5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

(a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer’s requests for updates regarding such progress.

(c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.

(e) All Findings are in Taxpayer’s Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer’s favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section’s findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

   (1) If the assigned section concludes that the dispute should be resolved in the taxpayer’s favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section’s findings, subject to Board approval.

   (2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer’s favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer’s Favor.

   (1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer’s favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section’s findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section’s findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

   (2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer’s favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either
advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer’s petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Board approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section’s findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

(g) If the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer’s Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer’s petition will be resolved in accordance with the change, subject to Board approval if applicable.

(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of $100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:

(1) The Board may approve the findings.

(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.

(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.
History:  1. New section adopted 9-12-2007; effective 2-6-2008.

   2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced “Board Staff from the” with “The” at the beginnings of subdivisions (a), (b), and (c); replaced “to District Office or Board Section” with “of Petition” in the title of subdivision (b); deleted “Board Staff in” from between “to” and “the,” replaced “Section” with “section” after “Board,” and added the text after “comment” to the first sentence in subdivision (b); add the second sentence to subdivision (b); added “Notice of” to the title of subdivision (d); deleted “Board Staff from” from after the comma, replaced “present” with “advise the taxpayer of,” and replaced “to the petitioner” with “in writing” in subdivision (d); replaced subdivisions (e) and (f); and added new subdivisions (g) and (h).