

# INITIAL DISCUSSION PAPER

## Proposed Amendments to the Harris-Katz California Taxpayers' Bill of Rights, Revenue and Taxation Code §§ 7080-7099.1, and Special Taxes Bill of Rights

### Issue

Whether and to what extent the Harris-Katz California Taxpayers' Bill of Rights and the Special Taxes Bill of Rights should be amended to better serve California's taxpayers in light of needs and concerns that may have arisen since the inception of Harris-Katz in 1989.

### Background

In January 1989, the Harris-Katz California Taxpayers' Bill of Rights (Exhibit 1) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts are provided protection under this law (Revenue and Taxation Code – RTC – sections 7080-7099.1). Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax and fee programs administered by the Board of Equalization (BOE).

The Harris-Katz California Taxpayers' Bill of Rights and the Special Taxes Bill of Rights (collectively, "TBORs") provide for a Taxpayers' Rights Advocate (Advocate). Exhibit 2 contains a summary of the statutes included in these TBORs.

### Discussion

The Advocate is undertaking a systematic review of the TBORs and intends to propose that the Board support updates and changes to ensure the TBORs' continued relevance and clarity. The Advocate's goals in this undertaking are to propose: (1) the revision or deletion of outdated laws and (2) the incorporation of clarifying and strengthening language to make it easier for taxpayers to understand their rights and for BOE staff and the Advocate to protect the rights of taxpayers.

#### Advocate's Proposed Amendments

The Advocate has identified the following four Sales and Use Tax statutes, along with equivalent Special Taxes statutes, for which amendments are needed. All references are to the RTC. Proposed amendments to the Sales and Use Tax statutes are shown in ~~strikeout~~ and underline.

#### ***Taxpayers' Rights Advocate***

*Sales and Use Tax section 7083*

*Special Taxes sections 8261, 9261, 30458.1, 32461, 40201, 41161, 43512, 45857, 46612, 50156.1, 55322, and 60622*

The Advocate has the authority to order staying actions where taxpayers have suffered or will suffer irreparable loss as a result of BOE actions. However, often a different type of intervention by the Advocate is needed. A common reason for taxpayers to seek assistance from the Advocate is that they are unable to reach an equitable payment agreement with collection staff. The Advocate is proposing to provide the authority for the Advocate to order the modification of payment agreements under the same circumstances as a staying action. In addition, minor clarifying language and rearrangement of the statute subsections is recommended.

#### **7083**

**(a)** *The board shall establish the position of the Taxpayers' Rights Advocate who shall report directly to the executive officer of the board.*

**(b)** *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~~ board actions. Applicable statutes of limitation shall*

**INITIAL DISCUSSION PAPER**  
**Proposed Amendments to Taxpayers' Bill of Rights**

*be tolled during pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.*

~~*(e) The advocate shall report directly to the executive officer of the board.*~~

~~*(c) The advocate may order the modification of any payment agreement where the taxpayer has suffered or will suffer irreparable loss as the result of the terms of the agreement.*~~

***Plan to Timely Resolve Claims and Petitions***

*Sales and Use Tax section 7089*

*Special Taxes sections 8267, 9267, 30458.7, 32467, 40207, 41167, 43518, 45863, 46618, 50156.7, 55328, and 60628*

Section 7089 required the BOE, in cooperation with certain named taxpayer-oriented groups and the Advocate, to develop a plan no later than July 1, 1989 to reduce the time required to resolve petitions for redetermination and claims for refund of Sales and Use Taxes. The Special Taxes statutes mirror this requirement, but without a deadline date, and cite cooperation with relevant state agencies with which the BOE partners in administering various special taxes laws.

The Advocate recommends the deletion of section 7089 and equivalent special taxes statutes because they are obsolete. BOE satisfied the requirement to develop plans to reduce the time required to resolve petitions for redetermination and claims for refund years ago.

***7089***

~~*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 of time.*~~

***Exemptions from Levy***

*Sales and Use Tax section 7095*

*Special Taxes sections 8273, 9273, 30459.3, 32473, 40213, 41173, 43524, 45869, 46624, 50156.13, 55334, and 60633*

Section 7095 and equivalent Special Taxes statutes explain how the amounts of exemptions from levy, specified in the Code of Civil Procedure (CCP), are to be adjusted periodically for inflation, i.e. whenever the change in the California Consumer Price Index is more than five percent higher than any previous adjustment. However, the methodology described in these statutes is at odds with CCP 703.150, most currently amended in 2012, which specifies how the amounts of various kinds of exemptions from levy are to be adjusted. CCP subsection 703.150(d) provides that the amounts shall be adjusted based on the California Consumer Price Index, but contains no reference to a "five percent or higher" provision.

The Advocate recommends the deletion of section 7095 and equivalent Special Taxes statutes because they contradict the CCP statute that provides the rules on adjusting the amounts of exemptions from levy. Furthermore, the RTC statutes do not appear to serve a useful purpose since they pertain to matters already fully addressed in another code of law.

***7095***

~~*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.*~~

**INITIAL DISCUSSION PAPER**  
**Proposed Amendments to Taxpayers' Bill of Rights**

***Claim for Reimbursement of Bank Charges by Taxpayer***

*Sales and Use Tax section 7096*

*Special Taxes sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.4, 55335, and 60633.1*

Originally section 7096 provided that a taxpayer may file a claim with the BOE for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold issued by the BOE (subsequently expanded to include erroneous processing action or collection action by the BOE). In 2001, BOE-sponsored amendments added a provision allowing taxpayers to also file a claim for reimbursement of any reasonable third-party "check charge fees." A BOE analysis of the law change noted that previously the BOE was not able to approve claims for fees other than bank charges related to the BOE error, such as bounced check charges imposed by third parties such as daycare centers, retailers, or utility companies. The analysis further noted that it is fair and equitable to reimburse taxpayers for third-party charges and this law change was well within the intent of the original legislation that authorized the BOE to reimburse taxpayers for BOE errors.

As provided by Compliance Policy and Procedures Manual section 155.025, BOE staff receiving a section 7096 claim for reimbursement are to forward the claim to the Taxpayers' Rights Advocate Office for evaluation, along with a copy of the charge or fee, a statement explaining the facts of the case, and a recommendation as to whether the claim should be approved. Occasionally BOE staff question the definition of "third party check charge fees," along with the reference to "overdrafts" and whether these terms include fees billed to the taxpayer by a payee such as a utility company when a check or electronic payment to the utility company is disallowed due to an erroneous BOE action.

The Advocate recommends amendments to the statutes to clarify the intent of the law by more clearly encompassing third-party charges or fees incurred due to dishonored electronic payments and dishonored checks. In addition, the Advocate recommends splitting subsection (a) into two subsections to enhance clarity by separating the general statement of law and definitions from the requirements of the claim process.

**7096**

**(a)** *A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party ~~check charge~~ charges or fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank and third-party charges and fees include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges or fees for overdrafts or dishonored payments that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges or fees are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party.*

**(b)** *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) (c)** *Claims pursuant to this section shall be filed within 90 days from the date the bank ~~and~~ or third-party charges or fees 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.*

**INITIAL DISCUSSION PAPER**  
**Proposed Amendments to Taxpayers' Bill of Rights**

**Summary**

The Advocate welcomes any comments or suggestions regarding his proposals or ideas on other amendments that may be needed for the TBORs.

Prepared by the Taxpayers' Rights Advocate Office  
Current as of October 9, 2015

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