supporting documentation evaluated for consistency with these guidelines and the criteria provided in RTC section 6596 and Regulation 1705. Upon completion of the evaluation, the BTFD Deputy Director will issue a memo to the District Administrator providing approval or denial of the request for relief. If the BTFD Deputy Director does not approve the request for relief and the taxpayer remains in disagreement with the current audit, the taxpayer should be advised to follow the normal appeals process.

The current AWP's shall include a copy of the following:

1. District Administrator's memo requesting section 6596 relief.
2. BTFD Deputy Director's reply.
3. Letter notifying the taxpayer of the proper application of tax.

The RTC section 6596 issue shall be discussed in the district office staff meeting. The district office shall emphasize the importance of the completeness of the field audit examination and the accuracy of audit comments.

ADJUSTMENTS TO BILLED DIFFERENCES**0107.00**

Cancellations and modifications of \$5,000 or more to previously billed differences require the approval of a supervisor or designee. Employees authorized to approve difference adjustments cannot create and approve the same adjustment.

Cancellations and modifications of less than \$5,000 to previously billed differences do not require the approval of a supervisor or designee. However, all sections/divisions involved in adjusting differences previously billed must routinely sample these adjustments to help ensure their validity.

SAMPLE REVIEW PROCESS BY DIVISION/SECTION**0107.02****Petitions Section**

Ten percent of an entire day's transactions not requiring supervisor approval are reviewed once every two weeks. Review days are selected randomly so that transactions performed by all employees have an opportunity to be reviewed. Transactions requiring review are identified by using the Audits Results Released for Billing Report and the Revenue Transaction Audit Trail Report (Audit Trail).

The Petitions Section maintains a log of the reviews performed. Log entries include the name of the reviewer, the date of review, the account number of each transaction reviewed, the name of the employee initiating the adjustment and a comment regarding action taken on any discrepancies noted. The log is retained for two years.

Return Analysis Unit

Every two weeks, a day is selected for one employee's work to be reviewed. On the day selected for review, an employee's name is randomly selected. The section supervisor or designee will review the Audit Trail, IRIS Document Management browses, daily work summaries, re-file material, or any other available resource to determine if the employee had any transactions posted for the previous day.

The employee selected is notified that his or her work is up for review and is required to submit all completed work from the previous day to the reviewer. The reviewer also performs a quality assurance review, such as proper notations left on documents, proper payment application, and extensions granted.

The section/division supervisor maintains a log of the review findings. The log contains the employee name, the date of review, and the reviewer's name and initials signifying completion of the review of the employee's work for that day. The log is retained for two years.

Consumer Use Tax Section

Ten percent of an entire day's transactions not requiring supervisor's approval are reviewed once every two weeks. Review days are randomly selected so that transactions performed by all section employees have a chance to be reviewed. Transactions requiring review are identified by using the CUT SR screen in IRIS in conjunction with the Audit Trail.

The section maintains a log to record the reviews performed. Log entries identify the date and the total number of transactions reviewed. The account number of any transaction with discrepancies is noted in the comment portion of the log. A memorandum that identifies the total number of accounts reviewed is prepared for the section files. The hard copy documentation of each report used for the review is attached to the memorandum. The log will be retained for two years.

Special Taxes and Fees Division

Every two weeks, a day is selected for one employee's work to be reviewed. On the day selected for review, an employee's name is randomly selected. The section supervisor or designee will review the IRIS Document Management subsystem browses, daily work summaries, re-file material, or any other available resource to determine if the employee had any transactions posted for the date selected for review.

The employee selected is notified that his or her work is up for review and is required to submit all completed work from the previous day to the reviewer. The reviewer also performs a quality assurance review, such as proper notations on documents, proper payment application and extensions granted.

The section supervisor maintains a log of the review findings. The log contains the employee name, the date of review, and the reviewer's name and initials signifying the completion of the review of the employee's work for that day. The log is to be retained for two years.

Special Operations Branch

Adjustments not requiring supervisor's approval that are less than \$5,000 in the Special Operations Branch will be routinely sampled. A Business Taxes Compliance Specialist, on a quarterly basis, will review an employee's transactions that did not require approval. The employee will be randomly selected and the day of the review will vary so that no set pattern is followed. All employees involved in completing transactions not requiring approval will have their work reviewed. Quarterly reports will be used to identify transactions selected for review.

The section will maintain a log to record the reviews performed. The log entries will show the employee name, date of review, number of transactions reviewed, and the reviewer's name and initials. The log will also contain the number of transactions that show discrepancies. The log will be retained for two years.

Timber Tax Section

No sample review is performed as all cancellations and adjustments to previously billed differences require the approval of a supervisor or designee. Employees authorized to approve difference adjustments cannot create and approve the same adjustment.

GUIDELINES FOR PROCESSING REFUNDS**0108.00**

- Claims for refund exceeding \$100,000 require BOE approval. Audit Determination and Refund Section (ADRS) handles claims for refund \$100,000 or less.
- All refunds of \$5,000 or greater require approval of the section supervisor or designee.
- All refunds where the payee name or address has been changed require the approval of the section supervisor or designee.
- Refunds cannot be created and approved by the same employee.
- The section supervisor or designee will verify the validity of at least ten percent of all refunds processed by their section for one day every two weeks that did not require supervisory approval (that is, refunds of less than \$5,000). The DIF BX screen in IRIS is used to request a random sample of the refunds processed and identifies the specific refunds requiring review. This review should be performed at least monthly, and the reports identifying the refunds reviewed should be retained for two years. These reports must identify the name of the person performing the review and the date on which the review was performed.

CANCELLATIONS AND CREDITS**0109.00**

In general, cancellations and credits exceeding \$100,000, including relief of penalties, require BOE approval. Cancellations involving a fraud penalty for any amount also require BOE approval.

The following categories of cancellations and credits can be processed without BOE approval:

1. Credits for \$100,000 or less involving cancellation or reduction of determinations and credits established for overpayments which are to be applied to other liabilities. However, credits or cancellations for amounts of \$50,000.01 to \$100,000.00 require approval of the Deputy Director of the appropriate program area and must be made a public record for ten days before they become effective.
2. Cancellation of Consumer Use Tax Vehicle, Vessel or Aircraft Determinations of any amount. However, cancellations in excess of \$50,000 require approval of the Deputy Director of the Business Tax and Fee Department and the cancellation must be made a public record for ten days before the cancellation becomes effective.
3. Credits for cancellation of delinquency interest and penalty determined not to be due, and correction of internal accounting errors or document preparation errors.
4. Credits or cancellations of any amount for successor liabilities. However, credits or cancellations of successor liabilities in excess of \$50,000 require approval of the Deputy Director of the appropriate program area.
5. Credits or cancellations resulting from approved settlement agreements.

EDUCATIONAL CONSULTATIONS**0110.00****BACKGROUND****0110.02**

The Educational Consultation Program (Program) is designed to provide sales and use tax information to new taxpayers during the taxpayers' first year of business to help taxpayers meet the sales and use tax reporting requirements.

The consultation should be performed by an experienced auditor who reviews the taxpayer's business operations, record-keeping and tax preparation system. This personal assistance is an educational opportunity for taxpayers to obtain answers to sales and use tax questions, as well as any general questions regarding the Board of Equalization (BOE). The Program is provided at no charge and is available upon taxpayer request. Consultation appointments typically last no more than one day.

PRE-CONSULTATION ACTIVITIES**0110.04**

Once a taxpayer contacts a district office requesting a consultation, the district should verify that the requesting taxpayer is eligible for the Program. To be eligible, the taxpayer must have:

1. Started a new business within the last twelve (12) months.
2. Filed at least two sales and use tax returns.

Although outside the guidelines as set forth in criteria (1.), district offices have the discretion to perform consultations for taxpayers who have been in business for more than 12 months. Such taxpayers may request a consultation and amend returns (CPPM section 505.120) within the appropriate statute of limitations. The taxpayer must be advised that since the taxpayer does not meet the criteria for an educational consultation, the consultation the taxpayer receives may result in the BOE conducting a full audit based upon its findings.

CONSULTATION ACTIVITIES**0110.06****Consultation Appointments and Taxpayer Contact**

The auditor contacts the taxpayer and schedules an appointment to conduct the consultation at the place of business of either the taxpayer or the taxpayer's representative, or the auditor makes arrangements to have the taxpayer furnish enough records and tax returns so an in-office consultation can be performed. The auditor then mails Form BOE-1297, *Taxpayer Education Consultation Program Appointment Confirmation Letter*, to the taxpayer confirming the appointment. The letter includes the appointment date and time, and it describes the extent of the auditor's anticipated brief examination of the taxpayer's records.

Contact information throughout the consultation process may be documented on Form BOE-414-Z, *Assignment Activity History*, using the BOE-414-Z program.

Examination of Records

At the taxpayer's place of business, the auditor will perform the following:

1. Discuss the taxpayer's business and type of operation
2. Examine the business and its facilities
3. Examine the taxpayer's books and records
4. Examine the taxpayer's sales and use tax returns and review with the taxpayer how the returns are prepared
5. Provide the taxpayer with applicable publications and/or regulations
6. Answer any questions the taxpayer may have with regards to the taxpayer's sales and use tax account or any other BOE services.

If an examination of the taxpayer's place of business was not performed (e.g., consultation was conducted at the taxpayer's representative's place of business), a note to that effect will be disclosed in the "Other Comments" section of Form BOE-1300, *Taxpayer Educational Consultation Report*.

POST-CONSULTATION ACTIVITIES**0110.10**

When the consultation is complete, the auditor will discuss findings or concerns (if any) with the taxpayer and give recommendations to remedy or correct the identified issues. The taxpayer will also be advised about the areas that are being handled correctly to reinforce those areas.

1. Material Debit Amount Discovered

If the auditor finds a material debit discrepancy, the auditor will advise the taxpayer to amend its return(s) and pay the appropriate tax and interest.

2. Material Credit Amount Discovered

If the auditor finds a material credit discrepancy, the auditor will furnish the taxpayer with Form BOE-101, *Claim for Refund or Credit*, and instruct the taxpayer how to properly file the claim.

3. Educational Consultation Report

After completion of the consultation, the auditor will complete Form BOE-1300, *Taxpayer Educational Consultation Report* (Report), and either Form BOE-1298, *Taxpayer Educational Consultation Program Letter* (Findings), or Form BOE-1299, *Taxpayer Educational Consultation Program Letter* (No Findings) cover letter, depending on the outcome of the consultation. The Report form requires the following information:

- Taxpayer's name
- Account number
- Contact person
- Date of consultation
- Accountant (if applicable)
- Periods of returns previously filed
- Auditor's name
- Supervisor's name
- Reviewer's name
- Date of review
- Type of business
- Hours spent
- Type of cover letter sent
- Books and records information
- Types of sales
- Deductions and purchases.

While each consultation varies from taxpayer to taxpayer, district staff shall make efficient use of their time spent on consultations (e.g., 8 hours per consultation recommended). The auditor submits the Report to their supervisor in the same manner as other audit cases. The district reviewer reviews the Report for accuracy and related comments, and enters the date in the section "Date of Review" and signs in the section "Reviewed By" on the Report. Both the Report and the cover letter must be mailed to the taxpayer. Field staff should archive this report in the digital audit archive. In addition, staff should forward a copy of the Report to the Taxpayer Records Unit (MIC 36).

In the "Other Comments" section of the Report, the auditor should record any publications or regulations provided to the taxpayer, along with any errors discovered and the appropriate action taken or discussed to correct them (e.g., amended returns). The cover letter to the taxpayer should explain the purpose of the consultation and that it was not an audit of the books and records. The letter should also instruct the taxpayer to amend its returns, if applicable.

Presentation of a taxpayer's books and records to a tax auditor for examination is considered a written request for an audit report. If a prior audit report of a person requesting RTC section 6596 relief contains written evidence that demonstrates the issue in question was examined, such evidence will be considered "written advice from the BOE" and qualify for relief under RTC section 6596. (AM section 0105.04.) The same holds true for a consultation wherein the auditor examines the taxpayer's books and records and completes the Report form. Audit staff should be careful to accurately describe the types of transactions and records examined because only those types of transactions and/or records will qualify as written advice from the BOE under RTC section 6596. A taxpayer cannot file a valid RTC section 6596 claim for relief regarding transactions and records not examined by the auditor should the taxpayer dispute an audit finding at a later date. Therefore, auditors should describe in the Report transactions the taxpayer engages in, but were not examined during the consultation. For example, "Claimed exempt shipping charges were not verified against actual shipping documents."

Auditors should also be aware of transactions the taxpayer may be entering into in the future. Any discussions about future types of transactions should also be described in the "Other Comments" section of the Report form. For example, if the taxpayer does not have sales for resale, the auditor will describe and note that he/she explained to the taxpayer the proper elements of a resale certificate and any other types of records used to support claimed nontaxable or exempt sales, etc. The application of tax and correct record-keeping explained to the taxpayer for any (future) transactions should be documented in IRIS.

In the discussion, auditors should explain that advice regarding future transactions constitutes oral advice and does not serve as a basis for RTC section 6596 relief. The auditor should also explain the application of RTC section 6596 and Regulation 1705 and stress the importance of obtaining written advice. See AM section 0105.00 for RTC section 6596 relief guidelines.

4. Follow-up Actions

The auditor should enter appropriate comments in IRIS (TAR AI Comments screen) to document that a consultation was requested and completed, rejected, refund recommended, etc.

Either the auditor or the auditor's supervisor should track accounts for which the taxpayer was instructed to amend his or her returns. If the taxpayer has not submitted amended returns after six (6) months from the notification date or earlier if the statute of limitations is approaching, the auditor should inform his or her supervisor, who will then flag the account for follow up.

PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE IRS AND FTB

0115.00

INTERNAL REVENUE SERVICE (IRS)

0115.02

Federal Tax Information (FTI) is any information provided by the IRS regarding a taxpayer, including, but not limited to, information provided on federal income tax returns, quarterly federal tax returns, and annual federal unemployment tax returns. All data contained in the returns such as ownership information, personal and business addresses, and revenue and expense information is considered FTI.

The following are considered FTI:

- Original records received from IRS in both paper and electronic form.
- Copies of information received from IRS in both paper and electronic form.
- Data transcribed from IRS documents into any data base, audit working papers, written and electronic forms or correspondence such as, but not limited to, levy letters.
- The printing of FTI from external agencies. The IRS has authorized the BOE to access and print FTI in the FTB's online databases. The FTB has flagged the FTI information that is contained on screens in the online databases as required by IRS Publication 1075. When a resource person accesses Franchise Tax Board (FTB) information on the FTB's online databases (TI, "Taxpayer Information System" and BETS, "Business Entity Tax System") and prints IRS information contained on screens of the databases, it is considered FTI.

There are two options for obtaining FTI from the IRS:

1. Transcript Delivery System (TDS)
2. Photocopies of IRS income tax returns

TDS provides transcripts to the Board of Equalization (BOE) electronically and is generally available within two weeks of the IRS receiving the request. Processing of requests for photocopies may take several months. Most FTI should be obtained by the TDS option.

The following transcripts are available through TDS:

1. *Account Transcript* includes the following information:
 - Subsequent activity posted to an account after the return is filed (e.g., payments, credits, adjustments).
 - Information on the account balance, interest and penalties.
 - Taxpayer's filing status (e.g., "married filing joint").
 - Line item information from the return such as "Adjusted Gross Income," "Taxable Income," and "Tax Per Return." The amounts shown may be "per return" or "IRS adjusted." The transcript identifies the date on which IRS processed the return.
2. *Return Transcript* contains most lines from the original return, including attached forms and schedules. The transcript contains both the "per return" and "IRS adjusted" entries. It does not contain subsequent activity on the account. Return transcripts are available for returns filed during the current and three prior tax years.
3. *Record of Account* includes both the "Account Transcript" and "Return Transcript" information, and is available for returns filed during the current and three prior years.

4. *Wage and Income Documents* shows income reported by taxpayers on forms such as W-2 and 1099. Wage and income information are only available for individual tax returns. Wage and Income documents are only available for wages and income earned during the current and ten prior years.

Requesting FTI

Requests for FTI under either option noted above should only be made when the information is not available from FTB or any other sources. A request for FTI should be made using [Form BOE-33-B](#), *Request for Federal Tax Information*.

The following information should be included on [Form BOE-33-B](#):

- Taxpayer's name and address.
- BOE account or reference number.
- Taxpayer's social security number (if requesting individual income tax returns).
- Spouse's name and social security number (if known) when requesting individual income tax returns. Include the spouse's name if both the husband and wife are on the permit, if attempting to locate community property assets, or if there is evidence the spouse was involved with the business but is not listed on the permit.
- Federal Employer's Identification Number (FEIN) must be included when requesting partnership or corporate information.
- Write in the specific IRS form number(s) filed by the taxpayer. A complete list of available forms is provided in Exhibit 3. However, the following forms most commonly requested are:
 - (a) 940-Employer's Annual Federal Unemployment Tax Return
 - (b) 941-Employer's Quarterly Federal Tax Return
 - (c) 1040-U.S. Individual Income Tax Return
 - (d) 1065-U.S. Partnership Return of Income
 - (e) 1120-U.S. Corporate Income Tax Return
- Requesting unit, name of requestor, date of request, name and title of the approver, date approved, and signature (see the third bullet below).

The procedures for electronic handling of Form [BOE-33-B](#) are as follows:

- The Requestor will complete Form [BOE-33-B](#) (except for the items to be completed by the approver as explained below).
- The Requestor will send the completed Form [BOE-33-B](#) for approval via email. The BOE Exchange of Information list contains the names of BOE staff within the district and headquarters unit or section, authorized to request, receive, and disclose tax information on behalf of BOE (approver). The approver is generally the District Administrator, District Principal Auditor, District Principal Compliance Supervisor or headquarters section supervisor.
- The approver will complete the section of the form titled “Approved By,” “Title,” and “Date Approved.” In lieu of a signature, the approver will type in their name followed by the word “emailed” in parentheses on the “Approved By” (signature) line.
- The approver will email the completed Form [BOE-33-B](#) to the *SUTD-FTI Custodian mailbox*. The approver must use the unique District / Section Identifier in the subject line of the email sent to the SUTD-FTI Custodian Mailbox. The unique identifier format will include the district or section letters and a number sequence. For example: Sacramento District Office would be KH 00001. The email from the approver documents the approver’s signature.
- The unique identifier must be included on the district’s FTI request log.

Processing FTI

The Compliance Program Analysis Section (CPAS) is responsible for maintaining the *SUTD-FTI Custodian mailbox* and IRS Tracking Database, as well as processing FTI requests. The procedures for processing FTI requests are as follows:

- Check the SUTD-FTI Custodian mailbox for incoming Form [BOE-33-B](#) requests.
- Verify that the person who approved the request is included in the BOE Exchange of Information list.
- Process the request and send the Requestor FTI materials in a double sealed envelope marked “Confidential.”
- The IRS Tracking Database sends an email to the District Administrator, HQ-SUP or their designee notifying them the FTI has been mailed.
- The FTI materials consist of the following documents:
 - TDS transcripts, photocopies of IRS returns, or IRS letters (FTI documents).
 - [Form BOE-33](#), *Records of Authorized Examination of Federal Income Tax Returns*.
 - Form BOE-85, *Inspection or Disclosure Limitations (Federal)*.
- If the request is for “Photocopy of Return,” enter the information on [IRS Form 8796-A](#), *Request For Return/Information*. Send the form and a cover memo to:

Internal Revenue Service
Disclosure Scanning Operation Stop 93A
PO Box 621506
Atlanta, GA 30362-3006

- Maintain the IRS Tracking Database. The database documents all activities that occur in the process of issuing and destroying FTI materials. The required actions and the related database requirements are shown on the *FTI Actions and Database Activity Table (Exhibit 4)*.

Receiving FTI

Upon receipt of the FTI materials in a double sealed envelope marked “Confidential” from CPAS, the Requestor must confirm receipt via email to the [SUTD-FTI Custodian’s mailbox](#). The date of the email is entered into the database in the “District Acknowledgement” section.

Safeguarding FTI

The BOE has a statutory obligation to protect FTI from unauthorized access and disclosure under the Internal Revenue Code. (IRC § 6103(d)). In order to comply with the IRS information safeguarding requirements, Form BOE-85, *Inspection or Disclosure Limitations (Federal)*, must be attached to the AWP to flag any page that includes FTI. It is *not* necessary to attach Form BOE-85 to AWP that include information from income tax returns obtained from someone other than the IRS, such as the taxpayer or FTB, if not identified as FTI.

The requestor is personally responsible for safeguarding the FTI documents. When staff is in possession of FTI, it is critical that the information is treated with the utmost security and confidentiality. Only staff with a business reason to view the information may access it. If the information is examined for any reason, the viewing must be documented as follows:

Hard-copy documents

[Form BOE-33](#) must be attached to all hard-copy documents and reports containing FTI (including, but not limited to paper documents, audit working papers, etc.). Any person inspecting the document must complete the *Date, Purpose of Examination, Signature of Board Representative, and Employee Number* fields. The form must be signed by the District Administrator or headquarters unit or section supervisor.

Electronic documents

The viewing or examining of electronic documents containing FTI (including, but not limited to documents on electronic media, i.e., CD-Roms (CDs), flash drives, etc.) must be documented in the [FTI Tracking Log](#). To begin the entry, select *Add New Request* and complete the required fields.

Storage of Hard-copy and Electronic documents

While the hard-copy documents, reports and documents on electronic media are in the possession of staff, they must be stored in a separate, locked cabinet during all times when not being examined by staff. CDs and flash drives must have a label indicating that FTI data is stored on them.

FTI in ACMS

When accessing the “IRS Address Detail” or “IRS Levy Detail” screens in ACMS, the user is presented with a warning banner that reads “CONFIDENTIAL IRS DATA.” ACMS has an IRS Summary feature in which the user must record any FTI. It is crucial for the user to update ACMS and properly record FTI data using the IRS Summary.

Levy Letters Containing FTI

Levy letters that contain information from IRS are considered FTI. The following information may be noted on levy letters:

- Tax Debtor's SSN or FEIN
- Tax Debtor's address
- Tax Debtor's "aka" or "dba"
- Tax Debtor's spouse (name, SSN, address)
- Sources of income (i.e. Banking institutions, Financial institutions, Sources of Independent Contractor income, Insurance policies, etc)

Levy letters that contain this type of information from IRS must be documented in the [FTI Tracking Log](#) as described above.

Audits Containing FTI

Digital audits stored on the J: drive, archived on CDs, or uploaded to the Audit Archive must be identified if they contain FTI. To do so, the file folder should utilize the following naming convention: District Code_Case Number_Taxpayer Name_FTII. CDs must be encrypted and labeled as FTI. In addition, if viewing digital audits with FTI information, you must enter the viewing information on the [FTI Tracking Log](#) as described above.

Destroying FTI

When hard copy documents, including transcribed notes, levy letters and *Memorandum of Garnishee*, that are provided to BOE are no longer needed, they must be forwarded to the supervisor of the CPAS (MIC 02) in a double sealed envelope marked "Confidential" for destruction. In addition, an email must be sent to the [SUTD-FTI Custodian's mailbox](#) confirming the FTI materials are being returned for destruction. The date of the email is entered into the database in the "District Return Notification" section. When CPAS receives the FTI materials and BOE forms, they date stamp the envelope and enter the date returned in the database "Received from District" section.

The FTI materials will be destroyed with the approved shredder located in CPAS.

FRANCHISE TAX BOARD

0115.04

Requests for information from the FTB, must be made using the “External Access Tracking (EAT) System,” program, which is located at <http://eboe/eboe3/checklogin/eatrr.cfm>. This location in the eboe also contains the guidelines for requesting information. To access this program, the tax auditor must be authorized to do so by his or her supervisor. Requests for information are processed only by designated resource persons within the requestor’s district office.

Information processed through the EAT System does not include details but is usually sufficient for sales and use tax purposes. Income tax schedules or the complete return not provided through the EAT System must be requested on Form BOE-1144, *Official Request for Return Info*, available in the Supply Section (MIC WS). The completed form must be forwarded to Headquarters Special Procedures Section (MIC 55) for processing.

Information obtained from FTB is confidential information. Tax auditors must not request, access, examine, use or disclose information from FTB unless there is a BOE related, legitimate business purpose to do so. The EAT System keeps track of all requests for information which are periodically reviewed by supervisors for validity. Inappropriate requests for information may result in disciplinary, civil, and criminal actions.

Supervisory guidance on periodic review of requests for information is located at <http://eboe/eat/doc/EATHelp/helpnmanual/index.html>, under “Supervisor Functions.”

DESTRUCTION OF FILE MATERIAL

0117.00

AUDIT WORKPAPER RETENTION POLICY

0117.02

Archived electronic audit working papers (AWPs) for all accounts (active and closed out) shall be retained indefinitely. All paper AWPs with no periods open to statute may be purged except as noted below.

Paper copies of the two most recent audits (current and immediately prior audits) must be retained for the following accounts even if archive CDs are available:

- Active accounts
- Closed-out accounts with legal successors, liabilities owing from an audit, pending appeals or litigation, claim for refund, pending request for RTC section 6596 relief, or other similar matter

Backup CDs must be stored in a secure location. If there is no secure area available for storage of the CDs, the CDs must be encrypted.

See AM section 0306.00, Electronic Audit Working Papers.

INFORMATION FROM THE FTB

0117.06

Generally, copies of FTB returns obtained from the FTB will not be retained in the BOE files or AWPs, unless the retention is authorized by the District Administrator. When no longer needed, the FTB returns must be returned to the District Administrator for destruction.

Documents obtained through the EAT System should be returned to the resource person for destruction within 10 days. Documents not returned by the requestor within 10 days will be red flagged for supervisory follow-up.

REWARD PROGRAM

0122.00

GENERAL

0122.02

RTC section 7060 authorizes rewards for information leading to the collection of unreported or under reported sales and use taxes. This program, however, has not been funded.

Individuals occasionally indicate that they have information that would enable the BOE to recover sales tax revenues. Tax auditors should advise these individuals that there is currently no state funding that would enable us to provide a reward. However, tax auditors may attempt to obtain such information by appealing to the person's sense of duty as a good citizen. The tax auditor should advise the person providing information that he or she may request that his or her identity not be divulged.

The person providing the information should also be made aware that confidentiality laws prevent the BOE from divulging to them the results of any subsequent investigation.

INFORMANT CONTACT PROCEDURES**0124.00****GENERAL****0124.02**

Under the Information Practices Act (IPA)(Civil Code § 1798 et seq.), all information provided by an informant, as well as the informant's name, may be withheld during the investigation of criminal or non-criminal matters if disclosure of the information would compromise the investigation or a related investigation. Once the investigation has been completed, information relating to the identity of the informant may continue to be withheld provided the informant was promised confidentiality. A promise of confidentiality shall be documented in writing. For purposes of this paragraph, the investigation will be considered complete when a determination is issued, regardless of the fact that the taxpayer subsequently petitions for a redetermination. If the informant was not promised confidentiality, then the informant's identity must be divulged upon request by the taxpayer. While the IPA is only applicable to individual taxpayers, as a policy matter, the BOE has extended the protection of the IPA to all taxpayers.

Whether or not confidentiality is promised, the information provided by the informant must be divulged if a request is made by the taxpayer, but only after the investigation is completed. Additionally, staff may provide either an exact copy of the information provided by the informant, with the informant's identity deleted if confidentiality has been promised or a comprehensive summary of the substance of the information. If the informant's identity can be readily determined from an exact copy of the information, then it would be preferable to provide a comprehensive summary. If a comprehensive summary is provided, staff should pay particular attention to providing all personal information that could affect the taxpayer's reputation, rights, benefits, or privileges.

Even though an informant is promised confidentiality under the IPA, occasionally other statutes and case law may require disclosure of the informant's name. For example, circumstances involving discovery proceedings related to pending litigation or a defendant's right to confront his or her accuser when criminal charges have been filed may require disclosure of the informant's name. Such matters shall be referred to the BOE's legal staff for decision and response.

GUIDELINES**0124.04**

The following guidelines should be followed to ensure that the informants are aware of their rights:

- **INITIAL CONTACT.** Generally, staff should not encourage informants to request confidentiality. If an informant contacts the BOE by phone or in person and asks to remain confidential, that request and the promise of confidentiality should be documented in writing. The informant should be advised that under certain circumstances, such as a court proceeding, the BOE may be unable to maintain the informant's confidentiality.
- Where the informant contacts the BOE in writing, confidentiality should be maintained if so requested.
- The BOE may accept information that is provided anonymously.

GUIDELINES

(CONT.) 0124.04

- **DOCUMENTS.** In those cases where the informant provides his/her name, any documents containing the informant's allegations should clearly state whether or not his/her name was provided with the promise of confidentiality. If the information was provided with the promise of confidentiality, then to ensure against the improper release of the informant's identity it is imperative that staff clearly print in red "INFORMANT — CONFIDENTIAL" on the top of such documents. In addition, when the document is prepared by staff, the informant's name as well as other information which should not be released to protect the identity of the informant (i.e., telephone number, address, etc.) should be placed in one central location and circled in red. He or she should thereafter be referred to in the document as "the informant."
- **INVESTIGATION.** During an investigation, if a taxpayer or the taxpayer's authorized representative requests file material, staff must provide a copy of all documents in the file except those with confidential information such as an informant's name or the information received from the informant. However, in doing so, staff must inform the taxpayer that such information exists and is being withheld until completion of the investigation as required by the IPA. Staff should not provide details of the information provided by the informant during the investigation.
- **FOLLOWING THE INVESTIGATION.** Once the investigation is complete, the BOE will withhold the identity of the informant if there was a promise of confidentiality; otherwise, we must disclose his/her identity. Whether or not confidentiality was promised the informant, the taxpayer is entitled to either an exact copy of the information with only such deletions as are necessary to protect the informant's promised confidentiality or a comprehensive summary of the substance of the material.
- **COURT PROCEEDINGS.** When the BOE's records are subpoenaed as the result of court proceedings such as a discovery order or a criminal investigation where the defendant has the right to confront his or her accuser, the matter should be referred to the BOE's legal staff for action.

**IDENTITY THEFT PROCEDURES —
ABSOLVING THE INNOCENT PARTY****0126.00****GENERAL****0126.02**

Identity theft occurs when someone appropriates the personal information of others without their knowledge with the intent to commit fraud or theft. It is a felony in California to use the personal identifying information of another person without the authorization of that person for any unlawful purpose (Penal Code section 530.5 et. seq.). Specific guidelines should be followed to absolve the innocent party of tax liabilities that occur as a result of identity theft.

PROCEDURES**0126.04**

In the event a tax auditor uncovers a situation where an individual has assumed another's identity, the tax auditor should collect documentary evidence supporting the identity theft from the innocent party. Supporting documentary evidence includes police and/or court reports. The tax auditor should thoroughly examine the evidence and alert the audit supervisor. The audit supervisor will notify other potentially affected sections (i.e., Centralized Collections, Special Procedures) that may have additional pertinent information (MIC 42). The audit supervisor will also contact the Investigations Division, notifying them a potential identity theft has occurred. Copies of all pertinent documents will be forwarded to the Investigations Division, which is responsible for contacting law enforcement.

Once the tax auditor and audit supervisor are satisfied the provided documents support identity theft, the case should be forwarded to a compliance supervisor. The compliance supervisor will review the case and approve a legal adjustment to the taxpayer's (innocent party) account. This legal adjustment will delete the disputed liability from the taxpayer's account. After the adjustment, copies of the file documents should be sent to the Internal Security and Audit Division (MIC 54).

AUDIT MANUAL

GENERAL INFORMATION

TABLE OF EXHIBITS

Tax Code Table for Sales and Use Taxes	Exhibit 1
Sample of Request for Relief Memo.....	Exhibit 2
Forms and Schedules Available for TDS	
Transcript by Entity Type	Exhibit 3
FTI Actions and Database Activity Table	Exhibit 4

TAX CODE TABLE FOR SALES AND USE TAXES

EXHIBIT 1

Taxable Activity - Sales Tax Accounts	TAT	TAT Ind.	Notes
Regular Sales Tax	SR		
Regular Sales Tax(Gasoline Retailer)	SR		See Acct char for additional gas attributes
Regular Sales Tax(multiple locations in one tax area code)	SR	X	
Regular Sales Tax(multiple locations)	SR	Y	
Regular Sales Tax with sch B	SR	S	
Regular Sales Tax with sch B (multiple locations)	SR	Z	
Sales Tax Gasoline Distributor	SG		
Sales Tax Exemption	SJ		
Certificate of Registration — Use Tax	SC		If voluntary will have Acct char code of 08
Consumer Use Tax	SU		
Consumer Use Tax w/spec rtn	SU	S	
Temporary	SR		
Arbitrary	SR		

Description	Acct. Char Code
Retailer who is temporary	01
Retailer who is part-time	02
Retailer who sells fuel	03
Retailer who sells fuel and is also a fuel broker	04
Retailer who sells fuel and is also a distributor	05
Retailer who sells at swap meets and temporary locations	06
Retailer who has warehouse locations	07
Retailer is voluntary filing (SC)	08
Retailer who is vehicle lessor	09
Retailer who has a manufacturer exemption	10
Government entity that has a permanent 30 day extension	11
Regulation 1802-Sales and Purchases \$500,000 and over	12
Use tax direct pay permit government	13
Use tax direct pay permit non-government	14
Arbitrary account	999

Account Analysis	Code	New Field
Sells Fuel	G	Acct char 03
Sells Fuel and is also a fuel broker	B	Acct char 04
Sells fuel and is also a fuel distributor	D	Acct char 05
Sells at swap meets	M	Acct char 06
Files a simplified return	S	Rtn-type-code 002
Warehouse locations	W	Acct char 07

SAMPLE OF REQUEST FOR RELIEF MEMO

State of California

Board of Equalization

Memorandum

To : [Insert Deputy Director's Name]
Business Tax and Fee Department (MIC: 43)

Date :

From : [Insert District Administrator's Name]
[Insert District Name] District Administrator [Insert (District Code)]

Subject : Recommendation for Section 6596 Relief [Seller's Permit Number]
[Insert taxpayer's name]

[Opening paragraph - include current audit period, the subject of request for relief, and the basis of misinformation]. For example:

The taxpayer requests relief from the payment of tax, interest and penalty related to the current audit period, January 1, 2000 through March 31, 2002. The current audit is assessing tax on merchandise withdrawn from resale inventory for distribution without charge to dealers and end users. The taxpayer claims the understatement of tax is based on misinformation provided in a prior audit and seeks relief under section 6596 of the Revenue and Taxation Code.

Background

[Describe taxpayer's business, billing method, etc., in relation to the subject of the request for relief.] For example:

The taxpayer is a distributor of audio equipment, language laboratories and teaching software to dealers and educational institutions. The taxpayer withdraws items from resale inventory for distribution without charge to dealers, end users, either directly or through the taxpayer's employees, for use in product evaluation or as samples. These items are not returned to the taxpayer. During the periods covered by both the prior and current audits, inventory withdrawals were posted to the general ledger samples expense accounts and were not reported by the taxpayer as subject to use tax.

Current Audit

[Describe current audit in relation to the subject of the request for relief. Attach sample documents.] For example:

During the current audit, the auditor examined the general ledger samples expense accounts on an actual basis. The auditor explained that items given away to dealers and/or end users in state are subject to use tax at cost. The auditor further explained that items delivered by the taxpayer's employees outside the state are not subject to use tax.

[Insert Deputy Director's Name]

[Date]

Prior Audit

[State prior audit period, documents examined and test period (s). Specify misinformation. Attach sample documents and copy of related prior audit working papers.] For example:

The taxpayer was previously audited for the period of January 1, 1997 to December 31, 1999. The taxpayer reported from the general ledger for sales and use tax purposes. The prior auditor reviewed the general ledger and reconciled it with the sales tax returns. The auditor also examined purchases subject to use tax on actual basis. Exceptions did not include unreported samples withdrawn from resale inventory. The verification comment states, "No withdrawals from inventory (of significance) for "personal use" were applicable per discussion with the taxpayer."

Application of Tax

[Discuss application of tax. Include references, i.e., Section of the Law, Regulation, Annotation, etc.] For example:

Use tax applies to inventory withdrawals of sample merchandise for distribution without charge to other persons in this state or to other persons outside the state when shipped by means of a common carrier. Use tax does not apply when samples are delivered outside this state by means of taxpayer's facilities (section 6009.1 exclusion) provided there is no use in this state prior to delivery and the taxpayer does not relinquish its control over the property in this state.

Annotation 570.0435, Withdrawals from Ex-Tax Inventory, states in pertinent part as follows: ...Storage or use includes...the withdrawal of property from resale or other ex-tax inventory (such as property purchased from outside California...) for functional use in this state by the purchaser and for the transfer of title in this state to other persons in transactions that do not constitute sales..."

Recommendation

[Recommendation to grant section 6596 relief. Include the date of either the separate notification letter or a comment that a copy of this letter to the taxpayer establishes the last day that relief applies.] Following is an example where a separate letter was sent to the taxpayer:

Based on misinformation provided in the prior audit, I recommend granting the taxpayer section 6596 relief from the payment of tax, interest and penalty added thereto, on sample merchandise withdrawn from resale or extax inventory during the audit period. We further recommend that the relief apply through June 30, 2004, the date we notified the taxpayer, in writing, of the proper application of tax. We have sent a copy of this notification letter to the taxpayer's file in the Taxpayer Records Unit (MIC: 36). The agenda for our next staff meeting will include a discussion of this case and the importance of the completeness of the field audit examination and the accuracy of audit comments.

[Insert Deputy Director's Name]

[Date]

Attachments: Sample documents from the current and prior audits
Prior audit working papers

FORMS AND SCHEDULES AVAILABLE FOR TDS

TRANSCRIPT BY ENTITY TYPE

EXHIBIT 3

Account Transcript		Return Transcript		Record of Account		Wage and Income	
Individual	Corporation	Individual	Corporation	Individual	Corporation	Individual	Corporation
1040	1141	1040	1065	1040	1065	1042-S	N/A
3250A	1141A	1040A	1120	1040A	1120	1098	
5329	1141QFT	1040EZ	1120A	1040EZ	1120A	1098-C	
706	1042	1040NR	1120H	1040NR	1120H	1098-E	
706GS(D)	1065	1040REZ	1120L	1040REZ	1120L	1098-T	
706NA	1065B	1040SS/PR	1120S	1040SS/PR	1120S	1099-A	
709	1066					1099-B	
709A	1120					1099-C	
8288	1120A					1099-CAP	
Civil Penalty	1120C					1099-DIV	
Sep. Assessment	1120F					1099-G	
	1120FSC					1099-H	
	1120H					1099-INT	
	1120L					1099-LTC	
	1120ND					1099-MISC	
	1120PC					1099-MSA	
	1120POL					1099-OID	
	1120					1099-PATR	
	REIT					1099-Q	
	1120RIC					1099-R	
	1120S					1099-S	
	1120SF					5498-ESA	
	11C					5498-IRA	
	2290					5498-MSA	
	4720					8805	
	5227					All Forms	
	706GS(D)					K-1 1041	
	706GS(T)					K-1 1065	
	720					K-1 1120S	
	730					SSA-1099	
	8288					Summary	
	8752					W-2	
	8804					W-2G	
	940					W-4	
	940EZ						
	941						
	943						
	944						
	945						
	990						
	990C						
	990EZ						
	990PF						
	990T						
	CT-1						
	Civil Penalty						

FTI ACTIONS AND DATABASE ACTIVITY TABLE

Action	Database Requirement
Process Form BOE-33-B.	Create entry on the IRS Tracking Database.
When FTI materials are received, send the FTI materials and forms BOE-33 and BOE-85 in a double-sealed envelope marked "Confidential" to the requesting office.	Click on "Email Menu," then "Notify District – Items Have Been Mailed" on the database. Verify that the FTI materials displayed in the database email match the hard copy by selecting "Preview" then "Send Email." The system sends out an email to the District Administrator, HQ-SUP or their designee notifying them the FTI has been mailed.
The Requestor acknowledges receipt of the FTI via email.	Enter the date of the email in the database "District Acknowledgement" section.
If no email is received from the Requestor acknowledging receipt of materials within two weeks of mailing, a follow-up email should be sent.	In the database email menu select "Fourteen Day Follow-up (No Acknowledgment)." The system will send an email to the appropriate party requesting an update. In addition, in the database "Comments" section, enter the date, coordinator initials, and a note that a follow-up email has been sent requesting acknowledgement of receipt of FTI materials.
The Requestor notifies CPAS via email that the FTI materials and BOE forms are being returned for destruction.	Enter the date of the email in the "District Return Notification" section.
Receive the FTI materials and BOE forms.	Date stamp the envelope and enter the date returned on the database "Received from District" section.
Destruction of all hard copy FTI materials and BOE forms in compliance with IRS Publication 1075.	Enter the date of destruction in the database "Destruction Date" section.