PROPOSED REGULATION	SUBJECT MATTER	SUGGESTED REVISION (SOURCE UNDERLINED)	STAFF RESPONSE **
Article 1.	**Application, Definitions, and Jurisdiction**		
4010(a)	Application of part 4	1) Add Taxpayers' Bill of Rights to list of statutes covered by part 4. (FTB) 2) Clarify that part 4 governs when there is a conflict with part 5. (FTB) 3) Remove reference to "hearings" because a hearing is not "filed" with the Board. (BOE Staff)	1) Revision is not necessary because part 4 does not cover hearings under the Taxpayers' Bill of Rights. 2) Revision accepted. 3) Revision accepted.
4011	Definitions	1) Add "business entities" to definitions. (FTB) 2) Include individual who files claim for refund in definition of "claimant." (Mr. Vinatieri) 3) Replace "taxpayer" and "claimant" definitions with one definition of "appellant." (BOE Staff) 4) Define "respondent" to mean FTB. (BOE Staff)	All revisions accepted, except that revision 2 is rendered moot by revision 3.
4012(a)	Jurisdiction-generally	1) Use the term "quasi-adjudicatory body." (FTB) 2) Define or remove language about "grievances" against FTB because it is ambiguous. (FTB & Mr. Vinatieri)	1) The term "quasi-adjudicatory body" is not suitable because it may conflict with other statutory provisions. Instead the language was simplified. 2) "Grievance" language was removed due to its ambiguity.
4012(b)	Jurisdiction-specific situations	1) Add additional provisions to the list of situations giving rise to BOE jurisdiction. (FTB) 2) Use the mailing of a notice, rather than receipt of the notice, as the trigger for jurisdiction (FTB) 3) Various technical changes (BOE Staff)	All revisions accepted.
4012(c)	Jurisdiction-barred issues	1) Add bankruptcy to the list of barred issues. (FTB) 2) Add whether CA constitution violates US Constitution to list of barred issues. (BOE Staff) 3) Add FTB's violation of "policies and procedures" to list of barred issues. (BOE Staff)	1) Revision accepted. 2) Revision accepted. 3) Revision accepted; but issue is not barred if it affects the adequacy of notice or amount of tax.

** Please note that where staff accepted a proposed revision, staff did not always use the exact language proposed by the interested party. In some cases, the revision was accepted in principle, but staff modified the language to better fit the context and goals of the regulations.

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Article 2.	**How to file an appeal from the Franchise Tax Board**		
4020	Requirements for filing appeals	1) Add a copy of the notice being appealed to the list of required contents. (FTB) 2) Add page and formatting limits. (BOE Staff) 3) Add requirement that an HRA appellant cite facts and legal authority. (FTB) 4) Add provisions for FAX and e-filing (FTB & BOE)	1) Revision accepted; but copy of notice not required when there is a deemed denial. 2) Revision accepted. 3) Revision not necessary due to nature of HRA appeals. 4) Revision accepted. New section 4020.5 created to set forth methods for parties to submit documents and Board Proceedings Division (BPD) to correspond with parties. Section 4020.5 will apply to all documents and correspondence during the appeal.
4021	Time for filing an appeal	1) Make mailing of the notice the trigger. (FTB) 2) Add additional statutory deadlines that were inadvertently omitted. (FTB & BOE Staff) 3) Delete examples because they are better suited to informal publications. (FTB) 4) Various technical changes. (BOE Staff) 5) Delete subsection on extensions as inconsistent with the jurisdictional statutes. (FTB)	1) Revision accepted. 2) Revision accepted. 3) Revision accepted. 4) Revision accepted. 5) Two options for this section will be presented to the Board. Staff believes there are good faith arguments for either keeping or deleting the extension provisions. Option 1 includes extensions (consistent with current practice). Option 2 deletes extensions.

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4022	Accepting or rejecting an appeal	1) Either clarify or delete "alternative rights or remedies" language. (Mr. Vinatieri; BOE Staff) 2) Various technical and clarifying changes. (BOE Staff) 3) Bifurcate appeals with jurisdictional disputes into separate hearings on jurisdiction and merits. (FTB) 4) Revise to allow for additional review of jurisdictional issues by the Chief Counsel, or his or her designee, and to require unanimous agreement between the Chief of BPD and the Chief Counsel, or his or her designee, before an appeal will be dismissed based upon a lack of jurisdiction. (BOE Staff)	1) Revision accepted; deleted "alternative rights or remedies" language. 2) Revisions accepted. 3) Two options for this section will be presented to the Board. Staff believes that bifurcation has merit, but as a matter of practice it would be a burden to implement. Option 1 has no bifurcation procedure (consistent with current practice). Option 2 adds bifurcation. 4) Revision accepted. The Chief of BPD is a member of the Legal Department and reports to the Chief Counsel, who has the ultimate authority to resolve such issues. The revisions recognize this relationship and give the Chief Counsel express authority to review jurisdictional issues prior to the rejection of any appeal.
4023	Perfecting an appeal	1) Clarify that BPD provides written notification. (FTB) 2) Allow extensions by written agreement. (BOE Staff) 3) Clarify how many copies must be mailed (BOE Staff)	All revisions accepted.

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Article 3.	**Briefing Schedules**		
4030	General requirements	1) Reword subd (a) to use the term "brief" (FTB) 2) Clarify BPD's duties (FTB) 3) Incorporate fax and e-filing provisions. (FTB) 4) Allow filing of amicus briefs (FTB) 5) Refer to "agreement" instead of "stipulation" between the parties (FTB) 6) Allow extensions for "reasonable cause" rather than "extreme hardship" (Mr. Vinatieri & FTB) 7) Allow for handwritten briefs. (FTB & BOE Staff) 8) Require written request for extensions. (BOE Staff) 9) Give the Chief Counsel or his or her designee express authority to decide whether reasonable cause exists for granting an extension. (BOE Staff)	All revisions were accepted and the section was reorganized for clarity. Also, the Chief of BPD is a member of the Legal Department and reports to the Chief Counsel, who is ultimately responsible to the Board for ensuring a fair and complete briefing process. The Chief Counsel intends to delegate authority over extension issues to the Chief of BPD when this section becomes effective.
4031	General briefing schedule	1) Name the briefs for ease of reference. (multiple interested parties) 2) Require parties to mail copies of briefs to opposing parties (FTB) 3) Don't require FTB to ask permission to file a reply brief; in the alternative, allow 20 days for to ask permission to reply (FTB) 4) Allow 90 days to file reply briefs (Mr. Vinatieri) 5) Give the Chief Counsel, or his or her designee, authority to decide whether to grant respondent permission to file a reply brief. (BOE Staff)	1) Revision accepted. 2) Revision unnecessary because BPD will ensure all parties receive copies. 3) Revision not accepted because it would unnecessarily draw out the briefing process. 4) Revision not accepted because it would unnecessarily draw out the briefing process; extensions are available for reasonable cause. 5) Revision accepted. The Chief of BPD is a member of the Legal Department and reports to the Chief Counsel, who is ultimately responsible to the Board for ensuring a fair and complete briefing process, and the revisions recognize this relationship. The Chief Counsel intends to delegate authority over this issue to the Chief of BPD when this section becomes effective.

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4032	Briefing schedule for innocent spouse appeals	1) Define or delete "meaningful participation" language because it is superfluous and ambiguous (multiple interested parties) 2) Redact personal information when providing copies of documents to opposing spouse (FTB) 3) Allow for possibility that both spouses might file separate appeals. (FTB) 4) Make FTB's and non-appealing spouse's briefs consecutive, rather than concurrent. (FTB) 5) Allow reasonable cause exception when Non-Appealing Spouse fails to join the appeal (BOE Staff) 6) Give the Chief Counsel, or his or her designee, authority to decide whether to grant respondent permission to file a reply brief. (BOE Staff)	1) Revision accepted. "Meaningful participation" language deleted. 2) Revision accepted. 3) Revision accepted. 4) Revision not accepted because it would unnecessarily lengthen the briefing process. 5) Revision accepted. 6) Revision accepted. The Chief of BPD is a member of the Legal Department and reports to the Chief Counsel, who is ultimately responsible to the Board for ensuring a fair and complete briefing process, and the revisions recognize this relationship. The Chief Counsel intends to delegate authority over this issue to the Chief of BPD when this section becomes effective.

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4033 & 4034	Simplified briefing schedules for small tax appeals and HRA appeals	1) Do not have a simplified schedule that requires any appellant to waive the right to oral hearing (multiple interested parties) 2) Keep the simplified schedule but make it elective for HRA and small tax appeals; clearly inform parties of the consequences of making the election. (multiple interested parties) 3) Reorganize and reword section 4033 for clarity and simplicity (Mr. Vinatieri) 4) Clarify what is included in the amount at issue for purposes of eligibility. (FTB) 5) Clarify that supplemental briefing under section 4035 is still allowed. (BOE Staff)	1) Two options for this section will be presented to the Board. Option 1 deletes the simplified briefing schedules. Option 1 is consistent with current practice; currently the Board does not employ a simplified briefing schedule or ask any appellant to waive the right to request an oral hearing. 2) Option 2 will create an elective simplified briefing schedule for HRA and small tax cases; electing the simplified schedule will require a waiver of the right to request an oral hearing. The goal is to provide an expedited resolution of appeals as a way to benefit taxpayers and ensure the efficient use of state resources. Option 2 will require clear notification that making the election will constitute a waiver of the right to request an oral hearing. 3) Reorganizing revisions accepted. Rewording revisions not accepted. Staff believes that precise wording is necessary, even if it is complex, so that the regulation will be fairly and consistently applied. Less technical wording can be used in publications. 4) Clarifications made. 5) Clarifications made.
4035	Supplemental briefing	1) Add headings to the subdivisions. (FTB) 2) Add additional language to clarify the scope of the authority under the section. (FTB) 3) Technical changes. (BOE Staff)	1) Revision accepted. 2) Revision not necessary because existing language is sufficient to allow discretion for varying situations. 3) Revision accepted.

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Article 4.	**Requesting Oral Hearings**		
4040	Right to oral hearing	1) Allow FTB to request oral hearings. (FTB) 2) Use a more manageable timeline for requesting an oral hearing. (FTB) 3) Require unanimous agreement between the Chief of BPD, the Chief Counsel, and the Board Chair to deny oral hearings on res judicata cases, and add interest abatement to res judicata provision. (BOE Staff) 4) Be more lenient with allowing separate hearings on innocent spouse appeals. (BOE Staff)	1) Revision not accepted. No change from current practice is necessary. 2) Revision accepted. 3) Revision accepted due to the serious nature of the decision. 4) Revision accepted. Staff does not want to discourage spouses from requesting hearings.
4041	Submission for decision without oral hearing	1) Incorporate section 5006. (FTB) 2) Technical changes only. (BOE Staff)	All revisions accepted.
4042 & 4043	Appeals review; scheduling the hearing; and hearing summaries	1) Do not implement mandatory appeals conferences because the procedure does not translate well from business taxes to income taxes; in particular, appeals conferences would drastically extend the time needed to process appeals, stretch administrative resources, increase costs for all parties, and would undermine FTB's ability to resolve disputes through protest and settlement (multiple interested parties) 2) Instead of appeals conferences, implement optional pre-hearing conferences in cases where an oral hearing is requested (multiple interested parties) 3) Provide more detailed hearing summaries and the opportunity to file written objections to hearing summaries (multiple interested parties)	1) Revision accepted. For the reasons cited by interested parties, staff agrees that mandatory appeals conferences would be inefficient, costly, and in most cases likely unproductive. Therefore, the proposed regulations released on December 9, 2005, will not go forward. 2) Revision accepted. Staff believes that optional pre-hearing conferences in cases set for oral hearing would accomplish many of the same goals as appeals conferences, but in a more efficient, productive, and cost-effective manner. 3) Revision partially accepted. The Results of the pre-hearing conference will be incorporated into a more detailed hearing summary that staff believes would be accurate and informative. Thus, staff believes that allowing written objections would be both difficult to implement and unnecessary.

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Article 5.	**Decisions, Opinions, and Frivolous Appeal Penalties**		
4050	Letter Decisions	1) Shorten notification deadline from 7 days to 3 business days in order to allow parties more time to consider filing a petition for rehearing. (FTB)	1) Revision will be incorporated into section 5026 of part 5.
4051	Summary Decisions	1) Require notification of decision in 3 business days to allow parties more time to consider filing a petition for rehearing. (FTB) 2) Change references from "Summary Decision" to "Proposed Summary Decision" until it is adopted by the Board (FTB) 3) Allow Appeals Division to complete the Summary Decision in 60 days, rather than 45 days, in small tax cases. (Mr. Vinatieri) 4) Start running of 90-day deadline from date the Appeals Division receives the file; alternatively, eliminate the 90-day deadline. (BOE Staff) 5) Allow extensions for further briefing when the Board orders a Summary Decision. (BOE Staff)	1) Revision will be incorporated into section 5026 of part 5. 2) Revision not accepted because it would add unnecessary wording. Instead the regulation will be clarified to state that the appeal is not decided until the Board adopts the Summary Decision, or otherwise votes to decide the appeal. 3) Revision is moot; references to small tax cases are removed due to uncertainty about whether the Board will adopt the small tax procedure. 4) The 90-day deadline will be eliminated. After further consideration, staff believes the deadline (which does not exist under the current regulations) is unnecessary because summary decisions are routinely completed within 90 days and the deadline could potentially impose an artificial limit requiring unnecessary allocation of the Appeals Division's personnel resources. 5) Revision not accepted. There can be no further briefing without the Board's approval after the hearing.

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4052	Formal Opinions	1) Require notification of decision in 3 business days to allow parties more time to consider filing a petition for rehearing. (FTB) 2) Change references from "Formal Opinion" to "Proposed Formal Opinion" until it is adopted by the Board (FTB) 3) Start running of 120-day deadline from date the Appeals Division receives the file; alternatively, eliminate the 120-day deadline. (BOE Staff) 4) Make the criteria set forth in subdivision (d) determinative and binding, rather than giving the Board the discretion to adopt or not adopt a formal opinion. (State Bar Taxation Section) 5) Allow for depublication of formal opinions. (multiple interested parties)	1) Revision will be incorporated into section 5026 of part 5. 2) Revision not accepted because it would add unnecessary wording. Instead the regulation will be clarified to state that the appeal is not decided until the Board adopts the Formal Opinion, or otherwise votes to decide the appeal. 3) Revision accepted. 4) The 120-day deadline will be eliminated. After further consideration, staff believes the deadline (which does not exist under the current regulations) is unnecessary because formal opinions are routinely completed within 120 days and the deadline could potentially impose an artificial limit requiring unnecessary allocation of the Appeals Division's personnel resources. 5) Revision not accepted; staff does not believe that it can force the Board to adopt formal opinions by regulation. 6) Revision not accepted; the Board has the implied power to depublish opinions and staff does not want to lock in an untested procedure; also, staff believes it would be prudent to leave most opinions published, but note on the website when an opinion has been superceded or overruled.

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4053	Dissenting Opinions	1) Allow concurring opinions. (multiple interested parties) 2) Allow citation of dissenting opinions just like dissenting appellate opinions. (Mr. Vinatieri) 3) Do not require the Appeals Division to draft dissenting and concurring opinions because it could put an appeals attorney in an ethical dilemma; also a new, untested procedure should not be locked into the regulation. (BOE Staff) 4) Require Member approval of the dissenting. (FTB)	1) Revision accepted. 2) Revision accepted. 3) Revision accepted. 4) Revision rendered moot by the foregoing revision.
4054	Frivolous Appeal Penalty	1) Clarify that previously considered arguments must have been rejected in a formal opinion in order to be grounds for the penalty. (Mr. Vinatieri) 2) Remove reference to "repeatedly" rejected so the Board need not adopt several formal opinions before it can impose a penalty. (BOE Staff)	1) Revision accepted. 2) Revision accepted.
Article 6.	**Petitions for Rehearing and Rehearings**		
Section 4060	Finality of Decision	1) Delete subdivision (b) because it is contrary to statute. (FTB) 2) Clarify that each party may file only one petition for rehearing (FTB) 3) Eliminate page and formatting limits (Mr. Vinatieri)	1) Revision accepted. Staff believes that subdivision (b), while it may be good policy, is outside the scope of the underlying statute. Staff believes a statutory amendment would be required to allow the Board to re-open cases after the 30-day period has elapsed. 2) Revision accepted. 3) Revision not accepted. Formatting and page limits are uniformly imposed on appeals, petitions for rehearing, and all briefs.

PROPOSED REGULATION	SUBJECT MATTER	SUGGESTED REVISION (SOURCE UNDERLINED)	STAFF RESPONSE
Section 4061	Petitions for Rehearing	1) Allow time to perfect an incomplete petition. (FTB & BOE Staff) 2) Eliminate "alternative rights or remedies" language because it is ambiguous. (BOE Staff) 3) Clarify the contents of the petition for rehearing. (FTB & BOE Staff) 4) Clarify BPD's duties with regard to providing copies to opposing parties. (FTB) 5) Revise sections 4061 through 4063 to better clarify and outline the steps involved, from filing a petition, to rendering a decision on the petition, to briefing on rehearing, to the decision on rehearing. (FTB)	1) Revision accepted; 15 days allowed. 2) Revision accepted; BPD should not be giving legal advice. 3) Revision accepted. 4) Revision accepted. 5) The suggestion to revise sections 4061 through 4063 is accepted. Those three sections will be split into five sections (numbered 4061 through 4065) that better divide the subject matter and outline the rehearing process.
Section 4062	Decisions on Petitions for Rehearing	1) Run the 45-day period from the date the Appeals Division receives the file; alternatively, delete the 45-day deadline. (BOE Staff) 2) Refer to the Decision as "proposed" until it is adopted by the Board. (FTB) 3) Clarify that date of decision only applies when the petition is denied, not granted. (FTB) 4) Clarify that BPD must provide copies of the decision to the parties within three business days. (FTB) 5) The decision should not be kept confidential prior to Board adoption. (Mr. Vinatieri)	1) The 45-day deadline will be eliminated. After further consideration, staff believes the deadline (which does not exist under the current regulations) is unnecessary because decisions on petitions for rehearing are routinely completed within 45 days and the deadline could potentially impose an artificial limit requiring unnecessary allocation of the Appeals Division's personnel resources. 2) Revision not accepted because it would add unnecessary wording. Instead, the regulation will be clarified to state that the petition is not decided until the Board adopts the decision, or otherwise votes to decide the petition. 3) Revision accepted. 4) Revision accepted. 5) Revision not accepted. Staff believes that, that the un-adopted decision is a privileged attorney-client document.
Section 4063	Rehearings	1) Conform to deletion of section 4060(b). (BOE Staff)	1) Revision accepted.