

The Harris-Katz California Taxpayers' Bill of Rights
(Revenue and Taxation Code Sections)

7080. Title. This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

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

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

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

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

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

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

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

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

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

- (1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

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

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

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

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

- (A) The statute or regulation violated by the taxpayer.
- (B) The amount of tax involved.
- (C) The industry or business engaged in by the taxpayer.
- (D) The number of years covered in the audit period.
- (E) Whether or not professional tax preparation assistance was utilized by the taxpayer.
- (F) Whether sales and use tax returns were filed by the taxpayer.

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

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

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

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

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

- (1) To evaluate individual officers or employees.

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

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

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

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

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

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

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

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

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

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

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

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

(e) For the purposes of this section:

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

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

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

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

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

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

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

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

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

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

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

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

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

7093.6 Offers in compromise. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven

thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

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

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and a compromise shall not be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the

installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

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

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

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

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

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

taxpayer or violate the confidentiality provisions of Section 7056. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(m) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:

(A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

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

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

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

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

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

(p) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

7094. Release of levy. (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) 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 hundred dollars (\$1,500)¹ 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.

(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 section shall not apply to the seizure of any property as a result of a jeopardy assessment.

¹ Effective January 1, 2016, the amount will be \$2,300, as provided by AB 1277 (stats. 2015).

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

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

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

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

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

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

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

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

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

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

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

to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this section:

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

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

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

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

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