Amend Revenue and Taxation Code (RTC) Section 7094 of the Sales and Use Tax Law and amend comparable statutes in the special tax and fee laws the Board of Equalization (BOE) administers to allow the BOE to (1) increase the levy amount the Taxpayers' Rights Advocate is authorized to return from $1,500 to $2,300 to adjust for inflation and to provide a mechanism for future adjustments for inflation, and (2) extend this right to all persons, even when a jeopardy assessment has been issued.

Source: Honorable Fiona Ma

Existing Law. Under the existing Sales and Use Tax Law (§ 7094), Use Fuel Tax Law (§ 9272), Alcoholic Beverage Tax Law (§ 32472), Energy Resources Surcharge Law (§ 40212), Emergency Telephone Users Surcharge Law (§ 41172), Hazardous Substances Tax Law (§ 43523), Integrated Waste Management Fee Law (§ 45868), Oil Spill Response, Prevention, and Administration Fees Law (§ 46623), Underground Storage Tank Maintenance Fee Law (§ 50156.12), and Diesel Fuel Tax Law (§ 60632), the Taxpayers' Rights Advocate (TRA) is authorized to release a levy or notice to withhold or, within 90 days of receipt of funds from a levy, order the return of up to $1,500 to the taxpayer or feepayer (hereafter, taxpayer), if the levy of funds threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

Two other provisions, the Cigarette and Tobacco Products Tax Law (§ 30459.2) and the Fee Collection Procedures Law (§ 55333), also allow the TRA to release a levy when the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family. These provisions also allow the BOE to release a levy when the expense of the sale exceeds the liability. However, neither statute authorizes the TRA to return funds.

The TRA authority to release or return funds does not apply when a jeopardy assessment has been issued. A jeopardy assessment is issued when collection of the amount due is jeopardized by delay. These assessments are due and payable immediately and are subject to all collection actions as of the date they are served. Because a jeopardy assessment is indicative of collection being in jeopardy if delayed, collection offices must give priority to these cases and should take all appropriate collection actions, including the seizure of personal property. Internal Revenue Code provisions exempt certain property from levy, but allow the levy on principal residences and certain business assets in certain circumstances. If the Internal Revenue Service (IRS) Secretary finds that collection of the tax is in jeopardy, then the IRS may levy on certain business assets.[1]

A taxpayer may also file a claim with the BOE for reimbursement of bank charges, if a levy is erroneously issued on a bank account and bank charges are incurred. In addition, prior to the BOE selling any property it may have seized, it must notify the taxpayer of the statutory exemptions from levy available under the Code of Civil Procedure. Finally, the BOE is also required to return to a taxpayer the property or the proceeds from the sale of any property levied upon if (i) the levy was not in accordance

[1] Section 6334 of Part II, of Subchapter D, of Chapter 64, of Subtitle F, of Title 26, of the United States Code.

with law, (ii) the taxpayer has entered into and is in compliance with an installment payment agreement as specified, or (iii) the return of the property will facilitate collection or be in the best interests of the state and the taxpayer. This provision does not apply where the BOE finds collection of the tax to be in jeopardy.

This Proposal. This proposal would increase the amount of levied funds the TRA is allowed to order returned within 90 days from the date the funds were received from $1,500 to $2,300, in cases where the levy threatens the health or welfare of the taxpayer, his or her spouse and dependents or family. The increase from $1,500 to $2,300 is based on the accumulation of application of the California inflation factor from the date Section 7094 was first effective, on January 1, 1996, to the present. This proposal also provides a mechanism for future adjustments for inflation. In addition, as noted previously, the TRA presently lacks the authority to return levy funds under two laws; both of these sections are proposed to be updated to be consistent with the other tax and fee laws.

The final provision extends the TRA rights to order a levy returned with regard to persons against whom a jeopardy determination has been issued; however, if collection is in jeopardy, the TRA may not release the funds.

Background. The federal Taxpayers' Bill of Rights was the model for California's Taxpayers' Bill of Rights. The California provisions are generally the same as the federal provisions, but some differences exist due to differences in tax administration, policies, and programs.

The Harris-Katz California Taxpayers' Bill of Rights was enacted in 1988 (Assembly Bill 2833, Ch. 1574), effective January 1, 1989, to place certain guarantees in the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. The Katz-Harris Taxpayers' Bill of Rights, also enacted in 1988, placed similar guarantees in the California Personal Income Tax Law and the Bank and Corporation Tax Law. Conforming taxpayer rights provisions were added to most BOE-administered special tax and fee programs in 1992 by Chapter 438, effective January 1, 1993.

The enacting legislation added RTC Section 7094, which allowed the TRA to release a levy upon making a determination that the levy threatened the health or welfare of the taxpayer or his or her spouse and dependents or family. The language mirrored Franchise Tax Board (FTB) statutes and did not have a limitation on the time or amount that could be released.

Section 7094 was subsequently amended in 1995 by Senate Bill 718 (Ch. 555) to read as it does today. Among other things, the TRA was provided additional authority to return (within 90 days from the levy) an amount not to exceed $1,500, in those cases where the TRA determined the levy threatened the health or welfare of the taxpayer or his or her spouse and dependents or family. Although the available legislative history does not explain the reason for the time or dollar amount threshold, the statute itself seems to suggest that the Legislature was attempting to strike a balance between the expanded power to return funds and the potential resulting revenue impact.

In General. Both the IRS and the FTB have provisions that provide for the release of a levy if the levy creates an economic hardship or otherwise threatens the health and welfare of the taxpayer, his or her spouse and dependents or family.

With respect to the FTB, a levy may be released in the event of any circumstances deemed appropriate by the FTB, including, but not limited to the following:

- Expense to the state related to the sales process exceeds the liability.
- TRA orders the release upon a finding that the levy threatens the health or welfare.
- Proceeds from the sale would not result in a reasonable reduction of the debt.
- Administrative procedures were not followed when the levy was issued.
- Installment payment agreement was entered into to pay the tax liability for which the levy was issued, unless the agreement allows for a levy.
- Release of the levy will facilitate collection of the tax liability or will be in the best interest of the taxpayer and state.

In general, the IRS is also authorized to release a levy under similar conditions as the FTB. These include the following:

- Release of the levy will facilitate collection of the liability.
- Installment payment agreement has been entered into, unless the agreement allows for a levy.
- Secretary determines that the levy creates a financial hardship.
- Liability is satisfied or becomes unenforceable due to lapse of time.
- Fair market value exceeds the liability and release will not hinder collection.

The IRS is specifically authorized to return property that has been wrongfully levied upon. The amount and time are both specified and exceed the time limit and amount that the BOE is authorized to return. The IRS may return property at any time. An amount equal to the amount of money levied on may be returned prior to nine (9) months from the date of levy.

Suggested amendments would increase the amount of levied funds the TRA is allowed to order returned within 90 days from the date the funds were received from $1,500 to $2,300, allow the TRA to return levied funds associated with a jeopardy assessment, but continue to protect state revenues when collection of the tax is in jeopardy.

Similar changes have been attempted in the prior two years. The BOE-sponsored Assembly Bill 1222 (Bloom, 2013) was amended into a different measure when the author did not accept Senate Governance and Finance suggested amendments to only add the inflation adjustment language, and not the increase to the return limit. Last year's Assembly Bill 2249 (Bloom) was not heard in a committee.

Section 7094 of the Revenue and Taxation Code is amended to read:

7094. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand~~ ~~five~~ two thousand three hundred dollars ~~($1,500)~~ ($2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(A) Notwithstanding subdivision (d), the Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy assessment, subject to the amounts set or adjusted pursuant to this section.

(2) The board shall adjust the two thousand three hundred dollar ($2,300) amount specified in paragraph (1) as follows:

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

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

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

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

(d) ~~This~~ Except as provided in subparagraph (b)(1)(A), this section shall not apply to the seizure of any property as a result of a jeopardy assessment.