Part 4: Appeals from Actions of the Franchise Tax Board

Article 1: Application, Definitions, and Jurisdiction

4010. Application of Part. □ Agree □ Disagree □ Modify

(a) This part shall apply to appeals, hearings, and petitions for rehearing filed with the Board pursuant to the:


(2) Senior Citizens Homeowners and Renters Property Tax Assistance Law. Chapter 1 and Chapter 4 of Part 10.5 of Division 2 of the Revenue and Taxation Code.

(b) To the extent this part does not set forth a specific rule or procedure, the rules and procedures set forth in part 5, General Board Hearing Procedures, shall apply to this part.

Reference: Sections 18533, 19045, 19047, 19048, 19104, 19324, 19331, 19333, 19334, 19335, and 20645 of the Revenue and Taxation Code.

4011. Definitions. □ Agree □ Disagree □ Modify

The definitions set forth in section 5002 of part 5, General Board Hearing Procedures, along with the following specific definitions, shall apply to this part:

(a) “Claimant” means an individual, or individuals, who file an appeal from the Franchise Tax Board’s denial of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law. The term “claimant” is also deemed to include, where appropriate, the claimant’s authorized representative.

(b) “Taxpayer” means an individual, or individuals, who file an appeal from an action of the Franchise Tax Board under the Administration of Franchise and Income Tax Laws. The term “taxpayer” is also deemed to include, where appropriate, the taxpayer’s authorized representative.

4012. Jurisdiction. □ Agree □ Disagree □ Modify

(a) Generally. The Board is an administrative agency that has jurisdiction to hear administrative appeals from actions of the Franchise Tax Board. The Board derives
its jurisdiction from specific statutes in the Revenue and Taxation Code and acts within the scope of those statutes. Except for the circumstances set forth in subdivision (b) of this section, the Board shall not hear any grievance against the Franchise Tax Board.

(b) Appeals from the Franchise Tax Board. The Board has jurisdiction to hear and decide a timely filed appeal under the following circumstances:

(1) The taxpayer receives a Notice of Action affirming a proposed assessment of additional tax, which may also include penalties, fees and interest.

(2) The taxpayer receives a Notice of Action on Cancellation, Credit, or Refund, or any other notice, which denies a claim for a refund of tax, penalties, fees, or interest.

(3) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months and is deemed to have denied the claim under Section 19331 of the Revenue and Taxation Code.

(4) The taxpayer receives a Notice of Determination Not to Abate Interest, or any other notice, that denies an abatement, in whole or in part, of paid or unpaid interest, under Section 19104 of the Revenue and Taxation Code.

(5) The taxpayer receives any notice that grants or denies, in whole or in part, innocent spouse relief under Section 18533 of the Revenue and Taxation Code.

(6) The claimant receives any notice that denies, in whole or in part, a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.

(c) Issues that shall not be considered. The Board’s jurisdiction is limited to determining the correct amount owed by, or due to, the taxpayer or claimant. Notwithstanding the timely filing of an appeal over which the Board has jurisdiction, the Board shall not consider or decide the following issues:

(1) Whether a California statute or regulation is invalid or unenforceable under the Federal or California Constitutions, unless an appellate court of competent jurisdiction has already made such a determination.

(2) Whether the Franchise Tax Board violated the Information Practices Act (Civil Code section 1798 et seq.), the Public Records Act (Government Code section 6250 et seq.), or any similar provision of the law.

(3) Whether the Franchise Tax Board failed to respect any rights enumerated in the Federal or California Constitutions.
Article 2: How to file an appeal from the Franchise Tax Board

4020. Basic Appeal Requirements.

(a) Franchise and Income Tax Appeals. Every appeal from the Franchise Tax Board made under the circumstances enumerated in paragraphs (1) through (5) of subdivision (b) of section 4012 shall be in writing and shall contain the following:

(1) The name of the taxpayer, or taxpayers, who are filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each taxpayer filing the appeal;

(3) The address and telephone number of each taxpayer and, if applicable, each taxpayer’s authorized representative;

(4) The amount involved, including tax, penalties, fees, and interest (whichever is applicable);

(5) The years involved;

(6) The date of the Franchise Tax Board’s action being appealed;

(7) The facts involved and the legal authorities upon which the taxpayer relies, including any relevant statutes, regulations, and judicial decisions;

(8) Any portion of the amount at issue that the taxpayer concedes it owes; and

(9) The signature of each taxpayer who wishes to be a party to the appeal, including a husband and wife, or the signature of an authorized representative made on behalf of each taxpayer that wishes to be a party to the appeal.

(b) Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board made under the circumstance in paragraph (6) of subdivision (b) of section 4012 shall be in writing and shall contain the following:

(1) The name of the claimant, or claimants, who are filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each claimant filing the appeal;
(3) The address and telephone number of the claimant and, if applicable, the claimant’s authorized representative;

(4) The amount of property tax assistance claimed;

(5) The claim year involved;

(6) The date that the Franchise Tax Board denied the claim; and

(7) The signature of each claimant who wishes to be a party to the appeal, including a husband and wife, or the signature of an authorized representative made on behalf of each claimant who wishes to be a party to the appeal.

(c) What to Mail; Where to Mail. The taxpayer, claimant, or authorized representative shall mail two copies of the appeal along with two copies of any supporting documents to the following address:

Board Proceedings Division, MIC 81
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the taxpayer or claimant may personally deliver the materials to the Board’s headquarters office located at 450 N Street, Sacramento. Personally delivered materials should be addressed to the Chief of Board Proceedings.

Reference: Sections 19045, 19046, 19324, 19332, and 20645 of the Revenue and Taxation Code.

4021. Time for Filing an Appeal.

An appeal is considered timely if it is mailed to or received by the Board Proceedings Division within the time period specified by the Revenue and Taxation Code, or as provided by this section.

(a) Statutory Deadlines. The Revenue and Taxation Code provides that an appeal is timely if it is mailed to or received by the Board Proceedings Division:

(1) Not later than 30 days from the date of a Notice of Action upon the protest of an unpaid assessment.

(2) Not later than 90 days from the date of a Notice of Action on Cancellation, Credit, or Refund, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.
(3) Not later than 90 days from the date the Franchise Tax Board is deemed to have denied a claim for a refund of tax, penalties, fees, or interest.

(4) Not later than 30 days from the date of a Notice of Determination Not to Abate Interest, or any other notice, that specifically denies the abatement of unpaid interest.

(5) Not later than 90 days from the date of a Notice of Determination Not to Abate Interest, or any other notice, that specifically denies the abatement of paid interest.

(6) Not later than 30 days from the date of any notice that grants or denies, in whole or in part, innocent spouse relief.

(7) Not later than 90 days from the date of any notice that denies, in whole or in part, a claim for homeowners’ or renters’ property tax assistance.

(b) Extensions. Unless a statute or regulation provides otherwise, the statutory deadlines for filing an appeal shall be extended:

(1) Five days if the appeal is mailed from an address within California;

(2) Ten days if the appeal is mailed from an address outside California, but within the United States; or

(3) Twenty days if the appeal is mailed from an address outside the United States.

(c) Date of Mailing. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline shall be extended to the next business day.

(d) Examples.

(1) On March 1, the Franchise Tax Board issues its Notice of Action on a protest of an assessment of additional income tax. The taxpayer at issue resides in California. Revenue and Taxation Code Section 19045 provides 30 days to appeal to the Board from a Notice of Action. Subdivision (b)(1) of this section extends the statutory deadline for the taxpayer to mail an appeal to the Board by five days because the appeal is mailed from within California. Therefore, the appeal must be postmarked by April 5, which is 35 days after the date of the Notice of Action. If April 5 is a weekend or holiday, the deadline would be extended to the next business day.
(2) On June 1, the Franchise Tax Board denies a claim for a refund of income tax. The taxpayer at issue resides in Oregon. Revenue and Taxation Code Section 19324 provides the taxpayer with 90 days to appeal to the Board from the denial of a refund claim. Subdivision (b)(2) of this section extends the statutory deadline by ten days because the appeal is mailed from outside California, but within the United States. Therefore, the appeal must be postmarked by September 9, which is 100 days after the date of the denial of the refund claim. If September 9 is a weekend or holiday, the deadline would be extended to the next business day.

(3) On October 15, the Franchise Tax Board denies a claim for property tax assistance. The claimant at issue resides in California. Revenue and Taxation Code Section 20645 provides the claimant with 90 days to appeal to the Board from the denial of a claim for property tax assistance. Subdivision (b)(1) of this section extends the statutory deadline by five days because the appeal is mailed from within California. Therefore, the appeal must be postmarked by January 18, which is 95 days after the date of the denial. If January 18 is a weekend or holiday, the deadline would be extended to the next business day.

Reference: Sections 18533, 19045, 19104, 19324, 19331, and 20645 of the Revenue and Taxation Code.

4022. Accepting or Rejecting an Appeal.

(a) Determinations of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings shall determine whether the Board has jurisdiction to hear the appeal, including whether the appeal is timely under the provisions of section 4021. The Chief of Board Proceedings may consult with Appeals Staff in making the determination under this Regulation.

(b) Accepting the Appeal. If the Chief of Board Proceedings determines that the Board has jurisdiction to hear the appeal and that the appeal is timely, or that there is a genuine issue relating to jurisdiction or timeliness, he or she shall accept the appeal and mail an acknowledgement letter to the taxpayer or claimant. The letter shall notify the taxpayer or claimant of his or her rights and obligations under this part. The Chief of Board Proceedings shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board.

(c) Issues Relating to Jurisdiction and Timeliness. If the Chief of Board Proceedings determines that there is a genuine issue relating to jurisdiction or timeliness, such matters will be considered to be at issue in the appeal and will be decided by the Board.

(d) Rejecting the Appeal. If the Chief of Board Proceedings determines that the Board does not have jurisdiction to hear the appeal or that the appeal is not timely, and that there is no genuine issue relating to jurisdiction or timeliness, he or she shall reject
the appeal. The Chief of Board Proceedings then shall mail a letter notifying the taxpayer or claimant of the rejection and the reasons therefore. The letter shall notify the taxpayer or claimant of any alternative rights or remedies.

Reference: Sections 18533, 19045, 19104, 19324, 19331 and 20645 of the Revenue and Taxation Code.

4023. Perfecting an Appeal.

(a) Generally. The briefing and resolution of an appeal cannot begin until the appeal is perfected. For purposes of this part, an appeal is “perfected” if it contains substantially all of the information required by section 4020. An appeal is not “perfected” until it contains sufficient information to identify and contact each taxpayer or claimant, and the signature of each taxpayer, claimant, or authorized representative.

(b) Time to Perfect the Appeal. If the Chief of Board Proceedings accepts an appeal, and such appeal is not perfected, the Chief of Board Proceedings shall notify the taxpayer or claimant of the need to perfect the appeal. The notification shall be included in the acknowledgement letter issued pursuant to subdivision (b) of section 4022. The notification shall explain what information is necessary to perfect the appeal.

(1) The taxpayer or claimant shall perfect the appeal not later than 90 days from the date of the acknowledgment letter. The Chief of Board Proceedings may extend the deadline for perfecting an appeal only upon a showing of extreme hardship.

(2) Perfecting the appeal is accomplished by mailing one copy of the information necessary to perfect the appeal to the Chief of Board Proceedings, and one copy of such information to the Franchise Tax Board at the address provided by the Board Proceedings Division.

(3) If the taxpayer fails to perfect the appeal within the 90-day period, or within any extension period granted by the Chief of Board Proceedings, the appeal shall be dismissed.

Article 3: Briefing Schedules and Procedures

4030. General Requirements.

(a) Briefing is required in all appeals from actions of the Franchise Tax Board. The parties to an appeal shall adhere to the briefing schedules and other requirements set forth in this article.
(b) Upon receipt of a perfected appeal, the Chief of Board Proceedings shall notify each party that a perfected appeal has been filed and that briefing will begin under the applicable briefing schedule, as determined by the Chief of Board Proceedings. The notification may be included, if appropriate, in the acknowledgment letter issued pursuant to section 4022. Throughout the briefing schedule, the Chief of Board Proceedings shall keep the parties apprised of applicable deadlines by written notification.

(c) A brief shall be considered filed on the “date of mailing,” as defined in subdivision (c) of section 4021. The Chief of Board Proceedings, in his or her discretion, may extend the period for filing a brief upon a showing of extreme hardship or by written stipulation of the parties.

(d) The party filing a brief is responsible for mailing one copy of the brief to the Chief of Board Proceedings and one copy to each opposing party at the address provided by the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines, the Chief of Board Proceedings shall notify each party that the brief has been received.

(e) All briefs shall be no longer than 30 double-spaced 8½” by 11” pages, or 15 single-spaced 8 ½” by 11” pages, excluding any table of contents, table of authorities, and exhibits. All briefs shall be printed only on one side in a type-font size of at least 10 points or 12 characters per inch. The Chief of Board Proceedings may grant an exemption to the requirements of this subdivision upon written request that establishes the necessity thereof. If a brief is filed that does not comply with the requirements of this subdivision, the Chief of Board Proceedings may, in his or her discretion, return the brief to the filing party and grant 10 days in which to file a corrected brief. Failure to file a corrected brief within the 10-day period shall constitute a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, such waiver shall have the effect of concluding the briefing schedule.

(f) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines and other requirements, shall constitute a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, such failure shall have the effect of concluding the briefing schedule.

4031. General Briefing Schedule.

(a) Application. The briefing schedule in this section shall apply to all appeals from actions of the Franchise Tax Board, unless the more specific briefing schedules contained in sections 4032, 4033, or 4034 apply.

(b) Opening Briefs.
(1) The perfected appeal shall be considered the taxpayer’s Opening Brief.

(2) The Franchise Tax Board shall file its Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the taxpayer’s perfected appeal.

(c) Reply Briefs.

(1) The taxpayer may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Opening Brief. The taxpayer’s Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Opening Brief. Except as provided in paragraph (2) of this subdivision, the filing of the taxpayer’s Reply Brief shall conclude the briefing schedule.

(2) The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief of Board Proceedings. The Franchise Tax Board’s Reply Brief, if filed, shall address only points of disagreement with the taxpayer’s Reply Brief.

(A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the taxpayer’s Reply Brief in which to file a written request for permission to file its own Reply Brief.

(B) Upon receipt of the Franchise Tax Board’s written request, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the taxpayer’s Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

(iii) Whether the appeal is so complex as to require additional discussion or clarification.

(C) If the Chief of Board Proceedings determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board permission to file a Reply Brief. The Franchise Tax Board shall file its Reply Brief not later than 30 days from the date that permission is granted.
(D) If the Chief of Board Proceedings determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board’s request to file a Reply Brief and the briefing process shall be concluded.

(3) If the Franchise Tax Board files a Reply Brief, the taxpayer may file a Second Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Reply Brief. The taxpayer’s Second Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Reply Brief. The filing of the taxpayer’s Second Reply Brief shall conclude the briefing schedule.

4032. Briefing Schedule for Innocent Spouse Appeals.

(a) Application. The briefing schedule in this section shall apply to all appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code section 18533.

(b) Definitions. For purposes of this section:

(1) The “Appealing Spouse” is the individual who files an appeal from the Franchise Tax Board’s grant or denial, in whole or in part, of innocent spouse relief.

(2) The “Non-Appealing Spouse” is the individual with whom the Appealing Spouse filed a joint return for the year at issue.

(3) The “requesting spouse” is the individual who requested relief from the joint and several liability imposed by Revenue and Taxation Code section 19006. The requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(4) The “non-requesting spouse” is the individual with whom the requesting spouse filed a joint return for the year at issue. The non-requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(c) Rights of the Non-Appealing Spouse.

(1) The Non-Appealing Spouse shall have the right to meaningful participation in the appeal, subject to the provisions of this section.
(2) Upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings shall provide one copy of the appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her rights under this section.

(3) The Chief of Board Proceedings shall use the best available information to contact the Non-Appealing Spouse.

(d) Opening Briefs.

(1) The Appealing Spouse’s perfected appeal shall constitute the Appealing Spouse’s Opening Brief.

(2) The Franchise Tax Board shall file its Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the perfected appeal.

(3) The Non-Appealing Spouse may file an Opening Brief not later than 90 days from the date of the notification of his or her right to participate in the appeal. The filing of an Opening Brief shall have the effect of joining the Non-Appealing Spouse as a party to the appeal. The failure to file an Opening Brief within the time provided shall constitute a waiver of the right to participate in the appeal.

(e) Reply Briefs.

(1) The Appealing Spouse may file a Reply Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Opening Brief; or

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse’s Opening Brief.

The Appealing Spouse’s Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Opening Brief and the Non-Appealing Spouse’s Opening Brief.

(2) If the Appealing Spouse files a Reply Brief, the Non-Appealing Spouse may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse’s Reply Brief. The Non-Appealing Spouse’s Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse’s Reply Brief.
(3) The Franchise Tax Board may not file a Reply Brief in response to the Appealing Spouse’s Reply Brief without written permission from the Chief of Board Proceedings. The Franchise Tax Board’s Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse’s Reply Brief.

(A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse’s Reply Brief in which to file a written request for permission to file its own Reply Brief.

(B) Upon receipt of the Franchise Tax Board’s request, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the Appealing Spouse’s Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

(iii) Whether the appeal is so complex as to require additional discussion or clarification.

(C) If the Chief of Board Proceedings determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board permission to file a Reply Brief. The Franchise Tax Board shall file its Reply Brief not later than 30 days from the date that permission is granted.

(D) If the Chief of Board Proceedings determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board’s request to file a Reply Brief.

(4) If neither the Non-Appealing Spouse nor the Franchise Tax Board file a Reply Brief, the briefing schedule shall be concluded.

(5) The Appealing Spouse may file a Second Reply Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Reply Brief; or

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse’s Reply Brief.
The Appealing Spouse’s Second Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Reply Brief and the Non-Appealing Spouse’s Reply Brief. The filing of the Appealing Spouse’s Second Reply Brief shall conclude the briefing schedule.

(f) Conformity with Federal Action. If, prior to the Board’s decision on the appeal, any party to the appeal receives notification that the requesting spouse has been granted relief under Internal Revenue Code section 6015, the following procedures shall apply in addition to the other procedures set forth in this Regulation:

(1) The party who receives notification that relief has been granted under Internal Revenue Code section 6015 shall submit proof of such notification to the Chief of Board Proceedings as soon as is practicable.

(2) Regardless of whether the non-requesting spouse has joined the appeal, the Chief of Board Proceedings shall notify the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, the non-requesting spouse may provide “information that indicates that relief should not be granted,” as that phrase is defined in Revenue and Taxation Code section 18533, subdivision (i)(2). Such information should be sent to the Board Proceedings Division at the address provided in Chief of Board Proceedings’ notice to the non-requesting spouse.

(3) If the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse and the Franchise Tax Board each may file an additional brief. An additional brief shall be filed not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief filed pursuant to this paragraph shall address only points of disagreement with the information described in paragraph (2) of this subdivision.

(4) If this subdivision becomes applicable after the briefing schedule has concluded, then briefing shall be reopened for the purpose of complying with this subdivision and any hearing or decision shall be postponed as appropriate.

(5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule shall not be considered concluded until the requirements of this subdivision have been satisfied.

Reference: Sections 18533, 19006, and 19045 of the Revenue and Taxation Code.
(a) Application. Any taxpayer may elect to have the briefing schedule in this section apply if:

(1) The amount at issue is not more than $5,000;

(2) The specific briefing schedules in sections 4032 and 4034 do not apply; and

(3) If the taxpayer is a trust, partnership, limited partnership, limited liability company, limited liability partnership, or corporation, the amount at issue does not include any item other than one or more of the following:

   (A) One or more of the taxes or fees imposed by Revenue and Taxation Code sections 17935, 17941, 17942, 17948, and 23153;

   (B) One or more of the penalties imposed by Revenue and Taxation Code sections 19131, 19132, 19133, 19134, 19141, 19172, and 19184;

   (C) One or more of the fees imposed by Revenue and Taxation Code sections 19221, 19254; and

   (D) Interest imposed by Revenue and Taxation Code section 19101.

(b) Special Definitions and Procedures.

(1) For purposes of this section, the “amount at issue” includes any tax, penalties, fees, and paid interest upon which the taxpayer and the Franchise Tax Board disagree and over which the Board has jurisdiction. Unpaid interest shall be included in the “amount at issue” only if the taxpayer is seeking interest abatement under Revenue and Taxation Code section 19104, and only to the extent of the unpaid interest accrued through the date of the Franchise Tax Board’s notice from which the appeal is made.

(2) When an appeal is perfected, the Chief of Board Proceedings shall determine whether the taxpayer filing the appeal is eligible to elect to apply this section. If it is determined that the taxpayer is eligible to elect to apply this section, the Chief of Board Proceedings shall notify the taxpayer of the right to make the election. In making such determination, the Chief of Board Proceedings may consult with Appeals Staff to determine the taxpayer’s eligibility. The notification described in this paragraph may be included in the acknowledgment letter issued pursuant to section 4022, if appropriate.
(3) The taxpayer must affirmatively elect the application of this section and inform the Chief of Board Proceedings in writing not later than 30 days from the date of the notification described in paragraph (2) of this subdivision. The Chief of Board Proceedings shall notify the Franchise Tax Board if and when the taxpayer makes the election.

(4) An election to apply this section shall constitute a waiver of the taxpayer’s right to request an oral hearing before the Board under section 4040.

(5) An election to apply this section is only revocable until the Franchise Tax Board files its Opening Brief. Thereafter, the election is irrevocable.

(c) Briefing Schedule. Where this section applies:

(1) The perfected appeal shall constitute the taxpayer’s Opening Brief.

(2) The Franchise Tax Board shall file its Opening Brief not later than 60 days from the date the Chief of Board Proceedings notifies it that the taxpayer has made an election to apply this section.

(3) The taxpayer may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Opening Brief. The taxpayer’s Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Opening Brief. The filing of the taxpayer’s Reply Brief shall conclude the briefing schedule.

(d) Intent. This Regulation is intended to provide a simplified briefing schedule and an expedited resolution of the appeal. The Board Proceedings Division and the Appeals Division shall consider this intent and shall expedite the processing of appeals to which this section applies, consistent with workload constraints.

(e) Pro Bono Representation. Taxpayers who are eligible to elect to apply this section shall be notified of, and may take advantage of, any pro bono representation provided pursuant to an agreement between a law school and the Board of Equalization.

4034. Briefing Schedule for Homeowners’ and Renters’ Property Tax Assistance Appeals.

☐ Agree
☐ Disagree
☐ Modify

(a) Application. The briefing schedule in this section shall apply to all appeals from notices that deny, in whole or in part, a claim under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.

(b) Briefing Schedule.
(1) The perfected appeal shall constitute the claimant’s Opening Brief.

(2) The Franchise Tax Board shall file its Opening Brief not later than 60 days from the date the Chief of Board Proceedings acknowledges receipt of the perfected appeal.

(3) The claimant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board’s Opening Brief. The claimant’s Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board’s Opening Brief. The filing of the claimant’s Reply Brief shall conclude the briefing schedule.

4035. Discretionary Supplemental Briefing.

(a) If the Board, in its discretion, determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board may set forth any order, deadlines, and conditions for briefing that it deems appropriate. The Board Proceedings Division shall administer any request made under this subdivision. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

(b) If the Supervising Tax Counsel in charge of Franchise and Income Tax Appeals Staff, in his or her discretion, determines that insufficient briefing or evidence has been provided, Appeals Staff may request additional briefing or evidence from any party. Appeals Staff may set forth any order, deadlines, and conditions for briefing that they deem appropriate. The Appeals Division shall administer any request made under this subdivision. Appeals Staff may extend deadlines under this subdivision upon a showing of reasonable cause.

(c) An individual Board Member may request additional briefing or evidence from any party only with the consent of the Board Chair. If the Board Chair consents to such a request, the Appeals Division shall determine the order, deadlines, and conditions under which any briefing or evidence must be submitted and shall administer any request made under this subdivision. Appeals Staff may extend deadlines under this subdivision upon a showing of reasonable cause.

(d) A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.
Article 4: Requesting and Scheduling Oral Hearings

4040. Right to Oral Hearing.

(a) Written Request Required. Except as otherwise provided in any statute or regulation, every taxpayer and claimant shall have the right to an oral hearing before the Board upon written request. The taxpayer or claimant may make a written request for an oral hearing at any time prior to the Board’s decision on the appeal.

(b) Innocent Spouse Appeals. Both the Appealing Spouse and the Non-Appealing Spouse, as those terms are defined in subdivision (b) of section 4032, may request an oral hearing. If such a request is made by either or both spouses, the Board shall conduct one oral hearing on the appeal and invite both spouses to appear, unless a court order would prohibit one or both spouses from appearing. The Non-Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal.

(c) Small Tax Appeals. A taxpayer electing to apply section 4033 may not request an oral hearing.

(d) Res Judicata. The Board has discretion to deny an oral hearing on an appeal from the Franchise Tax Board’s denial of a claim for refund if:

(1) The taxpayer received an oral hearing on an appeal from a Notice of Action affirming a proposed assessment; and

(2) The taxpayer’s claim for refund concerns the same facts, laws, and years that were at issue in the appeal described in paragraph (1) of this subdivision.


If the taxpayer or claimant does not make a written request for an oral hearing as provided in section 4040, the appeal shall be submitted for decision based upon the written record on file and without an oral hearing.

4042. Appeals Review; Scheduling an Oral Hearing.

(a) Application. The provisions of this section shall apply if the taxpayer or claimant makes a written request for an oral hearing as provided in section 4040.
(b) Appeal Review. At the conclusion of the applicable briefing schedule under article 3 of this part, Appeals Staff shall review the record and ascertain whether the briefing on file adequately addresses all relevant factual and legal issues.

(1) If Appeals Staff determines that the briefing on file does not adequately address all relevant factual and legal issues, Appeals Staff shall request additional briefing from each party.

(A) The request for additional briefing shall specify the factual and legal issues to be addressed and shall supersede any request for supplemental briefing under subdivision (b) of section 4035. Not later than 30 days from the date of the request for additional briefing, each party may submit a brief to the Appeals Division that addresses only those factual and legal issues specified in the request. The Appeals Division may extend the deadline for filing such a brief upon a showing of extreme hardship or by written stipulation of the parties. The procedure set forth in this subparagraph may be repeated as many times as Appeals Staff deems necessary in order to adequately address all relevant factual and legal issues, provided that each party is given an equal opportunity to file briefing.

(B) Any brief filed pursuant to this paragraph shall meet the requirements of subdivision (e) of section 4030.

(C) The Appeals Division may reject and return to the filing party any brief that does not comply with the requirements of this paragraph.

(2) If Appeals Staff determines that the briefing on file adequately addresses all relevant factual and legal issues, or upon the receipt of all briefs filed pursuant to paragraph (1) of this subdivision, Appeals Staff shall notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.

(c) Scheduling the Oral Hearing. Upon notification by Appeals Staff that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings shall schedule and notice an oral hearing pursuant to article 2 of part 5.

4043. Hearing Summaries.

(a) Definitions. For purposes of this part, a “Hearing Summary” is a written document intended to assist the Board in its consideration and decision of an appeal for which an oral hearing has been requested. The Hearing Summary shall contain sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing. The Hearing Summary also shall contain the Appeals Division’s recommendation for or against the adoption of a Formal Opinion under section 4052.
At the discretion of Appeals Staff, the Hearing Summary may contain Appeals Staff’s analysis and comments, including any questions posed to the parties.

(b) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to article 2 of part 5, the Appeals Division shall prepare a Hearing Summary. The Appeals Division shall submit the Hearing Summary to the Chief of Board Proceedings within the deadline set by the Chief of Board Proceedings, but in no case shall the Appeals Division have less than 30 days in which to prepare and submit the Hearing Summary. The Chief of Board Proceedings may extend the time period for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings shall mail one copy to each party.

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

4050. Letter Decisions.

(a) Definitions. A “Letter Decision” is a written decision setting forth the Board’s conclusions and a short explanation of the reasons therefore.

(b) Preparing the Letter Decision. Whenever the Board decides an appeal without adopting, or directing the preparation of, a Summary Decision or Formal Opinion, the Appeals Division shall prepare a Letter Decision. The Appeals Division shall mail one copy of a Letter Decision to each party not later than 7 days from the date of the Board’s decision.

(c) Date of Decision. The date on which the Board votes to decide the appeal shall be the date of the decision for purposes of this part.

(d) No Precedent Set. No Letter Decision shall be cited as precedent in any appeal or other proceeding before the Board.

4051. Summary Decisions.

(a) Definition. A “Summary Decision” is a written decision setting forth findings of fact and conclusions of law for the purpose of deciding an appeal under this part.

(b) Preparing the Summary Decision. The Appeals Division shall prepare a Summary Decision under the following circumstances:

1. Where an appeal is submitted for decision based upon the written record on file and without an oral hearing: the Appeals Division shall submit a Summary Decision to the Chief of Board Proceedings not later than 90 days from the
date the briefing schedule is concluded. The Chief of Board Proceedings may extend the time period for submitting the Summary Decision upon a showing of reasonable cause. A request for supplemental briefing under section 4035 is deemed to be reasonable cause. In the case of an appeal to which section 4033 applies, the Appeals Division shall make a reasonable effort to submit the Summary Decision to the Chief of Board Proceedings not later than 45 days from the date the briefing schedule is concluded.

(2) Where, at the conclusion of an oral hearing, the Board orders the preparation of a Summary Decision or staff recommendation: the Appeals Division shall submit a Summary Decision to the Chief of Board Proceedings not later than 30 days from the date of the Board’s order, or within any other deadline set by the Board. The Chief of Board Proceedings may extend the time period for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. The Summary Decision shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board adopts the Summary Decision shall be the date of the decision for purposes of this part.

(d) No Precedent Set. No Summary Decision shall be cited as precedent in any appeal or other proceeding before the Board.

4052. Formal Opinions.

(a) Definition. A “Formal Opinion” is a written decision setting forth findings of fact and conclusions of law for the purposes of deciding an appeal under this part and setting useful precedent

(b) Preparing the Formal Opinion. The Appeals Division shall prepare a Formal Opinion under the following circumstances:

(1) Where an appeal is submitted for decision based upon the written record on file and without an oral hearing and the Appeals Division determines, in its discretion, that a Formal Opinion is appropriate: the Appeals Division shall submit the Formal Opinion to the Chief of Board Proceedings not later than 120 days from the date the briefing schedule is concluded. The Chief of Board Proceedings may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause. A request for supplemental briefing under section 4035 is deemed to be reasonable cause.

(2) Where, at the conclusion of an oral hearing, the Board determines that a Formal Opinion is appropriate and orders the preparation of a Formal
Opinion: the Appeals Division shall submit the Formal Opinion to the Chief of Board Proceedings not later than 30 days from the date of the Board’s order, or within any other deadline set by the Board. The Chief of Board Proceedings may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. The Formal Opinion shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board adopts the Formal Opinion shall be the date of the decision for purposes of this part. The Board may, in its discretion, decline to adopt the Formal Opinion and order that the decision be adopted as a Summary Decision.

(d) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion is appropriate, the following factors shall be considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(e) Precedent Set. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board.

Reference: California Rule of Court 976.

4053. Dissenting Opinions.

(a) Definition. A “Dissenting Opinion” is a written decision setting forth the rationale of a Board Member or Members who oppose the adoption of a Formal Opinion.

(b) Preparing the Dissenting Opinion. The Appeals Division shall prepare a Dissenting Opinion at the direction of one or more dissenting Board Members. The dissenting Board Member or Members shall give such direction during the Board meeting at which the Formal Opinion is adopted or during the Board meeting at which the Formal Opinion is ordered to be prepared. The Appeals Division shall prepare the Dissenting Opinion as soon as is practicable, consistent with workload constraints,
and shall consult with the dissenting Board Member or Members to confirm the content of the Dissenting Opinion.

(c) Date of Adoption. The Dissenting Opinion shall be deemed to be adopted on the same date on which the Formal Opinion is adopted and shall be published as a supplement to the Formal Opinion.

(d) No Precedent Set. No Dissenting Opinion shall be cited as precedent in any appeal or other proceeding before the Board.

4054. Frivolous Appeal Penalty.

If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, pursuant to Revenue and Taxation Code Section 19714, on the taxpayer or claimant that filed the appeal. The following factors shall be considered in determining whether, and in what amount, to impose a frivolous appeal penalty:

(a) Whether the taxpayer is making arguments that the Board or courts have repeatedly rejected;

(b) Whether the taxpayer is making the same arguments that the same taxpayer made in prior appeals;

(c) Whether the taxpayer filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;

(d) Whether the taxpayer has a history of filing frivolous appeals or failing to comply with California’s tax laws.

Reference: Section 19714 of the Revenue and Taxation Code.

Article 6: Petitions for Rehearing and Rehearings

4060. Finality of Decision.

The Board’s decision pursuant to article 5 of this part shall become final 30 days after the date of the decision unless, within that 30-day period, one of the following occurs:

(a) A party to the appeal files a Petition for Rehearing. The filing of a Petition for Rehearing by one party shall not preclude the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed within the
aforementioned 30-day period and meets the requirements of subdivision (e) of section 4030.

(b) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance.

(1) The Board Chair may make an order pursuant to this subdivision only for one or more of the following reasons:

(A) The decision contains a clerical error;

(B) The decision contains a mistake of fact or law affecting the outcome of the appeal;

(C) A party or a party’s representative deliberately misrepresented facts; or

(D) The Board or any employee of the Board denied a substantial right of a party under this part.

(2) If the Board Chair makes an order pursuant to this subdivision, the Chief of Board Proceedings shall notify all parties of the order and the reason or reasons therefor.

(3) An order made pursuant to this subdivision shall preclude the finality of the decision if, and only if, the appeal is scheduled for an expunging vote at the first regular Board meeting that succeeds the date of the Board Chair’s order.

(4) If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board does not vote to expunge the decision, then the decision shall become final immediately.

(5) If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board votes to expunge the decision, then the Board shall reconsider and decide the appeal in a manner it deems appropriate. The Board’s subsequent decision shall become final after the passage of 30 days.

(6) This subdivision shall not become effective unless and until the Board passes a resolution in an open meeting that expressly delegates to the Board Chair the authority to order decisions held in abeyance pursuant to this subdivision.

Reference: Section 19048 of the Revenue and Taxation Code.
4061. Petitions for Rehearing.

(a) Definitions.

(1) The “Filing Party” is the party who files a Petition for Rehearing.

(2) The “Non-Filing Party” is the party who does not file a Petition for Rehearing.

(b) Time and Place for Filing.

(1) A Petition for Rehearing shall be considered timely if it is mailed within the 30-day period specified in section 4060, as extended by the provisions of subdivision (b) of section 4021. The date of mailing shall be determined under Subdivision (c) of section 4021.

(2) The Filing Party shall mail the Petition for Rehearing, along with any supporting documents, to:

Board Proceedings Division, MIC 81
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the Filing Party may personally deliver the materials to the Board’s headquarters office located at 450 N Street, Sacramento. Personally delivered materials should be addressed to the Chief of Board Proceedings.

(c) Acceptance or Rejection of the Petition for Rehearing.

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings shall determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.

(2) If the Petition for Rehearing is timely, the Chief of Board Proceedings shall accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance. The Chief of Board Proceedings also shall mail one copy of the Petition for Rehearing to each Non-Filing Party.

(3) If the Petition for Rehearing is not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and notify the Filing Party of any alternative rights or remedies.
(d) Briefing Schedule.

(1) Not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of a timely Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing. The Reply to the Petition for Rehearing shall address only the Non-Filing Party’s areas of disagreement with the Filing Party and shall meet the requirements of subdivision (e) of section 4030. The filing of the Reply to the Petition for Rehearing shall conclude the briefing schedule.

(2) If there is more than one Filing Party, then each party may file a Reply to each Petition for Rehearing under the requirements of paragraph (1) of this subdivision.

(3) This subdivision shall not preclude a request for supplemental briefing under section 4035.

Reference: Section 19048 of the Revenue and Taxation Code.


(a) Definition. A “Decision on Petition for Rehearing” is a written decision setting forth findings of fact and conclusions of law for the purpose of deciding whether to grant a rehearing.

(b) Preparing the Decision on Petition for Rehearing. The Appeals Division shall prepare and submit the Decision on Petition for Rehearing to the Chief of Board Proceedings not later than 45 days from the date of the conclusion of the briefing schedule described in subdivision (d) of section 4061.

(c) Adoption; Date of Decision. The Decision on Petition for Rehearing shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board adopts the Decision on Petition for Rehearing, or otherwise votes to grant or deny a rehearing without adopting the Decision on Petition for Rehearing, shall be the date of the decision for purposes of this part.

(1) If the Board grants a rehearing, then the Board’s decision under article 5 of this part shall be held in abeyance pending resolution of the rehearing.

(2) If the Board denies a rehearing, then the Board’s Decision on Petition for Rehearing shall become final upon the passage of 30 days.

(d) Reasons for Granting a Rehearing. A rehearing shall be granted only for one or more of the following reasons:
(1) The Petition for Rehearing demonstrates the existence of irregularity in the proceedings before the Board by which the Filing Party was prevented from having a fair consideration of its case;

(2) The Petition for Rehearing demonstrates the existence of accident or surprise, against which ordinary prudence could not have guarded, and by which the Filing Party was prevented from having a fair consideration of its case;

(3) The Petition for Rehearing presents newly discovered evidence that is material to the resolution of the appeal. Evidence shall be considered “newly discovered” only if the Filing Party, using reasonable diligence, could not have discovered, prepared, or submitted the evidence prior to the Board’s decision;

(4) The Petition for Rehearing demonstrates a reasonable likelihood that there was insufficient evidence to justify a factual finding in the Board’s decision; or

(5) The Petition for Rehearing demonstrates a reasonable likelihood that the Board’s decision contains an error in law.

(e) No Precedent Set. No Decision on Petition for Rehearing shall be cited as precedent in any appeal or other proceeding before the Board, unless the Board adopts the Decision on Petition for Rehearing as a Formal Opinion.


4063. Rehearings.

(a) Briefing Schedule. If the Board grants a rehearing, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine a briefing schedule appropriate for the rehearing, considering the following factors:

(1) The specific facts and legal issues still in dispute upon rehearing;

(2) The sufficiency of briefing provided to date, including any materials submitted in support of, or in opposition to, the Petition for Rehearing;

(3) The party upon whom the burden of proof rests;

(4) The complexity of the appeal; and

(5) The age of the appeal.
Once the briefing schedule is established, the Chief of Board Proceedings shall inform all the parties in writing. Notwithstanding the provisions of article 3 of this part, all briefs shall be submitted in the order, and within any deadlines, specified by the Chief of Board Proceedings. Each brief shall meet the requirements of subdivision (e) of section 4030.

(b) Hearing and Decision. At the conclusion of the briefing schedule, the provisions of articles 4 and 5 of this part shall apply, except that any reference to a “decision” shall be deemed a reference to a decision upon rehearing.

(c) Finality of Decision. The Board’s decision upon rehearing shall become final after the passage of 30 days, unless within that 30-day period the Board Chair orders the decision held in abeyance pursuant to the provisions, and subject to the requirements, of subdivision (b) of section 4060.

Reference: Section 19048 of the Revenue and Taxation Code.