

Memorandum

To: Ms. Brenda Fleming
Executive Director

Date: May 15, 2019

From: Henry Nanjo
Chief Counsel
Legal Department

Subject: **Board Meeting, May 29, 2019**
Item G – Chief Counsel’s Rulemaking Calendar
18 California Code of Regulations, Division 2.1, State Board of Equalization –
Rules for Tax Appeals: Chapter 2, *Special Taxes and Fees*; Chapter 3, *Property*
***Taxes*; Chapter 4, *Appeals from Actions of the Franchise Tax Board*; Chapter 5,**
General Procedures for Board Action*; and Chapter 6, *Taxpayer Bill of Rights
Reimbursement Claims

We request your approval to place the repeal of Chapter 4 of Division 2.1, Title 18 of the California Code of Regulations and the proposed amendments to Chapters 2, 3, 5, and 6 of the same Division on the Chief Counsel’s Rulemaking Calendar for the May 29, 2019, Board meeting.

Chapter 4, *Appeals from Actions of the Franchise Tax Board*, governs rules for appeals of Franchise and Income Tax and directs that such appeals go to the Board of Equalization (Board), and sets forth the procedures. However, pursuant to the Taxpayer Transparency and Fairness Act of 2017, Assembly Bill 102 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252), effective January 1, 2018 (the Act), the Office of Tax Appeals (OTA), and not the Board, hears all Franchise and Income Tax Appeals. Therefore, Chapter 4 is contrary to existing law and must be repealed in its entirety.

Chapter 2, *Special Taxes and Fees*, has already been amended to delete those provisions governing appeals of tax programs no longer administered by the Board after the passage of the Act. Further amendments are necessary to some of the rules contained in this chapter to make them consistent with the current organization of the Board. For example, section 5262 lists the MIC code for Board Proceedings Division as MIC:97; however, the Board Proceedings Division’s MIC code is MIC:80.

Chapter 3, *Property Taxes*, governs rules for appeals of certain decisions made by the County Assessed Properties and State Assessed Properties Divisions. After the Act, the Board maintains jurisdiction to hear appeals of such decisions. However, amendments to some of the rules contained in this chapter are necessary to make them consistent with the current organization of the Board. For example, multiple references are made throughout Chapter 3 to the Appeals

cc:	Ms. Glenna Schultz	MIC: 64
	Ms. Rose Smith	MIC: 80
	Mr. Richard Moon	MIC: 121

Text of Amendments to
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization - Rules for Tax Appeals
Chapter 2. Special Taxes and Fees

5216. Filing Petitions for Redetermination.

(a) A petition or related document may be electronically transmitted (e.g., facsimile, e-mail, etc.) to the Board if an electronic copy of such document is transmitted to the fax number or email address specified in subdivision (b). A petition or related document may also be electronically transmitted to the Board in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) A petition for redetermination and related documents may be hand delivered to the Board's headquarters at ~~450 N Street, in Sacramento, California,~~ or mailed to the address provided below:

~~Appeals and Data Analysis Branch, MIC: 33-
State Board of Equalization
P.O. BOX 942879
Sacramento, CA 94279-0033-
adab@boe.ca.gov
916-323-9497~~

Board Proceedings Division, MIC:80
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080
meetinginfo@boe.ca.gov
(916) 322-2270

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301, Revenue and Taxation Code.

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 Deputy Director 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 Deputy Director 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 Deputy Director 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 Deputy Director 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 Deputy Director 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 Deputy Director approval if applicable.

(g) Deputy Director 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 assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals

conference or Board hearing within 30 days of the date of the letter; and

(B) 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 resolved in accordance with the Deputy Director's findings.

(h) If the assigned section's findings are not subject to Deputy Director approval, but 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 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 appeal will be resolved in accordance with the change.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429 and 32302, Revenue and Taxation Code.

5229. Assignment of Application for Administrative Hearing to Appeals ~~Division~~Attorney for Appeals Conference.

(a) Upon receipt of an application for administrative hearing, Board Staff shall promptly:

- (1) Acknowledge its receipt;
- (2) Assign the application to the Appeals ~~Division~~Attorney for an appeals conference;
- (3) Schedule an appeals conference; and
- (4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, Appeals Staff will promptly issue a determination as to each issue raised in the application and provide notice of the determination to the applicant in a Decision and Recommendation. Appeals Staff may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the Decision and Recommendation in whole or in part, the applicant may request an oral hearing before the Board. A request for an oral hearing may be

denied on an application for administrative hearing. If an oral hearing is granted, the matter shall be scheduled for hearing as soon as practicable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5231. Limitation Period for Claim for Refund.

(a) A refund requested in a claim for refund cannot be approved, unless the claim for refund is filed within the time periods provided in this section:

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made under the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Alcoholic Beverage Tax Law. In lieu thereof, any such claim for refund is timely if filed within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Tax on Insurers Law. Subdivision (b)(1) does not apply to claims for refund filed under the Tax on Insurers Law. In lieu thereof, any such claim for refund is timely if filed within four years after April 1st of the year following the year for which the overpayment was made. A claim for refund filed under the Tax on Insurers Law may be filed in accordance with section 5233 or may be filed with the Commissioner of Insurance.

(e) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed under the Tax on Insurers Law.

(f) Financially Disabled Individuals.

(1) The periods described in subdivisions (b) of this section are suspended during any

period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to claims for refund filed under the Tax on Insurers Law.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12978, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5232. General Contents of Claims for Refund.

(a) All Claims. Every claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

(1) The specific grounds or reasons upon which the claim is founded.

(2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.

(3) The amount of the refund being claimed, if known.

(4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and ~~(b)~~ for the periods of the claim.

(c) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(d) Forms. The use of a completed form provided by the Board for use as a claim for refund

will satisfy the requirements of this section (other than subdivision (c)). However, this subdivision does not require taxpayers to use a form.

(e) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12979, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5234. Assignment and Acknowledgment of Claim for Refund.

Once a claim for refund is received, it will be assigned to the appropriate section or group listed in section 5233 based upon the type of tax or fee at issue, and Board Staff from the assigned section will promptly send the claimant a letter acknowledging the claim, which will contain the contact information for the assigned section or group.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 32401, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5237. Executive Deputy Director Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Executive Deputy Director of the assigned section's Department for approval except where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Executive Deputy Director, the Executive Deputy Director may approve the assigned section's recommendation or exercise discretion to make the Executive Deputy Director's own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Executive Deputy Director approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Executive Deputy Director makes his or her own determination, then the Executive Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Executive Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended

determination, then the ~~Executive Deputy~~ Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the ~~Executive Deputy~~ Director's determination. However, if the result of the ~~Executive Deputy~~ Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the ~~Executive Deputy~~ Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the ~~Executive Deputy~~ Director's findings.

(c) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the taxpayer has not requested an appeals conference with the Appeals ~~Division~~ Attorney or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the ~~Executive Deputy Director of the assigned section's Department~~ for approval as provided in subdivision (b). If the ~~Executive Deputy~~ Director approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(d) If the assigned section or the ~~Executive Deputy~~ Director ~~of the assigned section's Department~~ determines that a refund in excess of \$50,000 should be granted, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977 and 32401, Revenue and Taxation Code.

5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes imposed under the Alcoholic Beverage Tax Law.

(b) Request Requirements. A request for innocent spouse relief must be:

(1) In writing.

- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax ~~or fee~~ from which relief is sought.
- ~~(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.~~

~~(e) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).~~

~~(d)~~(c) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 4903.

~~(e)~~(d) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Board Proceedings Division Offer in Compromise Section in accordance with instructions provided on the Board’s website at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Board Proceedings Division Offer in Compromise Section at the following address:

~~OFFER IN COMPROMISE SECTION, MIC 52-
STATE BOARD OF EQUALIZATION
P.O. BOX 942879-
SACRAMENTO, CA 94279-
0052
Board Proceedings Division, MIC:80
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080
(916) 322-2270~~

A request for innocent spouse relief and related documents may also be hand delivered to the Board’s headquarters at ~~450 N Street in Sacramento, California,~~ or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.

(a) Acknowledgment. When the Board Proceedings Division Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Board Proceedings Division Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(b) Review. The Legal Department Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 4903. The Legal Department Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Legal Department Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Legal Department Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

5242. Requests for Reconsideration by the Board.

(a) If the Legal Department Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 4903. A request for a Board hearing may be denied on a request for reconsideration, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the letter described in section 5241, subdivision (c).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals ~~Division~~Attorney prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and

Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

5245. Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.

(a) Authority to Grant Relief. If a person's failure to make a timely return, report, payment, or prepayment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

(1) Tax on Insurers Law. Revenue and Taxation Code sections 12258, ~~12282~~, 12287, 12631, 12632, and 12633.

(2) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.

~~(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief under this section.~~

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636 and 32255, Revenue and Taxation Code.

5246. Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.

(a) A person may be relieved of interest imposed under the tax ~~and fee~~ laws described in subdivision (b), if the person was charged interest due to:

(1) Unreasonable error or delay:

(A) By Board Staff acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(b) This section applies to interest imposed under the Alcoholic Beverage Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section must:

- (1) Be in writing;
- (2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;
- (3) Specifically identify the period for which interest relief is sought; and
- (4) Be signed by the person requesting relief under penalty of perjury.

~~(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief under this section.~~

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32256.5, Revenue and Taxation Code.

5247. Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

(a) A person may be relieved from liability for the payment of a tax imposed under the tax ~~and fee~~ laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure is found to be due to reasonable reliance on:

- (1) Written advice given under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (b);
- (2) Written advice given in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (c);
- (3) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (d); or
- (4) Written advice requested by a trade or industry association, on the person's behalf, under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (e).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Alcoholic Beverage Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

- (1) Be in writing;
- (2) Include the specific facts upon which the request for relief is based;
- (3) Be signed by the person requesting relief under penalty of perjury; and
- (4) Include an attached copy of the person's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32257, Revenue and Taxation Code.

5248. Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.

(a) If a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under:

- (1) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.
- (2) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.

(b) A request for relief of interest due to a disaster must:

- (1) Be in writing;
- (2) Identify the disaster due to which relief is sought;
- (3) Identify the period for which relief is sought; and
- (4) Be signed by the person requesting such relief under penalty of perjury.

~~(c) Form BOE 27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief under this section.~~

Note: Authority cited: Section 15606, Government Code; and sections 13170 and 32451,

Revenue and Taxation Code. Reference: Sections 12637 and 32256, Revenue and Taxation Code.

5249.4. Assignment and Acknowledgement of Requests for Relief.

- (a) A request for relief will be assigned to and reviewed by Board Staff in the appropriate section responsible for the particular tax-~~or fee~~ law concerned.
- (b) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and assigned to and reviewed by Board Staff in the appropriate section under the procedures contained in article 3 of this chapter.
- (c) Once the request for relief is assigned, the assigned Board Staff will promptly send the person requesting relief an acknowledgement letter containing the contact information for the assigned section, which may include a request for additional information.
- (d) This section does not apply to requests for relief included in a petition for redetermination or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636, 12637, 32255, 32256, 32256.5 and 32257, Revenue and Taxation Code.

5260. Referral to Appeals ~~Division~~Attorney for Appeals Conference; ~~Preferred Location for Appeals Conference.~~

~~(a)~~ If a petition for redetermination, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals ~~Division~~Attorney for an appeals conference, Board Staff will contact the petitioner, claimant, or person requesting relief:

- ~~(1) To verify and update the person's contact information; and~~
- ~~(2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.~~

~~(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in Sacramento. the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.~~

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402,

32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5261. Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.

(a) Board Proceedings Staff will prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which must include the date, time, and location of the appeals conference.

(b) Board Proceedings Staff will include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete and return the Response to Notice of Conference within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5264 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals ~~Division~~Attorney within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(d) Appeals conferences are not recorded. If the petitioner, claimant or person requesting relief would like to record the appeals conference the person must check the appropriate box on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals ~~Division~~Attorney upon request.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code

5262. Requests to Reschedule or Postpone Appeals Conferences.

(a) A request to postpone or reschedule an appeals conference may be submitted to the Board Proceedings Division at the fax number or email address below or in accordance with instructions provided for the return of the Response to Notice of Appeals Conference form or instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at ~~450 N Street in Sacramento, California,~~ or mailed to the:

Board Proceedings Division, MIC:9780
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-009780
ConferenceInfo@boe.ca.gov

(916) ~~324-3984~~ 322-2270

(b) Rescheduling. An appeals conference will be rescheduled only to a date within 30 days of the previously scheduled conference date, and only for a video or telephone conference or an in-person conference ~~either at the Board's headquarters or at an office in southern California designated by the Board Proceedings Division.~~ A party's initial written request to reschedule an appeals conference will be granted. A party's subsequent written request to reschedule an appeals conference will only be granted if the Chief of Board Proceedings determines that there is reasonable cause.

(c) Postponement. An appeals conference will not be rescheduled to a date more than 30 days after the previously scheduled conference date, but may, instead, be postponed. When an appeals conference is postponed, the appeal is placed back into the inventory of unassigned cases and reassigned to a conference holder at a later date. When that appeal is thereafter scheduled for an appeals conference, the Board Proceedings Division will notify the taxpayer as specified in section 5261. If a party files a written request for a postponement of an appeals conference by the return date specified in the Response to Notice of Appeals Conference form, the request will be granted if the Chief of Board Proceedings determines that there is reasonable cause. If a party requests a postponement of the appeals conference after the return date specified in the Response to Notice of Appeals Conference form, or files a second or subsequent request for a postponement, the request will be granted only if the Chief of Board Proceedings determines that there is reasonable cause and that the postponement will not unduly delay the appeal.

(d) The Board Proceedings Division may also reschedule or postpone an appeals conference at the request of the Appeals ~~Division~~Attorney for reasonable cause, including unavailability of the scheduled conference holder due to illness ~~or because of the departure of the scheduled conference holder from the Appeals Division.~~

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5263. Ways to Expedite an Appeals Conference.

(a) Board Proceedings Staff will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

(1) Attend an appeals conference at the Board's headquarter ~~located at 450 N-Street, Sacramento, California;~~

~~(2) Attend a video conference at one of the Board's district offices with the necessary equipment; or~~

~~(3)~~(2) Participate in a telephone conference (Board Staff will place the call).

(b) Subdivision (a) only applies to written notices sent to the Board Proceedings Division at or before the due date of the Response to Notice of Conference. Such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) has expired, Board Proceedings Staff will attempt to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief notifies the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5264. Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Additional Submissions.

(a) The appeals conference will be held by an Appeals ~~Division~~Attorney conference holder who has not had any prior involvement in the appeal being discussed at the appeals conference. It is the responsibility of the Appeals ~~Division~~Attorney to take a fresh look at the law and the facts and make the Appeals ~~Division~~Attorney's own objective recommendation.

(b) Generally, one or more representatives from the appropriate Department will be present at the appeals conference to provide the Department's position in the appeal. Where appropriate, other Board Staff may be present at the appeals conference.

(c) A representative from another state agency may be present at appeals conferences where the tax at issue is administered by the representative's agency. Such a representative will provide his or her agency's position in the appeal.

(d) The appeals conference is not an adversarial proceeding; it is an informal discussion of the relevant facts and applicable laws. It is important that all relevant information be presented to the Appeals ~~Division~~Attorney. A party may submit additional written arguments and documentary evidence to the Appeals ~~Division~~Attorney at any time before or during the appeals conference, but may do so after the conference only with the consent of the Appeals ~~Division~~Attorney.

(1) If any party requests permission to submit additional written arguments, documentary evidence, or both after the appeals conference and the conference holder concludes that the additional submission should be accepted, he or she will grant that party at least 15 days, but not more than 30 days without the consent of the ~~Assistant~~ Chief Counsel of the

~~Appeals Division~~, to submit such arguments and evidence from the date the request is made. The conference holder will also grant the other party at least 15 days, but not more than 30 days without the consent of the ~~Assistant Chief Counsel of the Appeals Division~~, to respond after that submission.

(2) The Appeals ~~Division~~Attorney may, at any time before the appeal is final, request additional written argument, analysis, or documentation from any party, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals ~~Division~~Attorney will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5266. Appeals ~~Division~~Attorney Recommendations; Requests for Reconsideration; Requests for Board Hearings; Supplemental Decision and Recommendation.

(a) The Appeals ~~Division~~Attorney may make the following recommendations in the Decision and Recommendation:

- (1) Deny the appeal in its entirety.
- (2) Grant the appeal in its entirety.
- (3) Grant the appeal in part.
- (4) That the appropriate Department perform a reaudit as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the appeal in whole or in part or a reaudit, the taxpayer may submit, within 30 days after the issuance of the Decision and Recommendation or the issuance of the letter from the Appeals ~~Division~~Attorney explaining the results of the reaudit:

- (1) A written request for reconsideration to the Appeals ~~Division~~Attorney. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the taxpayer disagrees with the Decision and Recommendation, the results of the reaudit, or both; or
- (2) A written request for a Board hearing to the Board Proceedings Division if the taxpayer has not previously done so.

(A) If a Board hearing has been requested, but the Appeals ~~Division~~Attorney believes

the taxpayer accepts the recommendation of the Appeals ~~Division~~Attorney or it is unclear whether the taxpayer disagrees with any portion of its Decision and Recommendation, the Appeals ~~Division~~Attorney may ask the taxpayer to confirm the request for Board hearing.

(B) If a Board hearing is requested and, if applicable, confirmed, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(c) If the Decision and Recommendation recommends that the appeal be granted in whole or in part or a reaudit:

(1) The Department and any state agency represented at the appeals conference may submit a written request for reconsideration to the Appeals ~~Division~~Attorney within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals ~~Division~~Attorney explaining the results of the reaudit. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the Department or other state agency disagrees with the Decision and Recommendation, the results of the reaudit, or both.

(2) Any state agency represented at the appeals conference may submit a written request for a Board hearing to the Board Proceedings Division, within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals ~~Division~~Attorney explaining the results of the reaudit. If a Board hearing is requested, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(d) If a party submits a timely request for reconsideration, as provided in subdivisions (b) and (c)(1) of this section, the Appeals ~~Division~~Attorney will prepare a Supplemental Decision and Recommendation to respond to the request for reconsideration and address any other matter the Appeals ~~Division~~Attorney deems warranted. The Appeals ~~Division~~Attorney may also issue a Supplemental Decision and Recommendation when it deems it appropriate to do so, including where no party has filed a timely request for reconsideration. For example, while the Appeals ~~Division~~Attorney is not required to do so, it may issue a Supplemental Decision and Recommendation to respond to a request for reconsideration submitted in response to a Supplemental Decision and Recommendation or otherwise filed more than 30 days after the issuance of the Decision and Recommendation or the letter explaining the results of a reaudit.

(1) When the Appeals ~~Division~~Attorney receives a request for reconsideration, it will send a letter to acknowledge receipt of the request and, if the request had not been submitted within the period specified in subdivisions (b) and (c)(1) of this section, to advise the parties whether the Appeals ~~Division~~Attorney will issue a Supplemental Decision and Recommendation in response to the request. Where the Appeals ~~Division~~Attorney will issue a Supplemental Decision and Recommendation, the letter will offer the other party

the opportunity to respond to the request for reconsideration. Where the Appeals ~~Division~~Attorney decides to issue a Supplemental Decision and Recommendation where no party has submitted a request for reconsideration, it will promptly send a letter to the parties to notify them of the forthcoming Supplemental Decision and Recommendation.

(2) The Appeals ~~Division~~Attorney may request additional written argument, analysis, or documentation from any party if it determines that the information may be relevant to the preparation of a Supplemental Decision and Recommendation, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals ~~Division~~Attorney will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

(3) The Appeals ~~Division~~Attorney must issue a Supplemental Decision and Recommendation within 90 days after the submission of any additional documents requested under paragraph (2), a copy of which will be sent to each party. The Chief Counsel may allow additional time beyond the 90 days to prepare a Supplemental Decision and Recommendation; however, both the request for additional time and the granting of additional time must be in writing and copies provided to each party to the appeal.

(4) A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c), as relates to the issues addressed in the Supplemental Decision and Recommendation, and may make the recommendations listed in subdivision (a) above.

(5) The provisions for requesting a Board hearing following the issuance of a Decision and Recommendation set forth in subdivisions (b) and (c)(2) of this section are applicable to the issuance of a Supplemental Decision and Recommendation.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals ~~Division~~Attorney will be held in abeyance, if:

(1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;

(2) The Appeals ~~Division~~Attorney's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and

(3) The Chief Counsel determines that the Department, the Appeals ~~Division~~Attorney, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals ~~Division~~Attorney recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals ~~Division~~Attorney recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax for approval, at which time:

(1) The Deputy Director may approve the recommendation.

(2) The Deputy Director may exercise discretion to make the Deputy Director's own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals ~~Division~~Attorney's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals ~~Division~~Attorney's recommendation, then:

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

(d) If the Appeals ~~Division~~Attorney or a Deputy Director recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, the proposed action to refund, credit, or

cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5268. Procedures for Conducting Board Hearings.

Board hearings will be conducted under the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Section 15606(a), Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428, 12978, 32301 and 32402, Revenue and Taxation Code.

Text of Amendments to
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization - Rules for Tax Appeals
Chapter 3. Property Taxes

5310. Application of Chapter.

(a) This chapter applies to:

(1) Petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, petitions for reassessment of private railroad car value, and assessment factor hearings for state-assessed properties and private railroad cars;

(2) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution;

(3) Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g) and section 140.2, and claims for the veterans' organization exemption under Revenue and Taxation Code section 215.1.

(4) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

(b) To the extent this chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 (commencing with section 5510) of this division apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.

Note: Authority cited: Sections 15606 and 15640, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840 and 11251, Revenue and Taxation Code.

5311. Definitions.

The following definitions apply to this chapter:

(a) "Appeals Conference" means a conference conducted by the Appeals ~~Division~~Attorney, at which all parties are entitled to attend and at which issues raised in the petition are to be discussed, and if possible, resolved.

(b) “Appraisal Data Report” means, for state assesses subject to the provisions of article 2 of this chapter, a document and data sheet that accompany the Board’s value determination required to be mailed to each state assessee between the first day of January and the first day of June of each year. The appraisal data report sets forth the State-Assessed Properties Division’s value recommendation to the Board and a summary of the State-Assessed Properties Division’s value indicators.

(c) “County-Assessed Properties Division” means the unit of the Board’s Property ~~and Special~~ Taxes Department responsible for making determinations of eligibility for organizational clearance certificates and supplemental clearance certificates or the unit of the Board’s Property ~~and Special~~ Taxes Department responsible for reviewing the assessment practices of county assessors under Government Code section 15640 et seq., where appropriate.

(d) “Legal Unit” means the Board’s Legal Unit.

~~(e)~~ “Organizational Clearance Certificate” means a certificate issued by the Board under Revenue and Taxation Code section 254.6.

~~(f)~~ “Party” means:

(1) For petitions described in section 5310, subdivision (a)(1), the petitioner and the State-Assessed Properties Division;

(2) For applications described in section 5310, subdivision (a)(2), the petitioner and the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(3) For petitions described in section 5310, subdivision (a)(3), the petitioner and the County-Assessed Properties Division;

(4) For petitions described in section 5310, subdivision (a)(4), the petitioner and the County-Assessed Properties Division.

~~(g)~~ “Petition” means a petition or application described in section 5310.

~~(h)~~ “Petitioner” means an individual or entity that filed a petition described in section 5310, and the individual or entity’s authorized representative where appropriate, and includes:

(1) A county, city, city and county, or municipal corporation that filed a petition with the Board under subdivision (g) of section 11 of article XIII of the California Constitution.

(2) The claimant of an Organizational Clearance Certificate for the property tax welfare exemption under Revenue and Taxation Code section 254.6 or Supplemental Clearance Certificate under Revenue and Taxation Code section 214, subdivision (g) and section 140.2. For purposes of a petition from the denial of a Supplemental Clearance Certificate under

Revenue and Taxation Code section 214, subdivision (g), the limited partnership is the petitioner.

(3) The county assessor and the taxing agency that filed a petition described in section 5310, subdivision (a)(4).

(ih) “Respondent” means:

(1) For petitions described in section 5310, subdivision (a)(1), the State-Assessed Properties Division;

(2) For applications described in section 5310, subdivision (a)(2), the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(3) For petitions described in section 5310, subdivision (a)(3), the County-Assessed Properties Division;

(4) For petitions described in section 5310, subdivision (a)(4), the County-Assessed Properties Division.

(ji) “Sample finding” refers to the sampling of assessments from the county assessment roll under Government Code section 15640, subdivision (c).

(kj) “Supplemental Clearance Certificate” means a certificate issued by the Board under Revenue and Taxation Code section 214, subdivision (g).

~~(k) “Tax and Fee Programs Division” means the unit of the Board’s Legal Department responsible for representing the Department, as defined in chapter 5 of this division, in responding to petitions described in section 5310, subdivision (a)(1), (a)(3), and (a)(4).~~

(l) “State-Assessed Properties Division” means the unit in the Board’s Property and Special Taxes Department responsible for determining value indicators and recommending values of property under the Board’s assessment jurisdiction and for administering the Board’s state assessment responsibilities.

(m) “State-Assessed Properties Division’s Analysis” means a written summary that sets forth an analysis of all of the issues raised in the petition and the State-Assessed Properties Division’s recommendation.

(n) “Written Findings and Decision” means a document prepared by the Appeals ~~Division~~ Attorney that sets forth the Board’s decision on a petition and the supporting reasons therefor.

Note: Authority cited: Sections 15606 and 15640, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840 and 11251, Revenue and Taxation Code.

5323.6. Submission of Petition.

The original petition and supporting documents, together with 10 copies thereof, must be mailed to the Chief of Board Proceedings at the address provided in section 5570, hand delivered to the Board's headquarters ~~office at 450 N Street, in Sacramento, California,~~ or electronically transmitted (e.g., facsimile, e-mail, etc.) to the Chief of Board Proceedings at the email address or fax number provided in section 5570 or in accordance with instructions provided on the Board's website at www.boe.ca.gov. If the original petition and supporting documents are provided in an electronic format, then the petitioner is not required to provide 10 copies thereof.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Section 741, Revenue and Taxation Code.

5324. Timeliness of Petition.

(a) A petition is considered filed timely if it is mailed or delivered in accordance with section 5323.6 or received by the Board Proceedings Division no later than the date provided in section 5323 or, if an extension is received, the date provided in section 5324.2.

(b) Timely performance and mailing date will be determined under the provisions of chapter 5 of this division.

(c) If the Chief of Board Proceedings determines that the Board requires original versions of documents filed electronically, the original documents must be mailed to the Board Proceedings Division at the address set forth in section 5570 or hand delivered to the Board's headquarters ~~office at 450 N Street, in Sacramento, California,~~ no later than the business day immediately following the Chief of Board Proceedings request for original versions of such documents.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 733, 741, 743, 746, 747, 758, 759, 11338 and 11339, Revenue and Taxation Code.

5324.6. Submission of Additional Supporting Documents by Petitioner.

(a) A petitioner's appraisal reports, financial studies, and other materials relevant to value may not be presented as evidence at the hearing unless such documents were provided to the Chief of Board Proceedings at the time the petitioner filed its petition or within a subsequent time extension, or was requested by and timely provided to the State-Assessed Properties Division or the Appeals ~~Division~~Attorney. However, any Board Member may, before or at the hearing,

permit or request the submission of evidence that was not previously filed with the Board.

(b) The State-Assessed Properties Division or the Appeals ~~Division~~Attorney may also request additional evidence in order to evaluate the petitioner's opinion of value as set forth in its petition. The State-Assessed Properties Division or the Appeals ~~Division~~Attorney may request such evidence in writing or by electronic means to the petitioner or its authorized representative and provide a deadline for the submission of such additional evidence by petitioner.

(c) All evidence, including both information and exhibits, must be accompanied by a declaration signed under penalty of perjury that the information contained in the petitioner's submitted evidence is true, correct, and complete to the best knowledge and belief of the person submitting the documents.

(d) Except as specified above, any submitted evidence received by the Chief of Board Proceedings from the petitioner subsequent to the filing of the petition and after the expiration of the deadline applicable to such submission will be returned to the petitioner by the Chief of Board Proceedings.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747, 759 and 11340, Revenue and Taxation Code.

5325. Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, ~~Tax and Fee Programs Division~~Legal Unit, and Petitioner.

(a) If requested by petitioner, the State-Assessed Properties Division and the ~~Tax and Fee Programs Division~~Legal Unit will meet with the petitioner, either in person or by other means convenient to both parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.

(b) At any time, the State-Assessed Properties Division or the ~~Tax and Fee Programs Division~~Legal Unit may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5325.4. Petitions Resolved Before Appeals ~~Division~~Attorney Review.

With respect to all petitions as to which the petitioner and the State-Assessed Properties Division have agreed to a joint recommendation on a proposed resolution of all issues presented in the petition before the petitioner's appeals conference or petitioner's reply brief, if no appeals conference is scheduled, the ~~Tax and Fee Programs Division~~Legal Unit will prepare and submit the "State-Assessed Properties Division's Recommendation for Property Tax Petition" on the

“Property Tax Matters Nonappearance Calendar” to the Chief of Board Proceedings. This recommendation will include a brief analysis of the petition and the related supporting documents, if any, as well as a statement confirming petitioner’s agreement with such recommendation. The Board, however, is not required to adopt the recommendation or take the recommended Board action.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5325.6. Prehearing Review of All Other Petitions.

(a) The Appeals ~~Division~~Attorney will review and prepare a Hearing Summary or Summary Decision for all petitions for which the ~~Tax and Fee Programs Division~~Legal Unit does not prepare the recommendation described in section 5325.4.

(1) A Hearing Summary must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed Board hearing;

(B) A discussion of the appeals conference, if one was held, including any additional information, stipulations, and resolutions resulting therefrom;

(C) The Appeals ~~Division~~Attorney’s analysis and comments, including questions to be posed to the parties; and

(D) Conclusions and recommendations of the Appeals ~~Division~~Attorney after applying the relevant law to all of the relevant information.

(2) A Summary Decision must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to evaluate the merits of the petition;

(B) A discussion of the appeals conference or other Appeals ~~Division~~Attorney review, including any findings, stipulations, and resolutions resulting therefrom; and

(C) The Appeals ~~Division~~Attorney’s analysis and recommended decision.

(b) If there has been a partial or complete resolution of issues between petitioner and the State-Assessed Properties Division after the Appeals ~~Division~~Attorney has issued its Hearing Summary or Summary Decision, the Appeals ~~Division~~Attorney will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary or Revised Summary Decision will state:

- (1) The issues which have been resolved;
- (2) The Appeals ~~Division~~Attorney's revised analysis and/or recommendation; and
- (3) The issues remaining for decision by the Board, if any.

The case will remain on the agenda for Board action.

(c) At any time, the Appeals ~~Division~~Attorney may request additional information or analysis from the petitioner or the State-Assessed Properties Division to assist in resolving any issue to be decided by the Board.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5326. General Briefing Procedures for Petitions Reviewed by the Appeals ~~Division~~Attorney.

- (a) A valid and complete petition as defined in section 5323.4 is considered the petitioner's opening brief.
- (b) The State-Assessed Properties Division's Analysis is the State-Assessed Properties Division's written response to the petition.
- (c) The petitioner's reply to the State-Assessed Properties Division's Analysis is optional.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5326.2. Briefing Schedule if no Appeals Conference Is Scheduled.

- (a) The State-Assessed Properties Division's Analysis will be submitted to the Chief of Board Proceedings no less than 45 days before the date on which the petition is scheduled for Board action.
- (b) The petitioner may submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals ~~Division~~Attorney previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.
- (c) At least 10 days before the Board meeting date for which the petition is scheduled for Board

action, the Appeals ~~Division~~Attorney will submit a Hearing Summary or Summary Decision to the Chief of Board Proceedings.

(d) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of the time provided in subdivisions (a), (b) and (c) above.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5326.4. General Appeals Conference Procedures.

(a) An appeals conference will be held if requested by any of the following:

(1) By the petitioner in the petition;

(2) By the State-Assessed Properties Division no later than August 15 for petitions for reassessment of unitary value or October 15 for petitions for reassessment of nonunitary value;

(3) By the Assistant Chief Counsel of the Appeals ~~Division~~Attorney; or

(4) By any Board Member.

(b) If an appeals conference is requested under subdivision (a)(3) or (a)(4), or for a petition for reassessment of nonunitary value under subdivision (a)(2), the Chief Counsel may modify the time periods provided in sections 5326.6 and 5327.

(c) An appeals conference will consider all issues raised in the petition. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.

(d) The parties may attend the appeals conference in person or by telephone. The Appeals ~~Division~~Attorney will attempt to conduct the appeals conference at a time and in a manner that is convenient for both the petitioner and the State-Assessed Properties Division.

(e) The petitioner and the State-Assessed Properties Division will be notified of the date, time, and place of the appeals conference in writing or by electronic mail or facsimile. The petitioner and the State-Assessed Properties Division must confirm their participation in writing or by electronic mail or facsimile. Once the parties agree to attend an appeals conference, the Appeals ~~Division~~Attorney, at its discretion, may choose to hold the appeals conference at the stated date, time, and place even if one party does not appear.

(f) ~~An attorney from~~ The Appeals ~~Division~~Attorney (conference holder) will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals

conference is informal and non-adversarial in nature.

(g) The petitioner must be represented at the conference by an agent or employee who is thoroughly familiar with the facts and issues and has been authorized to represent the petitioner. The State-Assessed Properties Division will be represented by an appraiser.

(h) The conference holder will not record, videotape, or arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a transcript must be made available to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.

(i) If an appeals conference is scheduled, the Chief Counsel may shorten the time period provided in section 5327.4, subdivision (c), for issuing the notice of hearing.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5326.6. Scheduling of Appeals Conference; Briefing Schedule for Petitions for Which an Appeals Conference Is Scheduled.

(a) The Appeals ~~Division~~Attorney will generally hold an appeals conference at least 30 days before the Board meeting at which the petition is scheduled for hearing or other Board action. The Appeals ~~Division~~Attorney has broad discretion in determining the briefing schedules and the deadlines for submitting additional information.

(b) The State-Assessed Properties Division's Analysis must be submitted to the Chief of Board Proceedings no later than 35 days before the scheduled appeals conference date.

(c) The petitioner must submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals ~~Division~~Attorney conference holder previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.

(d) The Appeals ~~Division~~Attorney may request additional information or briefing to be provided by the petitioner or the State-Assessed Properties Division before, during, or after the Appeals conference.

(1) The Appeals ~~Division~~Attorney should provide written confirmation of its request for additional information within two business days of the request.

(2) Unless otherwise permitted by the Appeals ~~Division~~Attorney, all requested information must be provided no later than seven days after the date of the request.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5327. Appeals ~~Division~~Attorney Hearing Summary or Summary Decision.

(a) Except as provided in subdivision (b), the Appeals ~~Division~~Attorney will submit to the Chief of Board Proceedings a Hearing Summary or Summary Decision no later than 10 days before the Board hearing at which the petition is scheduled for hearing or other Board action.

(b) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of a reasonable period of time for the issuance of the Hearing Summary or the Summary Decision. For purposes of this section “reasonable cause” includes, but is not limited to, an appeals conference being held less than 30 days before the hearing at which the petition is scheduled for hearing or other Board action.

(c) If prepared, a Revised Hearing Summary or Revised Summary Decision will be promptly submitted to the Chief of Board Proceedings by the Appeals ~~Division~~Attorney.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11651, Revenue and Taxation Code.

5327.6. Distribution of Documents.

The Chief of Board Proceedings will promptly distribute the following documents to the petitioner, ~~the~~ Board Members, the State-Assessed Properties Division, the ~~Tax and Fee Programs~~ Division Legal Unit, and the Appeals ~~Division~~Attorney, as appropriate (the documents may be distributed separately):

(a) Petition and supporting documentation;

(b) State-Assessed Properties Division’s Analysis;

(c) Petitioner’s Reply Brief, if any; and

(d) Appeals ~~Division~~Attorney’s Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared).

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748, 11338, 11339, 11340 and 11353, Revenue and Taxation Code.

5328. Consolidation of Petitions into a Single Hearing.

(a) Multiple petitions may be consolidated for hearing or decision as provided in chapter 5 of this division.

(b) If petitions are consolidated, the State-Assessed Properties Division's will draft a single Analysis to address and analyze the issues presented in all of the petitions. At the hearing, the Board may grant additional time, in equal amounts, to the petitioners' representative(s) and the State-Assessed Properties Division to present their respective cases. The Appeals ~~Division~~ Attorney will draft one Hearing Summary for all of the consolidated petitions.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 731, 732, 733, 741, 742, 743, 744, 746, 747 and 748, Revenue and Taxation Code.

5331. Application of Article.

This article applies to:

(a) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements filed under subdivision (g) of section 11 of article XIII of the California Constitution;

(b) Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g) and section 140.2, and claims for the veteran's organization exemption under Revenue and Taxation Code section 215.1; and

(c) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

Note: Authority cited: Article XIII, Section 11, California Constitution; and Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6 and 1840, Revenue and Taxation Code.

5335. Filing of Petitions, Briefs, and Related Documents.

(a) Original petitions, briefs, and related documents must be mailed to the Board Proceedings Division at the mailing address specified in section 5570 of this division or hand delivered to the Board's headquarters ~~office at 450 N Street, in Sacramento, California.~~

(b) Petitions, briefs, and related documents may be electronically transmitted (e.g., facsimile, e-mail, etc.) to the Chief of Board Proceedings at the email address or fax number provided in section 5570 or in accordance with instructions provided on the Board's website.

(c) Applications and Other Submissions. For applications described in section 5310, subdivision (b), both the petitioner and the Respondent must file their submissions with the other party and enclose a proof of filing with the other party in each submission to the Board Proceedings Division.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Section 15640, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5335.6. Distribution of Documents.

The Board Proceedings Division will promptly distribute the petition, briefs, related documents, and the Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared) to the petitioner, the Respondent, the ~~Tax and Fee Programs Division~~ Legal Unit, the Appeals ~~Division~~ Attorney, and the Board Members, as appropriate.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5337. Prehearing Meeting and Exchange of Information Between Respondent and Petitioner.

(a) If requested by the petitioner with regard to a petition described in section 5310, subdivision (a)(3) or (a)(4), the Respondent and the ~~Tax and Fee Programs Division~~ Legal Unit will meet with the petitioner, either in person or by other means convenient to all parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.

(b) At any time, the Respondent or the ~~Tax and Fee Programs Division~~ Legal Unit may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5337.4. Briefing: General Requirements.

(a) Submissions in the form of briefs are required for consideration of all petitions. The parties must adhere to the briefing schedules and other requirements set forth in this article.

(b) Upon receipt of a perfected petition, the Chief of Board Proceedings will provide written notification to each party that a perfected petition 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 acknowledgement letter issued under section 5336, subdivision (b). Throughout the briefing schedule, the Chief of Board Proceedings will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.

(c) Any request to extend the period for filing a brief must be in writing. The Chief Counsel, in his or her discretion, may grant such a request upon a showing of reasonable cause or based upon the written agreement of the parties and the Appeals ~~Division~~Attorney.

(d) The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and provide each opposing party with a copy of the brief and any supporting exhibits.

(e) General Requirements. All briefs permitted to be filed under this section must follow the requirements listed below:

(1) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 1/2" by 11" pages, ~~printed on one side only~~; or

(B) Not exceed 15 typed or handwritten, single-spaced 8 1/2" by 11" pages, ~~printed on one side only~~;

(2) Type-font size of at least 10 points or 12 characters per inch;

(3) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

(4) Exception. An exception to these requirements may be granted before the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

(f) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Such a failure will also conclude the briefing schedule, except as otherwise provided in the applicable briefing schedule.

(g) Any individual or entity may file a non-party (amicus) brief regarding a petition or application described in section 5310, subdivision (a)(2), (a)(3), or (a)(4), subject to any generally applicable conditions of this section and the specific conditions of this subdivision.

(1) No individual or entity will be permitted to file more than one non-party brief. Briefs filed by unidentified individuals or entities will not be accepted.

(2) All non-party briefs must be filed before the conclusion of the applicable briefing schedule. However, the Board in its discretion may choose to accept for consideration a non-party brief filed after the conclusion of the applicable briefing schedule. For purposes of this paragraph, the conclusion of the applicable briefing schedule will be determined without regard to the filing of any non-party brief or reply thereto. There will not be any extensions of time for the filing of non-party briefs.

(3) If a non-party brief is filed, the Chief of Board Proceedings will acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the non-party brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the non-party brief.

(4) The applicable briefing schedule is not concluded until the deadline for replying to all non-party briefs has passed.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5338. Appeals ~~Division~~Attorney Review.

(a) At the conclusion of the general briefing schedule under section 5337.6, the Appeals ~~Division~~Attorney will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals ~~Division~~Attorney may request additional briefing under section 5523.4.

(b) When the Appeals ~~Division~~Attorney determines that all relevant factual and legal issues have been addressed and completes the appeals conference required by section 5338.4, the Appeals ~~Division~~Attorney will notify the Chief of Board Proceedings that the petition is ready to be scheduled for an oral hearing.

(c) Upon notification from the Appeals ~~Division~~Attorney that the petition is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing under section 5522.6.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5338.4. Appeals Conference.

(a) Purpose. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.

(b) When to Hold an Appeals Conference. An appeals conference will be held for all petitions described in section 5310, subdivision (a)(2), (a)(3), and (a)(4). An appeals conference may be held only after the briefing schedule provided in section 5337.6 has concluded.

(c) Determining the Time and Location of the Appeals Conference. The Appeals ~~Division~~Attorney will determine the time and location of the appeals conference. Consistent with workload constraints, the Appeals ~~Division~~Attorney will attempt to ensure that the appeals conference is held at a time convenient to the petitioner. The appeals conference will ordinarily be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. However, an in-person appeals conference may be held outside of Sacramento if the Chief Counsel determines that there is reasonable cause and that the Board has the resources to conduct an appeals conference outside of Sacramento.

(d) Notice and Scheduling. The Board Proceedings Division will schedule the appeals conference in accordance with information provided to it by the Appeals ~~Division~~Attorney and will issue appropriate written notification to all parties.

(e) Conduct and Nature of the Appeals Conference. ~~An conference holder assigned to the Appeals~~ Attorney (conference holder) will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals conference is informal and non-adversarial in nature.

(f) Recording. The conference holder will not record, videotape, or arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a copy of the transcript or recording must be promptly provided to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.

(g) Additional Briefing and Evidence. If at any time before the submittal of the Hearing Summary or Summary Decision under section 5338.6, the ~~Assistant Chief Counsel for the Appeals Division~~, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals ~~Division~~Attorney may request additional briefing or evidence from any party. The Appeals ~~Division~~Attorney may set forth the order, deadlines, and conditions for briefing that it deems appropriate. The Appeals ~~Division~~Attorney will administer any request made under this subdivision and may extend deadlines under this subdivision upon a showing of reasonable cause.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5338.6. Preparing and Revising Hearing Summaries.

(a) Preparing the Hearing Summary. The Appeals ~~Division~~Attorney will prepare and submit a Hearing Summary to the Chief of Board Proceedings within 90 days after each appeals conference held under section 5338.4, or within any other period specified by the Chief of Board Proceedings, which provides the Appeals ~~Division~~Attorney with at least 30 days to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

(b) If the petition is submitted for decision without an oral hearing before the Appeals ~~Division~~Attorney prepares a Hearing Summary, the Appeals ~~Division~~Attorney will prepare a Summary Decision under section 5343.

(c) If there has been a partial or complete resolution of issues between petitioner and the Respondent after the Appeals ~~Division~~Attorney has issued its Hearing Summary or Summary Decision, the Appeals ~~Division~~Attorney will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary will state:

- (1) The issues which have been resolved;
- (2) The Appeals ~~Division~~Attorney's revised recommendation; and
- (3) The issues remaining for decision by the Board, if any.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5341. ADDITIONAL BRIEFING.

(a) Staff Requests for Additional Briefing. If the ~~Assistant Chief Counsel of the Appeals Division~~, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals ~~Division~~Attorney may request additional briefing or evidence from any party. The Appeals ~~Division~~Attorney will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

~~(b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division Attorney in order to request additional briefing or evidence from any party. The Appeals Division Attorney will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.~~

(b) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. 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.

(c) Timing of Request. 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.

(d) Notification of Board Chair. The Board Chair must be notified promptly of any request made under this section and may postpone the scheduling or hearing of an appeal.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5343. SUBMISSION FOR DECISION WITHOUT ORAL HEARING.

(a) A petition will be submitted for decision based upon the written records on file and without an oral hearing under any of the following circumstances:

(1) The petitioner does not request an oral hearing or waives a requested oral hearing under chapter 5 of this division.

(2) The petitioner fails to respond to a Hearing Notice as provided in section 5522.6.

(b) Preparing the Summary Decision. Where a petition is submitted for decision without an oral hearing, the Appeals ~~Division~~Attorney will prepare a Summary Decision summarizing the relevant facts and law and providing a recommendation for Board action.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5345. FINALITY OF BOARD ACTION; WRITTEN FINDINGS AND DECISION.

(a) The following provisions apply to petitions filed under this chapter:

(1) The Board's decision on a petition described in section 5310, subdivision (a)(1) or (2), is final. The Board's decision on a petition described in section 5310, subdivision (a)(3) or (4), becomes final 30 days after the date notice of the Board's decision is mailed to the petitioner, unless the petitioner files a Petition for Rehearing in accordance with the procedures provided in chapter 5 of this division within that 30-day period.

(2) The Board may not grant a rehearing to reconsider a final decision on a petition.

(3) The Board may not modify a final decision on a petition, except to correct a clerical error.

(b) The petitioner may request that the Board adopt a Written Findings and Decision for a petition. The request must be made before the commencement of the petitioner's Board hearing or, if a Board hearing is not scheduled, the commencement of the meeting at which the petition is scheduled for Board action. If a timely request is made, the Board will prepare and send to the petitioner a Written Findings and Decision according to the following procedure:

(1) After the Board has decided the petition, the Appeals ~~Division~~Attorney will draft the Written Findings and Decision.

(2) The Chief of Board Proceedings will schedule the Written Findings and Decision for Board consideration.

(3) Once the Board adopts the Written Findings and Decision, the Chief of Board Proceedings will promptly mail a copy of the Written Findings and Decision to petitioner. The petitioner may waive its right to its requested Written Findings and Decision any time before the Board adopts the petitioner's Written Findings and Decision.

Note: Authority cited: Sections 15606 and 15640, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841 and 11251, Revenue and Taxation Code.

Text of Amendments to
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization - Rules for Tax Appeals

~~Chapter 4: Appeals from Actions of the Franchise Tax Board~~

~~ARTICLE 1: APPLICATION OF CHAPTER 4, DEFINITIONS, AND JURISDICTION~~

~~5410. APPLICATION OF CHAPTER 4.~~

~~(a) This chapter applies to appeals and petitions for rehearing filed with the Board pursuant to the:~~

~~(1) Administration of Franchise and Income Tax Laws. Part 10.2 of division 2 of the Revenue and Taxation Code.~~

~~(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 chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 (commencing with section 5510) of this division apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~5411. DEFINITIONS.~~

~~The definitions contained in sections 5511 and 5512 of chapter 5 apply to this chapter. In addition, the following definitions apply to this chapter and to any documents prepared pursuant to this chapter:~~

~~(a) The term “appellant” means an individual or business entity who files an appeal from an action of the Franchise Tax Board. The term “appellant” also includes multiple individuals or business entities filing an appeal jointly and, where appropriate, an authorized representative or representatives thereof.~~

~~(b) The term “respondent” means the Franchise Tax Board and, where appropriate, an authorized representative or representatives thereof.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

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~~5412. JURISDICTION.~~

~~(a) Appeals from the Franchise Tax Board. In General, the Board has jurisdiction to hear and decide a timely filed appeal under any of the following circumstances:~~

~~(1) The Franchise Tax Board mails a *Notice of Action* on a proposed deficiency assessment of additional tax, which may also include penalties, fees and interest.~~

~~(2) The Franchise Tax Board mails a *Notice of Action* on a proposed carryover adjustment.~~

~~(3) The Franchise Tax Board mails a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, which denies any portion of a perfected claim for a refund of tax, penalties, fees, or interest.~~

~~(4) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months after the claim is perfected with the Franchise Tax Board.~~

~~(5) The Franchise Tax Board mails 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 Revenue and Taxation Code section 19104.~~

~~(6) The Franchise Tax Board fails to act on a request for abatement of interest within six months after the request is filed with the Franchise Tax Board under Revenue and Taxation Code section 19104. This paragraph does not apply to requests for interest abatement made in connection with a protest or an appeal from a *Notice of Action* on a protest.~~

~~(7) The Franchise Tax Board mails a notice that disallows interest on a refund.~~

~~(8) The Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief under Revenue and Taxation Code section 18533, subdivision (b) or (c), or section 19006, subdivision (c).~~

~~(9) The Franchise Tax Board mails a notice of determination, or fails to act within 90 days, on a petition for review of the Franchise Tax Board's finding of jeopardy.~~

~~(10) The Franchise Tax Board mails any notice that denies, in whole or in part, a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.~~

~~(b) Issues that will not be considered. The Board's jurisdiction is limited to determining the correct amount owed by, or due to, the appellant for the year or years at issue in the appeal. The Board has determined that it does not have jurisdiction to consider the following issues:~~

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

~~(2) Whether a provision of the California Constitution is invalid or unenforceable under the Federal Constitution, unless a federal or California appellate court has already made such a determination.~~

~~(3) Whether a liability has been or should have been discharged in bankruptcy.~~

~~(4) Whether the Franchise Tax Board violated the Information Practices Act (Civil Code sections 1798 et seq.), the Public Records Act (Government Code sections 6250 et seq.), or any similar provision of the law.~~

~~(5) Whether the appellant is entitled to a remedy for the Franchise Tax Board's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.~~

~~(e) This section contains general rules governing the Board's jurisdiction. Changes in the law may expand or limit the Board's jurisdiction.~~

~~Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 19570; Article III, section 3.5 of the California Constitution. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~ARTICLE 2: HOW TO FILE AN APPEAL FROM THE FRANCHISE TAX BOARD~~

~~5420. APPEAL FILING REQUIREMENTS.~~

~~(a) Franchise and Income Tax Appeals. Except as provided in subdivision (b), every appeal from an action of the Franchise Tax Board must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:~~

~~(1) The name of the appellant, or appellants, filing the appeal;~~

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

~~(3) The address and telephone number of each appellant and, if applicable, each appellant's~~

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~~authorized representative;~~

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

~~(5) The year(s) involved;~~

~~(6) A copy of the Franchise Tax Board's notice from which the appeal is made, unless the Franchise Tax Board has failed to act on a claim for refund or a request for interest abatement, in which case the appellant must provide a copy of the claim for refund or request for interest abatement;~~

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

~~(8) Any portion of the amount at issue conceded by the appellant; and~~

~~(9) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.~~

~~(b) Senior Citizens Homeowners and Renters Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board's denial, in whole or in part, of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:~~

~~(1) The name of the appellant, or appellants, filing the appeal;~~

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

~~(3) The address and telephone number of the appellant and, if applicable, the appellant's authorized representative;~~

~~(4) The amount of property tax assistance claimed;~~

~~(5) The claim year(s) involved;~~

~~(6) A copy of the Franchise Tax Board's notice from which the appeal is made;~~

~~(7) The reasons the appellant is entitled to property tax assistance; and~~

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~~(8) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.~~

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

~~5421. METHODS FOR DELIVERY OF WRITTEN DOCUMENTS AND CORRESPONDENCE.~~

~~(a) Appeals, petitions for rehearing, briefs, and related documents and correspondence may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division at the email address or fax number provided below or in accordance with instructions provided on the Board's website at www.boe.ca.gov.~~

~~(b) Appeals, petitions for rehearing, briefs, and related documents and correspondence may also be hand-delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to:~~

~~Board Proceedings Division, MIC: 81
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0081
MeetingInfo@boe.ca.gov
(916) 324-3984~~

~~(c) When this chapter requires a written notification or written acknowledgement to one or more parties during the course of an appeal, mail or personal delivery will be used, unless the party to whom the document is provided consents to delivery by facsimile or secure electronic means.~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

~~5422. TIME FOR FILING AN APPEAL.~~

~~An appeal is 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.~~

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~~(a) Statutory Deadlines. The Revenue and Taxation Code requires that any appeal must be filed:~~

~~(1) Not later than the later of: (A) 30 days from the date the Franchise Tax Board mails a *Notice of Action* upon the protest of an unpaid assessment, or (B) the date indicated on the notice as the deadline for filing an appeal.~~

~~(2) Not later than the later of (A): 30 days from the date the Franchise Tax Board mails a *Notice of Action* affirming a proposed carryover adjustment, or (B) the date indicated on the notice as the deadline for filing an appeal.~~

~~(3) Not later than 90 days from the date the Franchise Tax Board mails 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.~~

~~(4) At any time, if the Franchise Tax Board failed to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim was perfected. However, if the Franchise Tax Board denies the claim for refund in writing, the appeal must be filed not later than 90 days from the date the Franchise Tax Board mails notice of the denial.~~

~~(5) Not later than 30 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **unpaid interest**.~~

~~(6) Not later than 90 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **paid interest**.~~

~~(7) At any time, if the Franchise Tax Board failed to act on a request to abate interest within six months after the request was filed. However, if the Franchise Tax Board denies a request to abate interest in writing, the appeal must be filed within the time period specified in paragraph (8) in the case of unpaid interest, or within the time period specified in paragraph (6) in the case of paid interest.~~

~~(8) Not later than 90 days from the date the Franchise Tax Board mails a notice that disallows interest on a refund.~~

~~(9) Not later than 30 days from the date the Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief.~~

~~(10) Not later than 60 days from the earlier of: (A) the date the Franchise Tax Board mails a notice of its determination on a petition for review of a finding of jeopardy, or (B) the 91st~~

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~~day after a petition for review of a finding of jeopardy was filed with the Franchise Tax Board.~~

~~(11) Not later than 90 days from the date the Franchise Tax Board mails 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 are extended, pursuant to Code of Civil Procedure section 1013, as follows:~~

~~(1) Five days if the Franchise Tax Board's notice being appealed was mailed to an address within California;~~

~~(2) Ten days if the Franchise Tax Board's notice being appealed was mailed to an address outside California, but within the United States; or~~

~~(3) Twenty days if the Franchise Tax Board's notice being appealed was mailed to an address outside the United States.~~

~~(c) Date of Mailing. In the absence of other evidence, the filing date is the post mark date, the date of delivery to a "delivery service" as defined in section 5511, or the date of receipt if the document is filed pursuant to section 5421, subdivision (a). If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline is extended to the next business day.~~

~~Note: Authority cited: Government Code section 15606; Code of Civil Procedure section 1013. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~**5423. ACCEPTING OR REJECTING AN APPEAL.**~~

~~(a) Determination of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings must determine whether the Board has jurisdiction to hear the appeal under section 5412, subdivision (b), including whether the appeal is timely under the provisions of section 5422. If any question arises as to the timeliness of an appeal or the Board's jurisdiction to hear an appeal, the Chief of Board Proceedings will refer the appeal to the Chief Counsel. The Chief of Board Proceedings and the Chief Counsel may request any relevant information from the Franchise Tax Board in order to perform their duties under this section.~~

~~(b) Accepting the Appeal. If the Chief of Board Proceedings or the Chief Counsel determines that the Board has jurisdiction to hear the appeal and that the appeal is timely, or that there is a genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings~~

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~~must accept the appeal. The Chief of Board Proceedings then will provide written acknowledgement of the acceptance to the appellant and the Franchise Tax Board. The written acknowledgement will notify the appellant and the Franchise Tax Board of their rights and obligations under this chapter. The Chief of Board Proceedings will provide one copy of the appeal and any supporting documents to the Franchise Tax Board.~~

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

~~(d) Rejecting the Appeal. If the Chief of Board Proceedings or the Chief Counsel determine that the Board does not have jurisdiction to hear the appeal or that the appeal is not timely, and that there is no genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings must reject the appeal. The Chief of Board Proceedings then will notify the appellant and the Franchise Tax Board in writing of the rejection and the reasons therefor.~~

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

~~5424. PERFECTING AN APPEAL.~~

~~(a) Generally. The briefing and resolution of an appeal cannot begin until the appeal is perfected. For purposes of this chapter, an appeal is “perfected” if it contains substantially all of the information required by section 5420. In addition, an appeal is not “perfected” until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant 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 will notify the appellant in writing of the need to perfect the appeal. The notice will explain what information is necessary to perfect the appeal.~~

~~(1) The appellant must perfect the appeal not later than 90 days from the date of the notice. The Chief of Board Proceedings may extend the deadline for perfecting an appeal upon a showing of extreme hardship or upon written agreement by the parties. All parties will be notified in writing of any extension.~~

~~(2) Perfecting the appeal is accomplished by submitting the information necessary to perfect the appeal to the Chief of Board Proceedings.~~

~~(3) If the taxpayer fails to perfect the appeal within the 90-day period, or within any~~

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~~extension period granted by the Chief of Board Proceedings, the appeal will be dismissed. All parties will be notified in writing of the dismissal.~~

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

ARTICLE 3: BRIEFING SCHEDULES AND PROCEDURES

5430. GENERAL REQUIREMENTS.

(a) ~~Generally. Submissions in the forms of briefs are required in all appeals from actions of the Franchise Tax Board. The parties to an appeal must adhere to the briefing schedules and other requirements set forth in this article. Unless otherwise provided, the rules contained in this section apply to all briefs and briefing schedules.~~

(b) ~~Determining the briefing schedule; notification. Upon receipt of a perfected appeal, the Chief of Board Proceedings will provide written notification to each party that a perfected appeal has been filed and that briefing will begin under section 5431 or section 5432, whichever is applicable.~~

~~(1) If an appeal involves a jeopardy determination, the Chief Counsel will compose a suitable briefing schedule after due consideration of all the facts and circumstances of that appeal.~~

~~(2) The notification issued under this section may be included, if appropriate, in the acknowledgment letter issued under section 5423.~~

~~(3) Throughout the briefing schedule, the Chief of Board Proceedings will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.~~

(c) ~~Extensions. Any request to extend the period for filing a brief must be in writing and must be made prior to the scheduled due date for that brief. Extensions and deferrals of briefing may be granted under the provisions of section 5522.8.~~

(d) ~~Submission and acknowledgment. The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and will provide each opposing party with a copy of the brief and any supporting exhibits.~~

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~~(e) Formatting. All briefs must be no longer than 30 double-spaced 8½” by 11” pages, or 15 single-spaced 8½” by 11” pages, excluding any table of contents, table of authorities, and exhibits. All briefs must be handwritten or typed, and 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 exception to these requirements upon written request that establishes why an exception is necessary. 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 is a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, that waiver will conclude the briefing schedule.~~

~~(f) Failure to file a brief. The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, that waiver will conclude the briefing schedule. However, the Board, in its discretion, may accept any documentary evidence and related arguments submitted at a hearing pursuant to section 5523.6.~~

~~(g) Non-party briefing. Non-Party (Amicus) Briefs may be filed, subject to any generally applicable conditions of this section and the specific conditions of this subdivision.~~

~~(1) Any individual or entity may file a Non-Party Brief, whether unsolicited or upon request of the Appeals Division. No individual or entity may file more than one Non-Party Brief, unless the Appeals Division specifically allows otherwise.~~

~~(2) Unless the Appeals Division specifically allows otherwise, all Non-Party Briefs must be filed prior to the conclusion of briefing under section 5431 or section 5432, whichever is applicable.~~

~~(3) If a Non-Party Brief is filed, the Chief of Board Proceedings will acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the Non-Party Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Non-Party Brief.~~

~~(4) For purposes of articles 4 and 5 of this chapter, briefing is considered concluded when the deadline for replying to all unsolicited Non-Party Briefs has passed.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

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~~**5431. GENERAL BRIEFING SCHEDULE.**~~

~~(a) Application. The briefing schedule in this section applies to all appeals from actions of the Franchise Tax Board, unless the appeal involves an innocent spouse determination or a jeopardy determination.~~

~~(b) Opening Briefs:~~

~~(1) Appellant's Opening Brief. The perfected appeal is the Appellant's Opening Brief.~~

~~(2) Respondent's Opening Brief. The Franchise Tax Board may file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Appellant's Opening Brief.~~

~~(c) Reply Briefs:~~

~~(1) Appellant's Reply Brief. The appellant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Appellant's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief. Except as provided in paragraph (2), the filing of the Appellant's Reply Brief concludes the briefing schedule.~~

~~(2) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, may only address points of disagreement with the Appellant's Reply Brief.~~

~~(A) The Franchise Tax Board has 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appellant's Reply Brief in which to file a written request to file its Reply Brief.~~

~~(B) Upon receipt of the Franchise Tax Board's written request, the Chief Counsel will 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 Appellant'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 facts and issues in the appeal are so complex as to require additional discussion or clarification.~~

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~~(C) If the Chief Counsel determines that additional briefing is necessary, he or she will grant the Franchise Tax Board's request to file a Reply Brief. The Franchise Tax Board may file its Reply Brief not later than 30 days from the date on which its request is granted.~~

~~(D) If the Chief Counsel determines that additional briefing is not necessary, he or she will deny the Franchise Tax Board's request to file a Reply Brief. That denial concludes the briefing schedule.~~

~~(3) Appellant's Supplemental Brief. If the Franchise Tax Board files a Reply Brief, the appellant may file a Supplemental Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Reply Brief. The Appellant's Supplemental Brief, if filed, may only address points of disagreement with the Respondent's Reply Brief. The filing of the Appellant's Supplemental Brief concludes the briefing schedule.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~**5432. BRIEFING SCHEDULE FOR INNOCENT SPOUSE APPEALS.**~~

~~(a) Application. The briefing schedule in this section applies to all appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.~~

~~(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(s) 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~~

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~~joint return for the year(s) 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) Special Rules and Procedures.~~

~~(1) If both spouses file timely appeals from the Franchise Tax Board's partial grant or partial denial of innocent spouse relief, then the appeals will be consolidated for briefing, hearing, and decision. Each spouse will be treated as an "Appealing Spouse" under this section and will have an equal opportunity to file briefs.~~

~~(2) If only one spouse files a timely appeal, then upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings will provide one copy of the perfected appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her right to participate in the appeal.~~

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

~~(d) Protection of confidential information. The Board Proceedings Division will take reasonable steps, including redaction where appropriate, to ensure that the personal identifying information of one spouse is not provided to the other spouse. "Personal identifying information" includes, but is not limited to, a mailing address, electronic mail address, telephone number, and social security number.~~

~~(e) Opening Briefs.~~

~~(1) Appealing Spouse's Opening Brief. The Appealing Spouse's perfected appeal is the Appealing Spouse's Opening Brief.~~

~~(2) Respondent's Opening Brief. The Franchise Tax Board may file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Opening Brief.~~

~~(3) Non-Appealing Spouse's Opening Brief. 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 the Non-Appealing Spouse's Opening Brief will join the Non-Appealing Spouse as a party to the appeal. The failure to file the Non-Appealing Spouse's Opening Brief within the time provided is a waiver of the right to participate in the appeal, unless such failure is due to reasonable cause.~~

~~(f) Reply Briefs.~~

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~~(1) Appealing Spouse's Reply Brief. 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 Respondent's Opening Brief;~~

~~(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Opening Brief, if one is filed; or~~

~~(C) The date on which it becomes known that the Non-Appealing Spouse will not file an Opening Brief.~~

~~The Appealing Spouse's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief and the Non-Appealing Spouse's Opening Brief. Except as provided in paragraphs (2) and (3), the filing of the Appealing Spouse's Reply brief concludes the briefing schedule.~~

~~(2) Non-Appealing Spouse's Reply Brief. 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, may only address points of disagreement with the Appealing Spouse's Reply Brief.~~

~~(3) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, may only address points of disagreement with the Appealing Spouse's Reply Brief and the Non-Appealing Spouse's Opening and Reply Briefs. The rules in section 5431, subdivision (c)(2), apply to this paragraph. However, the 15-day period described in section 5431, subdivision (c)(2)(A), begins on the later of:~~

~~(A) The date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief;~~

~~(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief, if one is filed; or~~

~~(C) The date on which it becomes known that the Non-Appealing Spouse will not file a Reply Brief.~~

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

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~~(5) Appealing Spouse's Supplemental Brief. If the Franchise Tax Board or the Non-Appealing Spouse file a Reply Brief, the Appealing Spouse may file a Supplemental Brief not later than 30 days from the later of:~~

~~(A) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief;~~

~~(B) The date the Chief of Board Proceedings acknowledges receipt of the Respondent's Reply Brief; or~~

~~(C) The date on which it becomes known that the Franchise Tax Board will not file a Reply Brief. The Appealing Spouse's Supplemental Brief, if filed, may only address points of disagreement with the Respondent's Reply Brief and the Non-Appealing Spouse's Reply Brief. The filing of the Appealing Spouse's Supplemental Brief concludes the briefing schedule.~~

~~(g) 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 will apply in addition to the other procedures set forth in this section:~~

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

~~(2) Regardless of whether the non-requesting spouse has joined the appeal, the Chief of Board Proceedings will notify the Franchise Tax Board and the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, the Franchise Tax Board and 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).~~

~~(3) If the Franchise Tax Board and/or the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse may file an additional brief. If the Franchise Tax Board did not provide information as permitted by paragraph (2), it may also file an additional brief. Additional briefs must 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 may only address points of disagreement with the information described in paragraph (2) of this subdivision.~~

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

~~(5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule will not be concluded until the requirements of this subdivision are satisfied.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~5435. ADDITIONAL BRIEFING.~~

~~(a) Appeals Division Requests for Additional Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.~~

~~(b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.~~

~~(c) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. 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.~~

~~(d) Timing of Request. 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.~~

~~(e) Notifying the Chief of Board Proceedings. The Chief of Board Proceedings must be notified promptly of any request made under this section and may postpone the scheduling or hearing of~~

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~~an appeal.~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

~~ARTICLE 4: REQUESTING AND SCHEDULING ORAL HEARINGS~~

~~5440. RIGHT TO REQUEST AN ORAL HEARING.~~

~~(a) Written Request Required. Every appellant has the right to an oral hearing before the Board upon written request, except as otherwise provided in any statute or regulation.~~

~~(1) In order to obtain an oral hearing, the appellant must file a written request not later than 30 days from the conclusion of briefing.~~

~~(2) Upon receipt of a timely request, the Chief of Board Proceedings will send written acknowledgment of the request to all parties pursuant to section 5522.1.~~

~~(3) An untimely request may be accepted and acknowledged if the Chief Counsel determines that the failure to make a timely request was due to reasonable cause.~~

~~(b) Innocent Spouse Appeals. Both the Appealing Spouse and the Non Appealing Spouse, as those terms are defined in section 5432, subdivision (b), may request an oral hearing pursuant to subdivision (a) of this section. The Non Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, the Board typically will conduct one oral hearing and invite both spouses to appear. However, the Board will conduct separate oral hearings if:~~

~~(1) A court order would prohibit the spouses from appearing at the same hearing; or~~

~~(2) The Chief of Board Proceedings, after consulting with the Board Chair, determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.~~

~~If the Board conducts separate oral hearings, the Board will not decide the appeal until both hearings have concluded.~~

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

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~~5441. SUBMISSION FOR DECISION WITHOUT ORAL HEARING.~~

~~(a) Generally. If the appellant does not request an oral hearing under section 5440, or if the appellant does not respond to a Notice of Hearing under section 5522.6, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.~~

~~(b) Innocent Spouse Appeals. If neither the Appealing Spouse nor the Non Appealing Spouse request an oral hearing under section 5440, or neither spouse responds to their Notice of Hearing under section 5522.6, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~5442. APPEALS REVIEW; SCHEDULING THE ORAL HEARING.~~

~~(a) If an oral hearing is granted under section 5440, the Appeals Division will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request additional briefing under section 5435, or may order a pre-hearing conference under section 5443, or both. When the Appeals Division determines that all relevant factual and legal issues have been addressed, then the Appeals Division will notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.~~

~~(b) Upon notification from the Appeals Division that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing under section 5522.6.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~5443. PRE-HEARING CONFERENCE.~~

~~(a) Purpose. The purpose of a pre-hearing conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing.~~

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~~(b) When to Hold a Pre-hearing Conference. A pre-hearing conference may be held only when an oral hearing has been granted under section 5440, and after the conclusion of briefing.~~

~~(1) The Appeals Division may order a pre-hearing conference in its discretion.~~

~~(2) Any party may make a written request for a pre-hearing conference. The request must be made not later than 15 days from the date on which the Chief of Board Proceedings acknowledges the request for an oral hearing. The Appeals Division may deny the request, with the approval of the Chief Counsel, if the Appeals Division determines that a pre-hearing conference is likely to be unproductive.~~

~~(3) The Board, at the oral hearing on the appeal, may order that a pre-hearing conference be held. In that circumstance, the hearing will be postponed until after the conclusion of the pre-hearing conference.~~

~~(c) Determining the Time and Location of the Pre-Hearing Conference. The Appeals Division will determine the time and location of the pre-hearing conference. Consistent with workload constraints, the Appeals Division will ensure that the pre-hearing conference is held at a time convenient to the appellant. The pre-hearing conference ordinarily must be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. With good cause and with the approval of the Chief Counsel, an in-person pre-hearing conference may be held outside of Sacramento.~~

~~(d) Notice and Scheduling. The Board Proceedings Division will schedule the pre-hearing conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties. The parties will be given notice no less than 15 days before the date of the pre-hearing conference, provided that the notice period may be waived upon agreement by all parties.~~

~~(e) Conduct and Nature of the Pre-hearing Conference. An employee of the Appeals Division will conduct the pre-hearing conference. To the extent possible, the conference holder will ensure that the pre-hearing conference is informal and non-adversarial. However, if the conference holder determines that the pre-hearing conference is unproductive or that a party is uncooperative, the conference holder may terminate the pre-hearing conference.~~

~~(f) Recording or Transcription. The conference holder will not record, videotape, or transcribe the pre-hearing conference. Any party may arrange for the pre-hearing conference to be recorded or transcribed, at that party's expense. If a transcript is made, the transcript must be made available to all participants and it will become a public record. However, in all cases, statements made by participants during the pre-hearing conference are not binding upon the Board.~~

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~~(g) Additional Briefing and Evidence. The holding of a pre-hearing conference does not prevent the Appeals Division from requesting additional briefing or evidence under section 5435.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~**5444. HEARING SUMMARY.**~~

~~(a) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to section 5522.6, the Appeals Division will prepare a Hearing Summary and submit the Hearing Summary to the Chief of Board Proceedings. The Hearing Summary will contain:~~

~~(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;~~

~~(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5452, if the Appeals Division determines that such a recommendation is appropriate;~~

~~(3) A discussion of the pre-hearing conference, if one was held, including any additional information, stipulations, and concessions resulting therefrom; and~~

~~(4) The Appeals Division's analysis and comments, including any questions posed to the parties.~~

~~(b) Except in the case of an appeal that involves a jeopardy determination, the Appeals Division will have at least 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.~~

~~(c) Citation prohibited. Hearing Summaries may not be cited as precedent in any appeal or other proceeding before the Board.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

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~~**ARTICLE 5: DECISIONS, OPINIONS, AND FRIVOLOUS APPEAL PENALTIES**~~

~~**5450. LETTER DECISIONS. (REPEALED 04/01/14)**~~

~~**5451. SUMMARY DECISIONS.**~~

~~(a) The Appeals Division will prepare a Summary Decision for an appeal when:~~

~~(1) The appeal is submitted for decision under section 5441 and the Appeals Division has not prepared a Formal Opinion under section 5452;~~

~~(2) Board staff is required to draft a nonprecedential opinion for the appeal under section 5551; or~~

~~(3) The Board directs Board staff to draft a nonprecedential opinion for the appeal under section 5551.~~

~~(b) The Appeals Division must submit the Summary Decision to the Board Proceedings Division upon completion and within any deadline set by the Board, and, if section 5552 applies, at least 60 days prior to the expiration of the 120-day period described in section 5552, subdivision (b). The Chief Counsel may extend the time for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair if such extension will not prevent compliance with section 5552, subdivision (b).~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

~~**5452. FORMAL OPINIONS.**~~

~~(a) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion for an appeal when the appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate. The Appeals Division will also prepare a Formal Opinion when the Board directs Board staff to draft a precedential opinion for the appeal under section 5551. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division upon completion and within any deadline set by the Board, and, if section 5552 applies, at least 60 days prior to the expiration of the 120-day period described in section 5552, subdivision (b). The Chief Counsel may extend the time for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair if such extension will not prevent compliance with section 5552, subdivision (b).~~

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~~(b) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:~~

- ~~(1) A brief explanation of any Board action taken on the appeal, including any determination regarding the outcome of the appeal and the order to prepare a Formal Opinion;~~
- ~~(2) A statement explaining when the period for filing a Petition for Rehearing will begin; and~~
- ~~(3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.~~

~~(c) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are 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.~~

~~The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

~~5453. NOTICE OF BOARD'S DETERMINATION.~~

~~(a) If the Board votes to determine an appeal and does not adopt a written opinion or direct the Appeals Division to prepare a written opinion for the appeal at the time of the vote, and the~~

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~~Board is not required to adopt a written opinion for the appeal, then:~~

~~(1) The Appeals Division will prepare a notice of the Board's determination, which shall contain a brief statement of the reasons for the Board's determination; and~~

~~(2) A copy of the notice shall be mailed to each party not later than three business days from the date of the Board's determination.~~

~~(b) A notice may not be cited as precedent in any appeal or other proceeding before the Board.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

~~**5454. FRIVOLOUS APPEAL PENALTY.**~~

~~(a) Generally. If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, under Revenue and Taxation Code section 19714, on the appellant or appellants that filed the appeal. The Board may impose a frivolous appeal penalty on its own or upon the recommendation of the Appeals Division.~~

~~(b) Factors Considered. The following factors are considered in determining whether, and in what amount, to impose a frivolous appeal penalty:~~

~~(1) Whether the appellant is making arguments that the Board, in a Formal Opinion, or courts have rejected;~~

~~(2) Whether the appellant is making the same arguments that the same appellant made in prior appeals;~~

~~(3) Whether the appellant filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;~~

~~(4) Whether the appellant has a history of filing frivolous appeals or failing to comply with California's tax laws.~~

~~The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.~~

~~Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 19714. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047,~~

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~~19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345,
19346, 19714, and 20645.~~

~~ARTICLE 6: PETITIONS FOR REHEARING AND REHEARINGS~~

~~5460. FINALITY OF DETERMINATION.~~

~~(a) Finality. Generally, the Board's vote to determine an appeal becomes final 30 days from the date of the vote unless, within that 30-day period, a party to the appeal files a Petition for Rehearing. However, if the Board votes to determine an appeal and the Board's determination is held in abeyance under section 5551, then the Board's determination in the appeal becomes final 30 days from the date of the Board's later vote to adopt a written opinion or determine the appeal without adopting a written opinion.~~

~~(b) Finality Independent of Notice. The finality of the Board's vote to determine an appeal is not dependent upon the date of any notice of the determination. In addition, the determination may become final even if Board Staff fails to send, or a party fails to receive, notice.~~

~~(c) Number of Petitions for Rehearing.~~

~~(1) The filing of a Petition for Rehearing by one party does not prevent the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed on time. However, no party may file more than one Petition for Rehearing.~~

~~(2) In addition, no party may file a Petition for Rehearing in response to a Decision on Petition for Rehearing or the Board's vote to determine an appeal after a rehearing. If the Board Proceedings Division receives a submission intended as such a Petition for Rehearing, the Board Proceedings Division must reject the submission.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

~~5461. PETITIONS FOR REHEARING.~~

~~(a) Definitions. For purposes of this article:~~

~~(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.~~

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~~(b) Time for Filing. A Petition for Rehearing is timely if it is mailed within the 30-day period described in section 5460, subdivision (a). The date of mailing is determined under section 5422, subdivision (c).~~

~~(c) Format and Contents of the Petition for Rehearing. Every Petition for Rehearing must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:~~

- ~~(1) The name or names of the party or parties filing the Petition for Rehearing;~~
- ~~(2) The address and telephone number of each party and, if applicable, each party's authorized representative;~~
- ~~(3) Any portion of the amount at issue conceded by the party;~~
- ~~(4) The signature of each party or the signature of an authorized representative made on behalf of each party filing the Petition for Rehearing; and~~
- ~~(5) All the facts and legal authorities necessary to:
 - ~~(A) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the appeal;~~
 - ~~(B) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;~~
 - ~~(C) Identify newly discovered, relevant evidence, which the Filing Party could not have reasonably discovered and provided prior to the Board's decision; or~~
 - ~~(D) Demonstrate there was insufficient evidence to justify the Board's decision or the decision is contrary to law.~~~~

~~(d) Accepting or Rejecting the Petition for Rehearing.~~

- ~~(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings must determine whether the Petition for Rehearing is timely. If any question arises as to the timelines of a Petition for Rehearing, the Chief of Board Proceedings will refer the Petition to the Chief Counsel.~~
- ~~(2) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is timely, the Chief of Board Proceedings must accept the Petition for Rehearing.~~

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~~The Chief of Board Proceedings then will notify all parties in writing of the acceptance. The notice will explain each party's rights and obligations under this article. The Chief of Board Proceedings will provide one copy of the Petition for Rehearing and any supporting documents to the Non-Filing Party.~~

~~(3) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings must reject the Petition for Rehearing. The Chief of Board Proceedings then will notify all parties in writing of the rejection and the reasons therefor.~~

~~(e) Perfecting the Petition for Rehearing.~~

~~(1) The briefing and resolution of a Petition for Rehearing cannot begin until the Petition for Rehearing is perfected. A Petition for Rehearing is "perfected" if it contains substantially all of the information required by subdivision (c). A Petition for Rehearing is not perfected until it contains sufficient information to identify and contact each Filing Party or authorized representative, along with the signature of each Filing Party or authorized representative.~~

~~(2) If a timely Petition for Rehearing is not perfected, the Chief of Board Proceedings will notify the Filing Party in writing of the need to perfect the Petition for Rehearing. That notice will explain what information is necessary to perfect the Petition for Rehearing.~~

~~(A) The Filing Party must perfect the Petition for Rehearing not later than 30 days from the date of the notice. The Chief of Board Proceedings may extend the deadline for perfecting a Petition for Rehearing upon a showing of extreme hardship or upon written agreement by the parties. All parties will be notified in writing of any extension.~~

~~(B) Perfecting the Petition for Rehearing is accomplished by submitting the information necessary to perfect the Petition for Rehearing to the Chief of Board Proceedings.~~

~~(C) If the Filing Party fails to perfect the Petition for Rehearing within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the Petition for Rehearing will be rejected. All parties will be notified in writing of the rejection.~~

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

~~5462. BRIEFING ON PETITION FOR REHEARING.~~

~~(a) Subdivisions (b)(3), (c), (d), (e), (f), and (g) of section 5430 apply to the administration of~~

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~~this section and to any documents filed under this section. When applied to this section, provisions of section 5430 must be interpreted within the context of this section.~~

~~(b) Briefing Schedule.~~

~~(1) Unless otherwise directed by Board Staff, the Filing Party will not be permitted to submit any additional briefing after the submission of a perfected Petition for Rehearing.~~

~~(2) Not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of a perfected Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing.~~

~~(3) 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 (2).~~

~~(c) Additional Briefing. This section does not prevent a request for additional briefing under section 5435.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~**5463. DECISIONS ON PETITIONS FOR REHEARING.**~~

~~(a) Definition. A “Decision on Petition for Rehearing” is a written decision that provides the basis of the Board’s decision to grant or deny a rehearing. The Decision on Petition for Rehearing does not represent or reflect the Board’s decision to grant or deny the rehearing unless and until it is adopted by the Board.~~

~~(b) Preparing the Decision on Petition for Rehearing. Upon the conclusion of briefing under section 5462, the Appeals Division will prepare a Decision on Petition for Rehearing. Upon completion, the Appeals Division will submit the Decision on Petition for Rehearing to the Chief of Board Proceedings.~~

~~(c) Adoption, Confidentiality, and Date of Decision. The Decision on Petition for Rehearing will be submitted to the Board for adoption as a nonappearance matter and, unless otherwise directed by the Board, it remains confidential until adopted by the Board.~~

~~(1) If the Board grants a Petition for Rehearing, then the Board’s initial determination in the appeal will be held in abeyance pending resolution of the rehearing. The Board, in its discretion, may limit the scope of the rehearing.~~

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~~(2) If the Board denies a Petition for Rehearing, then the Board's decision to deny the petition becomes final 30 days from the date on which the Board voted to deny the rehearing.~~

~~(d) Citation. A Decision on Petition for Rehearing may not 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.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Section 657, Code of Civil Procedure; and Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

~~5464. BRIEFING ON REHEARING.~~

~~(a) Section 5430, subdivisions (b)(3), (c), (d), (e), (f), and (g) apply to the administration of this section and to any documents filed under this section. When applied to this section, provisions of section 5430 must be interpreted within the context of this section.~~

~~(b) Briefing Schedule; Single Petition Granted. If the Board grants a single Petition for Rehearing, the following briefing schedule applies:~~

~~(1) Filing Party's Opening Brief. The Filing Party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petition for Rehearing.~~

~~(2) Non-Filing Party's Reply Brief. The Non-Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Filing Party's Opening Brief.~~

~~(3) Filing Party's Reply Brief. The Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Non-Filing Party's Reply Brief.~~

~~(c) Briefing Schedule; Multiple Petitions Granted. If there is more than one Filing Party and the Board grants more than one Petition for Rehearing, the following briefing schedule applies:~~

~~(1) Opening Briefs. Each party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petitions for Rehearing.~~

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~~(2) Reply Briefs. Each party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the last brief filed pursuant to paragraph (1).~~

~~(d) Additional Briefing. This section does not prevent a request for additional briefing under section 5435.~~

~~(e) Alternate Briefing Schedule on Rehearing. Notwithstanding subdivisions (b) and (c), the Board may order any briefing schedule that it deems appropriate.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

~~**5465. DECISION ON REHEARING.**~~

~~(a) Hearing and Decision. At the conclusion of briefing under section 5464, the provisions of articles 4 and 5 of this chapter will apply, except that any reference to a “decision” or “opinion” is deemed a reference to a decision or opinion on rehearing, and any reference to the briefing schedule is deemed a reference to the briefing schedule under section 5464.~~

~~(b) Finality of Decision. The Board’s decision on rehearing is the Board’s decision on the appeal and becomes final 30 days from the date of the decision.~~

~~Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.~~

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5510. GENERAL APPLICATION OF CHAPTER 5.

(a) This chapter applies to appeals submitted to the Board for decision under any of the following laws:

- ~~(1) Administration of Franchise and Income Tax Laws (Rev. & Tax. Code, §§ 18401-19802).~~
- ~~(2) (1) Alcoholic Beverage Tax Law (Cal. Const., art. XX, § 22; Rev. & Tax. Code, §§ 32001-32557).~~
- ~~(3) California Tire Fee (Pub. Resources Code, §§ 42860-42895).~~
- ~~(4) Cigarette and Tobacco Products Tax Law (Cal. Const., art. XIII B, § 12; Health & Saf. Code, §§ 104555-104558; Rev. & Tax Code, §§ 30001-30482).~~
- ~~(5) Diesel Fuel Tax Law (Rev. & Tax. Code, §§ 9401-9433 & 60001-60708).~~
- ~~(6) Emergency Telephone Users Surcharge Law (Rev. & Tax. Code, §§ 41001-41176).~~
- ~~(7) Energy Resources Surcharge Law (Rev. & Tax. Code, §§ 40001-40216).~~
- ~~(8) Fee Collection Procedures Law (Rev. & Tax. Code, §§ 55001-55381).~~
- ~~(9) Hazardous Substances Tax Law (Rev. & Tax. Code, §§ 43001-43651), which is applicable to the Childhood Lead Poisoning Prevention Fee (Health & Saf. Code, §§ 105275-105310) and Occupational Lead Poisoning Prevention Fee (Health & Saf. Code, §§ 105175-105197).~~
- ~~(10) Integrated Waste Management Fee Law (Pub. Resources Code, §§ 40000-40201, 44001-44006, 48000-48008; Rev. & Tax. Code, §§ 45001-45984).~~
- ~~(11) Marine Invasive Species Fee Collection Law (Pub. Resources Code, §§ 71200-71271; Rev. & Tax. Code, §§ 44000-44008).~~
- ~~(12) Motor Vehicle Fuel Tax Law (Cal. Const., art. XIX, §§ 1-9; Rev. & Tax. Code, §§ 7301-8526).~~
- ~~(13) Natural Gas Surcharge Law (Pub. Util. Code, §§ 890-900).~~
- ~~(14) Oil Spill Response, Prevention, and Administration Fees Law (Gov. Code, §§ 8670.1-~~

~~8670.51.1; Rev. & Tax. Code, §§ 46001-46751).~~

~~(15) (2) Private Railroad Car Tax (Cal. Const., art. XIII, § 19; Rev. & Tax. Code, §§ 11201-11702).~~

~~(16) (3) Publicly Owned Property (Cal. Const., art. XIII, § 11, subd. (g); Rev. & Tax. Code, §§ 1840 & 1841).~~

~~(17) Sales and Use Tax Law, Bradley Burns Uniform Sales and Use Tax Law, and Transactions and Use Tax Law (Rev. & Tax. Code, §§ 6001-7176, 7200-7226, 7251-7279.6, respectively).~~

~~(18) Senior Citizens Homeowners and Renters Property Tax Assistance Law (Rev. & Tax. Code, §§ 20501-20646).~~

~~(19) (4) State-Assessed Property (Cal. Const., art. XIII, § 19; Rev. & Tax. Code, §§ 721-868, 4876-4880, 5011-5014).~~

~~(20) (5) Tax on Insurers Law (Cal. Const., art. XIII, § 28; Rev. & Tax. Code, § 12001-13170).~~

~~(21) Timber Yield Tax (Rev. & Tax. Code, §§ 423.5, 431-437, 38101-38908).~~

~~(22) Underground Storage Tank Maintenance Fee (Health & Saf. Code, §§ 25280-25299.99.3; Rev. & Tax. Code, §§ 50101-50162).~~

~~(23) Use Fuel Tax (Rev. & Tax. Code, §§ 8601-9433).~~

~~(24) (6) Welfare Exemption (Cal. Const., art. XIII, § 4, subd. (b); Rev. & Tax. Code, §§ 214-214.15, 254.5-254.6, 270-272).~~

(b) This chapter sets forth rules of general application for all appeals submitted to the Board for decision under the laws listed in subdivision (a) of this section. Where the procedure for a specific law differs from the general rule, the more specific procedure will be provided or cross-referenced.

~~(e) The rules and procedures in chapter 4 (commencing with section 5410) apply to appeals from the actions of the Franchise Tax Board. To the extent that provisions in this chapter conflict with chapter 4, the provisions of chapter 4 control.~~

~~(d) To the extent that provisions in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.~~

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601,~~ Revenue and

Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251,~~ 11651, 13170, ~~30451,~~ 32451, ~~38701,~~ 40171, 41128, 43501, 45851, 46601, ~~50152, 55301 and 60601,~~ Revenue and Taxation Code.

5511. DEFINITIONS.

The following definitions apply to this division, unless otherwise indicated:

(a) “Appeal” means:

- (1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, ~~petition for reconsideration of successor liability,~~ or petition for rehearing;
- (2) Administrative protest;
- (3) Claim, including a claim for refund;
- ~~(4) Appeal from an action of the Franchise Tax Board under chapter 4;~~
- (5) Application, including, but not limited to, an application for administrative hearing; or
- (6) Any other item that may be scheduled for a Board hearing conducted in accordance with chapter 5 of this division, including, but not limited to, requests for relief of taxes, interest, or penalties.

An appeal is also referred to as a “matter.”

(b) “~~Appeals Division~~Attorney” means an Attorney in the Appeals Division of the Board of Equalization’s Legal Department assigned to handle an appeal. “Appeals Staff” means an employee or employees of the State Board of Equalization assigned to work with the Appeals ~~Division~~Attorney of the Legal Department.

(c) “Board” means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(d) “Board Chair” or “Chair” means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.

(e) “Board hearing” means a taxpayer’s opportunity to appear, along with the Department, before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer’s appeal, also referred to as an “oral hearing” or “hearing.”

(f) “Board Member” means an individual Member of the State Board of Equalization. “Board

Member” includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller’s statutory duties on the Board.

(g) “Board Proceedings Division” means the Board Proceedings Division of the State Board of Equalization. “Board Proceedings Staff” means an employee or employees of the Board Proceedings Division.

(h) “Board Staff” means an employee or employees of the State Board of Equalization. “Board Member’s Staff” refers to Board Staff assigned to the office of a Board Member.

(i) “Brief” means a written document that contains an argument supporting a party’s position, whether citing specific laws, regulations, or other authorities or making arguments without citing specific authorities.

(j) “Chief Counsel” means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.

(k) “Chief of Board Proceedings” means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

(l) “Delivery Service” means a trade or business that delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records the date on which it accepts each document for delivery, either electronically to its database kept in the regular course of its business, or on the cover in which a document is delivered, or both.

(m) “Department” means the Property and Special Taxes Department of the Board of Equalization, ~~and Sales and Use Tax Department of the Board of Equalization, Special Operations and Investigations Division of the Legal Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board,~~ where appropriate.

(n) “Deputy Director” means the Deputy Director of the State Board of Equalization’s ~~Sales and Use Tax Department~~ or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.

(o) “Executive Director” means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.

(p) “Extreme hardship” means that a person exercising ordinary care is unable to or restricted

from complying with a provision of this division due to extraordinary circumstances beyond the person's control, such as illness, death, or disaster.

~~(q) "Formal Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal from an action of the Franchise Tax Board and sets precedent.~~

(r) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on an appeal for which a Board hearing has been scheduled.

~~(s) "Memorandum Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal; other than an appeal from an action of the Franchise Tax Board and sets precedent.~~

(t) "Nonappearance matter" means an appeal submitted to the Board for decision or a written opinion submitted to the Board for potential adoption on the basis of the existing record.

(u) "Nonprecedential opinion" means a Summary Decision.

(v) "Party" means the taxpayer and the Department.

(w) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.

~~(x) "Precedential opinion" means a Formal Opinion or Memorandum Opinion.~~

(y) "Reasonable cause" means circumstances that would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.

(z) "Summary Decision" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is not intended to set precedent.

(aa) "Tax" means any tax, ~~fee, surcharge~~, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of an appeal before the Board.

(bb) "Taxpayer" means an individual or business entity that is a taxpayer, ~~fee payer, surcharge payer~~, appellant, petitioner, applicant, claimant, or any other person who has an appeal before the Board or who is a person directly interested in an appeal before the Board. The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

(cc) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

(dd) “Written opinion” means a ~~Formal Opinion~~, Memorandum Opinion or Summary Decision.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. References: Article XIII, Section 17, California Constitution; Sections 15606 and 15640, Government Code; and Sections 20, 40, 254.5, 254.6, 742, 748, 1840, 5107, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196~~, 12429, 12636, 12637, 12951, 12977, 12978, 12981, ~~18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581~~, Revenue and Taxation Code.

5521. MONTHLY BOARD MEETINGS.

(a) Monthly Meetings. The Board holds monthly Board meetings. Board meetings are conducted in Sacramento and may also be held at other locations within the state for the convenience of taxpayers and their representatives residing outside the Sacramento area.

(b) Additional Meetings. At the discretion of the Board Chair, additional meetings may be conducted at such times and places as needed within the state.

(c) Teleconference Board Meetings. When circumstances require, the Board may hold meetings via teleconference as provided in Government Code section 11123.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections ~~15606, 15640~~; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15609, 15610.

5521.5. ADOPTION OF BOARD MEETING CALENDAR.

(a) The Board generally adopts a meeting calendar for the following calendar year, but may adopt a meeting calendar for any appropriate period.

(b) Within 15 days of adoption, the meeting calendar will be available for viewing by the public on the Board's website at www.boe.ca.gov.

(c) The Chief of Board Proceedings may cancel a portion of a Board meeting listed on a previously adopted meeting calendar after giving notice to the Board Chair. A majority vote of the Board may cancel or change a meeting date or location identified on a previously adopted meeting calendar. Board Proceedings Staff must promptly amend the publicly available meeting calendar to reflect any changes made pursuant to this subdivision.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15609, 15610.

5522. RIGHT TO REQUEST AN ORAL HEARING.

(a) Every taxpayer may file a written request for an oral hearing before the Board regarding any matter subject to the provisions of this chapter.

(b) Written requests for an oral hearing must be granted where the Board is required to grant an oral hearing on the taxpayer's matter by a statute or regulation, and will be liberally granted with regard to discretionary matters, unless an oral hearing is being requested for the primary purpose of delay or the taxpayer's position is frivolous or groundless.

~~(e) Business and Special Taxes: A written request for an oral hearing must be filed no later than 30 days after the date the Appeals Division issues its Decision and Recommendation pursuant to chapter 2 of this division.~~

~~(d)~~(c) Property Taxes: A written request for an oral hearing must be included in the taxpayer's petition or application pursuant to chapter 3 of this division.

~~(d) Appeals from Actions of the Franchise Tax Board: A written request for an oral hearing before the Board must be filed in accordance with section 5440 of chapter 4 of this division.~~

~~(e)~~(d) The Board may hold an oral hearing to discuss any matter whether or not an oral hearing has been timely requested in accordance with subdivisions (b) and (c), ~~(d), and (e)~~.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~, Revenue and Taxation Code. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151~~,

~~9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5522.2. ACKNOWLEDGEMENT OF REQUEST FOR ORAL HEARING.

(a) If Board Staff receives a written request for an oral hearing or confirmation that a previously requested hearing is still desired, the Board Proceedings Division must issue a letter acknowledging the request. The acknowledgment letter will indicate whether an oral hearing before the Board has been granted, and, if granted, will also provide the location where the oral hearing will be scheduled.

(b) Taxpayers must submit requests to change the location where an oral hearing is scheduled to the Board Proceedings Division upon receipt of the acknowledgement letter. Upon receipt of a request to change location, the Chief of Board Proceedings will review the request, prepare a recommendation, and submit the request and recommendation to the Board Chair for decision.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

5522.4. CONSOLIDATION FOR HEARING OR DECISION.

- (a) Multiple matters may be consolidated for hearing or decision if the facts and issues are similar and no substantial right of any party will be prejudiced.
- (b) The Board Members, Appeals Staff, or any party may request a consolidation, or object to a consolidation of, matters for hearing or decision.
- (c) Requests for and objections to the consolidation of matters for hearing or decision must be submitted in writing to the Board Proceedings Division and to all parties to the matters at issue.
 - (1) A request for consolidation should establish that the relevant facts and issues in each matter to be heard or decided are similar, and that no substantial right of any party would be prejudiced by consolidation.
 - (2) An objection to the consolidation of matters to be heard or decided should establish that consolidation would have an adverse effect on a substantial right of the objecting party.
- (d) If the Chief Counsel determines that consolidation would not prejudice a substantial right of any party, or all of the parties to such matters agree to consolidation, the Chief of Board Proceedings will consolidate such matters and notify all of the parties. If the Chief Counsel determines that consolidation would have an adverse effect on a substantial right of any party, the matters may not be consolidated regardless of the parties' consent.
- (e) Any party may file an objection to consolidation not later than 15 days from the date the Chief of Board Proceedings issues the notice described in subdivision (d). Upon receipt of an objection, the matters must be deconsolidated unless the Chief Counsel determines that the objection is frivolous or deconsolidation would result in the misuse of administrative resources.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, ~~18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044,~~~~

~~55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5522.6. NOTICE OF BOARD HEARING AND RESPONSE.

(a) General Procedure.

(1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 75 days in advance of the parties' scheduled hearing date.

(2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 45 days in advance of the parties' scheduled hearing date.

(b) Notice of Board Hearing. The notice must contain the following information:

- (1) The name, address, and case identification number of the taxpayer;
- (2) The session, date, and location of the hearing;
- (3) The due date of the Response to Notice of Board Hearing;
- (4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and
- (5) The date the Notice of Board Hearing was mailed.

(c) Response to Notice of Board Hearing. Each party or each party's authorized representative must return the Response to Notice of Board Hearing no later than 15 days from the date the Notice of Board Hearing was mailed. Each party or party's authorized representative must respond to the Notice of Board Hearing by indicating that:

- (1) The party or party's authorized representatives will appear at the hearing at the time and place noted;
- (2) The party waives the opportunity to appear and be represented at the hearing and requests the Board to decide the matter on the basis of the written record on file and without an oral hearing; or
- (3) The party withdraws the party's request for a hearing.

A party or party's representative may also include a request for an interpreter in the Response

to Notice of Board Hearing. Persons participating in Board meetings who speak a language other than English and require an interpreter are entitled to an interpreter at no charge.

(d) Waiver of Notice. The 75-day and 45-day notice periods may be waived upon agreement among all parties and the Chief Counsel. If the 75-day or 45-day notice period is waived, the Chief of Board Proceedings will modify any briefing schedule as appropriate.

(e) Failure to Respond to Notice of Board Hearing.

(1) If the party or parties who requested an oral hearing all fail to return the Response to Notice of Board Hearing by the deadline stated in the Notice of Board Hearing, the matter will be submitted to the Board for decision on the basis of the written record on file without an oral hearing.

(2) Board Proceedings Staff will notify the taxpayer, and any state agency that is a party to a matter in writing that the matter has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.

(3) Prior to a Board decision, the Chief Counsel, in his or her discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of reasonable cause.

(4) If the Chief Counsel makes an exception, the Board Proceedings Division must promptly provide notice to all the parties to such matter.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5522.8. DISMISSAL AND POSTPONEMENT.

(a) Dismissal. The Chief of Board Proceedings will dismiss an appeal under any of the following circumstances:

- (1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;
- (2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or
- (3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.

(b) Postponement of Board Hearing or Briefing. A Board Member, the Appeals ~~Division~~ Attorney, or any party to an appeal may submit a request to the Chief of Board Proceedings to postpone a Board hearing or the due date of any brief for reasonable cause.

(1) Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a postponement for a period of 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel in any of the following circumstances:

(A) A party or a representative of a party cannot appear at a Board hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;

(B) A party or a representative of a party cannot appear at a Board hearing or meet a briefing deadline due to an unavoidable scheduling conflict;

(C) A party has obtained a new representative who requires additional time to become familiar with the case;

(D) The Chief of Board Proceedings has been informed that all parties desire a postponement; or

~~(E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the appeal is being reviewed for possible settlement consideration; or~~

~~(F)~~(E) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.

(2) Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, if the parties to an appeal have entered into formal settlement negotiations.

(3) Postponement for Litigation. The Chief Counsel may, in his or her discretion, grant a postponement if the Chief Counsel determines that civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a material bearing on the appeal being deferred or postponed.

~~(4) Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone an appeal subject to chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify the parties that the appeal is postponed until the taxpayer's bankruptcy is concluded.~~

~~(5)~~(4) The Chief Counsel may, with the consent of the Board Chair, grant a postponement for any reason.

(c) Additional Postponements. The Chief Counsel may grant additional postponements that are not described in subdivision (b) of this section upon a showing of extreme hardship and only with the consent of the Board Chair.

(d) The Chief of Board Proceedings must provide written notification to the parties if a postponement has been granted.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections 15606 and 15640, Government Code; and Sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581~~, Revenue and Taxation Code.

5523. REPRESENTATION AT HEARINGS.

(a) Representation. During the hearing, taxpayers may be represented by any authorized person or persons, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate. For purposes

of this section, a person whose only function is to interpret for the taxpayer is not a representative.

(b) Recognition. The Board will recognize all authorized representatives who are identified in writing or orally by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform in preparation for and during the hearing.

(c) Substitution or Withdrawal. Taxpayers must promptly notify the Chief of Board Proceedings in writing of any substitutions or withdrawals of representation ~~and must also notify the Franchise Tax Board in all matters that are subject to chapter 4 of this division.~~

~~(d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 may not represent any taxpayer in a matter that is subject to chapter 4 of this division after the Franchise Tax Board gives the Chief of Board Proceedings notice of the suspension or disbarment.~~

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, ~~15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5523.1. POWER OF ATTORNEY.

(a) Requirement. The Board or Board Staff may require a taxpayer to complete a Board approved Power of Attorney in order to authorize another person or persons to act on the taxpayer's behalf. ~~The Power of Attorney must be a standard form adopted in conjunction with the Franchise Tax Board to be used in either State Board of Equalization or Franchise Tax Board matters.~~

(b) Form. The Power of Attorney ~~must~~ shall include the following information:

- (1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
- (2) The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
- (3) The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative's authority; and the tax period(s) for which the authorization is granted;
- (4) A statement that the Power of Attorney revokes all prior Powers of Attorney, with any exceptions to the revocation;
- (5) The time period during which the Power of Attorney shall be in effect; and
- (6) The signature(s) and title of all affected taxpayers and the date of signature.

(c) In lieu of the standard form described in subdivision (a), Board Staff will accept any written document containing substantially all of the provisions required by subdivision (b), including but not limited to a statutory form power of attorney complying with the provisions of Probate Code section 4401.

(d) If an issue arises as to a representative's authorization under any power of attorney, Board Staff will forward the document to the Chief Counsel, who will determine its legal effect.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, ~~15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333,~~

~~60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5523.2. CONTRIBUTION DISCLOSURE FORMS.

(a) The Board is subject to the Quentin L. Kopp Conflict of Interest Act of 1990 (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings (as defined in Gov. Code, § 15626, subd. (h)(5)). In order to comply with the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990:

(1) Every Board Member must make the disclosures required by California Code of Regulations, title 18, section 7009; and

(2) Every party, participant and agent as defined in California Code of Regulations, title 18, sections 7004 through 7006 must complete a contribution disclosure form as required by California Code of Regulations, title 18, section 7011.

(b) Approximately 45 days prior to a hearing, Board Proceedings Staff will mail contribution disclosure forms to all parties, participants, and agents as defined in California Code of Regulations, title 18, sections 7004 through 7006, inquiring as to whether contributions have been made to one or more Board Members.

(c) Contribution disclosure forms should be returned to the Board Proceedings Division prior to the recipient's scheduled hearing.

(d) The rules and definitions contained in Government Code section 15626 and California Code of Regulations, title 18, sections 7001 through 7011 apply to this section.

Note: Authority cited: Government Code section 15606. Reference: Government Code section 15606, 15626.

5523.3. HEARING SUMMARY.

(a) Preparation. The Appeals ~~Division~~Attorney should prepare and submit an objective Hearing Summary to the Chief of Board Proceedings:

(1) Generally within 40 days of the oral hearing date, with respect to matters arising under chapter 2 of this division; or

(2) As provided in chapter 3 of this division, ~~with respect to matters arising under chapter 3;~~
~~or~~

(3) ~~As provided in section 5444, with respect to matters arising under chapter 4 of this~~

~~division.~~

If the Appeals ~~Division~~Attorney determines that a Hearing Summary requires modification after initial distribution, the Appeals ~~Division~~Attorney will promptly provide the modifications to the Chief of Board Proceedings.

(b) Date of Mailing. The Board Proceedings Division must mail, transmit via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provide the taxpayer and the Department with a copy of the Hearing Summary, generally within 30 days of the oral hearing date. Modifications to a Hearing Summary after initial distribution must be mailed, transmitted via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provided to the taxpayer and the Department promptly after the modified Hearing Summary is provided to the Chief of Board Proceedings in a manner intended to provide prompt notice.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, ~~6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5523.4. ADDITIONAL BRIEFING.

(a) Additional Briefing. If the ~~Board, a Board Member, or the Assistant Chief Counsel for the Appeals Division~~ or his or her designee determines that insufficient briefing has been provided under chapter 2 of this division after issuance of the Hearing Summary, but prior to an oral hearing before the Board, ~~a Board Member or the Assistant Chief Counsel for the Appeals Division~~ or his or her designee may request additional briefing from either party in a writing addressed to the Chief of Board Proceedings.

(b) Briefing Schedule. Upon receipt of a request for additional briefing described in subdivision (a), the Chief of Board Proceedings will set a briefing schedule and notify the parties that

additional briefing is required.

(c) General Requirements. All briefs permitted to be filed pursuant to this section must follow the requirements listed below:

(1) Be addressed and mailed to the Chief of Board Proceedings;

(2) Be mailed or personally delivered to the other parties;

(3) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 ½” by 11” pages, printed on one side only; or

(B) Not exceed 15 typed or handwritten, single-spaced 8 ½” by 11” pages, printed on one side only;

(C) Type-font size of at least 10 points or 12 characters per inch;

(D) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

(4) Exception. An exception to the requirements of paragraph (3) may be granted prior to the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

~~(d) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters that are subject to the provisions of chapter 4 of this division. Section 5435 of chapter 4 of this division applies to such additional briefing.~~

~~(e)~~(d) Property Tax Matters. This section applies to additional briefing in matters that are subject to chapter 3, article 3 of this division, and does not apply to matters subject to chapter 3, article 2 of this division.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5,~~

~~32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5523.5. PREPARATION FOR BOARD HEARING AND SUBPOENAS.

(a) Scope of Hearing. An oral hearing will be limited to consideration of the facts, issues, values, or precise elements in dispute in a taxpayer's matter. The Board may ask the parties questions during an oral hearing, and will afford the parties an opportunity to respond.

(b) Subpoenas. The Board may issue subpoenas for the attendance of witnesses or the production of books, records, accounts and papers before the Board, the Board's Executive Director, individual Board Members, or any other representative of the Board in accordance with Government Code section 15613. An application for a subpoena for the production of books, records, accounts and papers must be supported by an affidavit showing good cause and containing the information prescribed by Code of Civil Procedure section 1985. Any affidavit filed in support of an application for a subpoena must be served with the subpoena. A subpoena must be signed by a Board Member, the Board's Executive Director, or other person designated by the Executive Director. Taxpayers are required to serve subpoenas issued pursuant to their request upon the witnesses identified in the subpoenas and will bear any expenses incurred.

(c) Time Allocation. The Chief of Board Proceedings will generally allocate a total of 35 minutes per hearing. The Chief of Board Proceedings will inform the parties and the Board of the time allocations prior to the hearing.

(d) Additional Time. A party may request additional time to present a complex matter. A request for additional time must be submitted to the Board Proceedings Division in writing no less than 15 days prior to the hearing, and state the reason(s) why additional time is needed. The Chief of Board Proceedings must submit requests for additional time to the Board Chair for approval. The Board Chair may grant a party whatever additional time the Board Chair determines the party needs to present a complex matter. Board Proceedings Staff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.

(e) Modification. At the oral hearing, the Board Chair may limit the time for a party's presentation if, in his or her discretion, the Board Chair determines that the party's presentation has no purpose other than to delay the proceedings. The Board Chair may, in his or her discretion, grant a party additional time to complete its presentation during the hearing.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15606, 15613, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581~~.

5523.6. PRESENTATION OF EVIDENCE.

(a) Admissible Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented at a Board hearing. Each party will be permitted to comment on or respond to any affidavits, declarations, or other evidence.

(b) Submission of Evidence. Parties should submit documentary evidence to the Board Proceedings Division and to the opposing party at least 14 days prior to the Board hearing in order to facilitate the orderly consideration of the issues at the hearing. Although a party may submit documentary evidence at the hearing, the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. The Board will consider any objections to, and comments on, the evidence presented at the hearing in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

(c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to the submission of an appeal for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.

(d) Official Notice. The Board may on its own or at the request of a party take official notice of any fact that may be judicially noticed by the courts of this State. Any party may, at the Board hearing or in its petition for rehearing, contest any matter thus noticed.

(e) Distribution. Board Proceedings Staff must provide copies of any documentary evidence that

has been submitted or officially noticed, any written arguments concerning the relevance of the evidence, and any stipulations to the Board Members, each party, and the Appeals Division.

(f) Use of Electronic Presentation. A party may only use an electronic presentation during a Board hearing if:

(1) The hearing is held at the Board's headquarters ~~office at 450 N Street, in Sacramento,~~ or another location that is equipped for electronic presentations; and

(2) The presentation is submitted to the Board Proceedings Division at least five days prior to the scheduled hearing date.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Sections 15606 and 15640, Government Code; Sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581,~~ Revenue and Taxation Code.

5523.7. WITNESSES.

(a) Witnesses. The taxpayer and the Department may offer the testimony of any person who can provide relevant information concerning the matter, including representatives of the taxpayer and the Department who have knowledge concerning the facts at issue in the matter.

(b) If a witness refuses to testify or produce books, records, accounts, or papers pursuant to a Board issued subpoena, the Board may initiate contempt proceedings as provided in Government Code section 15614 to compel compliance. A person found guilty of contempt may be punished by a fine and imprisonment in the county jail.

(c) As part of the Response to Notice of Board Hearing, the parties should provide the Board Proceedings Division and the opposing party with the name and address of any witness who will

testify, and a brief description of the purpose of their testimony, in advance of the hearing.

(d) The Board Chair may, at the Board Chair's discretion, direct any witness to testify under oath or affirmation, and any Board Member or party to a matter may request that any witness testify under oath or affirmation.

(e) Each party may cross-examine opposing witnesses. However, the Board will not compel witnesses to answer questions in any particular manner.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.~~

5523.8. COMMUNICATIONS WITH BOARD MEMBERS.

The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties, subject to the restrictions on ex parte communications referenced in Government Code section 15609.5. ~~Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and a Board Member's Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.~~

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15609.5, 15610, ~~15623;~~ Revenue and Taxation Code section ~~7081.~~

5530. PUBLIC AGENDA NOTICE.

(a) Board Proceedings Staff must mail a Public Agenda Notice showing the matters and other items of business scheduled to be conducted at an upcoming Board meeting to those interested parties who have requested such notice in writing. The Public Agenda Notice may be mailed via electronic mail or the U.S. Postal Service, and must be mailed at least 10 days prior to the scheduled Board meeting to which it relates. The Public Agenda Notice must also be available for public viewing on the Internet at www.boe.ca.gov.

(b) The Public Agenda Notice must include:

(1) The name, address, and telephone number of Board Proceedings Staff who can provide further information prior to the meeting;

(2) The address of the Internet site where notices are made available; and

(3) A specific agenda for the meeting, containing a brief description of the matters and other items of business to be conducted or discussed in either open or closed session. A description of a matter or other item of business to be conducted or discussed in closed session shall include a citation to the specific statutory authority under which a closed session is being held.

(c) A Public Agenda Notice may contain additional information that is not described in subdivision (b).

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~.
Reference: Government Code section 11125.

5540. CONDUCT OF THE BOARD MEETING.

(a) Board meetings are conducted in accordance with the following laws:

(1) Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires the Board to hold public meetings;

(2) Government Code section 15625, which prohibits Board Members and Board employees from engaging in certain economic activities that are incompatible with their duties to the Board and create a conflict of interest;

(3) The Quentin L. Kopp Conflict of Interest Act of 1990 (Gov., Code § 15626), as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings; and

(4) The Political Reform Act (Gov. Code, § 81000, et seq.), which requires Board Members and Board employees to disclose certain financial interests that may create a conflict of interest, and prohibits Board Members and Board employees from making, participating in making, or in any way using their official position to influence a decision in which they know or should know that they have a financial interest.

(b) The public may attend those portions of Board meetings that are conducted during open session. If a person or persons, including a party or parties to a matter, willfully interrupt any portion of a Board meeting, the Board Chair may order the removal of such person or persons from the meeting.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 11120-11132, 15609, 15625, 15626, 81000-91014.

5541. BURDEN OF PROOF.

(a) Except as otherwise specifically provided by law, the burden of proof is upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue is upon the Department.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 270, 742, 1840, ~~6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352~~.

5550. QUORUM.

A quorum must be present for the Board to take any action.

(a) Any three Board Members present at a meeting constitutes a quorum. For purposes of this chapter, a Board Member is present at a meeting, if the Board Member is participating in the meeting via teleconference pursuant to section 5521.

(b) When a Board Member is disqualified from participating in a decision under the contribution disclosure statute (Gov. Code, § 15626), or the Political Reform Act (Gov. Code, § 81000, et

seq.), or the ex parte communications rules (Gov. Code, § 11430.10, et seq.), that Board Member is not counted for purposes of a quorum.

(c) If a deputy designated by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General) is not authorized to participate in a decision because the matter before the Board is a constitutional matter, the deputy is not counted for purposes of a quorum.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251~~, 11651, 13170, ~~30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601~~.
Reference: California Constitution, article XIII, section 17; Government Code sections 7.6, 7.9, 11122.5, 15606, 15626, 81000-91014.

5551. VOTING AND DECISIONS.

(a) Timing of Board's Vote on an Appeal. The Board may vote to decide an appeal after considering the appeal at a Board hearing or as a nonappearance matter, or the Board may take the appeal under submission and vote to decide it later at the same meeting or at a subsequent meeting. The Board may also continue a Board hearing to a later date.

(b) Written Opinions. The Board may, but is not required to, adopt a written opinion to decide an appeal. The Board may vote to decide an appeal by adopting a written opinion containing its decision, or the Board may vote to decide an appeal without adopting a written opinion at the time of the vote.

(1) Before or after the Board votes to decide an appeal, the Board may direct Board staff to draft a written opinion and submit the opinion to the Board for consideration as a nonappearance matter at a subsequent meeting.

(2) If the Board votes to decide an appeal for which a written opinion is required by section 5552, but the Board does not adopt a written opinion or direct staff to draft a written opinion at the time of the vote, then Board staff shall draft a nonprecedential opinion and submit it to the Board for consideration as a nonappearance matter at a subsequent meeting. In such cases, the Board's vote to decide the appeal is not tentative and shall not be held in abeyance, unless the Board expressly directs staff to hold its decision in abeyance before the decision becomes final.

(3) If the Board votes to decide an appeal and then directs staff to draft a precedential opinion for the same appeal before the decision is final, then, unless the Board directs otherwise, the Board's vote to decide the appeal will be tentative, and shall be held in abeyance and subject to change until the Board subsequently votes to adopt a precedential opinion or votes not to adopt a precedential opinion. However, a vote to decide an appeal described in section 5310, subdivision (a)(1) or (2) is not tentative and shall be final when made.

(4) A precedential opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Nonprecedential opinions may not be cited as precedent in any matter or other proceeding before the Board.

(5) A written opinion is not confidential if the Board has already voted to decide the appeal to which the opinion relates and the Board's decision is not being held in abeyance pending the Board's consideration of the written opinion. In all other circumstances, a written opinion is confidential unless and until adopted by the Board. In addition, confidential taxpayer information included in a written opinion prepared for an appeal subject to chapter 2 or 3 of this division is confidential before and after the opinion is adopted, unless the taxpayer has waived the right to confidentiality as to such information as provided in section 5573 or the opinion is required to be published pursuant to section 5552.

(c) Dissenting and Concurring Opinions.

(1) If a precedential opinion is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the opinion, if different than the rationale set forth in the opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the precedential opinion to which it relates is adopted, and is publishable as a supplement to the precedential opinion. A Dissenting Opinion or Concurring Opinion may be cited in any proceeding before the Board.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Article XIII, Section 17, California Constitution; Sections 7.9, 11122.5, 11125, 15606 and 15640, Government Code; and Sections 40, 254.5, 254.6, 742, 748, 1840, 5148, ~~6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352,~~

~~45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.~~

5552. PUBLICATION.

(a) Adoption. The Board shall adopt a written opinion for each appeal decided by the Board, on or after January 1, 2013, in which the amount in controversy is five hundred thousand dollars (\$500,000) or more.

(b) Publication. If the Board is required to adopt a written opinion pursuant to subdivision (a), then the Board shall adopt and publish the written opinion on the Board's Internet website within 120 days after the date upon which the Board's vote to decide the appeal became final.

(c) Content. All written opinions required to be adopted pursuant to subdivision (a) shall include all of the following:

- (1) Findings of fact;
- (2) The legal issue(s) presented;
- (3) Citation(s) to applicable law;
- (4) An analysis of the law and facts;
- (5) The disposition of the matter; and
- (6) The names of the adopting Board Members.

(d) Amount in Controversy. "Amount in controversy" means, for purposes of subdivision (a), the total amount of taxes, ~~fees~~, penalties, interest and/or other charges directly contested by the parties to an appeal as of the date the Board's vote to decide that appeal becomes final. Consolidated appeals shall be treated as one appeal in calculating the amount in controversy. "Amount in controversy" does not include taxes, ~~fees~~, penalties, interest, or other charges that may be ancillary or related to, or calculated with reference to, directly contested amounts, unless the taxes, ~~fees~~, penalties, interest, or other charges are also directly contested. Amount in controversy shall equal one percent of the difference between the assessed values asserted by the parties in property tax appeals. ~~If an appeal concerns the reallocation of local or district tax, amount in controversy includes directly contested taxes that were reported and paid to the Board prior to the date the Board's decision on the appeal became final (e.g., taxes reported and paid for the last quarter for which a return was filed prior to the finality date), and shall not include taxes that are reported and paid to the Board after the date the Board's vote to decide the appeal becomes final.~~

(e) Application. Subdivision (a) only applies to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax ~~or fee~~ or refund of tax ~~or fee~~ to a taxpayer, ~~or the reallocation of local or district tax~~, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including Board hearing and nonappearance matters, except for nonappearance consent calendar action items.

(f) For purposes of Revenue and Taxation Code section 40, the Board's decision on an appeal is rendered on the date that the Board's vote to decide the appeal becomes final.

Note: Authority cited: Section 15606, Government Code. Reference: Section 40, Revenue and Taxation Code.

5560. NOTICE OF BOARD DECISION.

(a) Generally. All parties to a proceeding will be notified in writing of the Board's decision. The notice will contain the determined value, tax, ~~fee~~, penalty or interest owed-

~~(1) Business Taxes: In general, notice of the Board's decision will be mailed to all parties within 45 days from the date of the Board's decision. Notice of a decision denying a claim for refund will be mailed to all parties within 30 days from the date of the Board decision.~~

~~(2) Appeals from actions of the Franchise Tax Board: In general, a copy of the decision or opinion prepared pursuant to article 5 of chapter 4 will be mailed to all parties within 3 business days from the date of the Board's decision.~~

~~(3) Property Tax: In general, a Notice of Decision and will be mailed within 30 days from the date of the Board's decision.~~

~~(b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to chapter 2 of this division shall become final 30 days after the date notice of the Board's decision is mailed to the taxpayer unless, within that 30-day period, one of the following occurs:~~

~~(1) A party to the petition or appeal files a Petition for Rehearing.~~

~~(2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.~~

~~(c)~~(b) Finality of Property Tax Decisions. Chapter 3 of this division applies to the finality of decisions on property tax petitions.

~~(d) Appeals from the Franchise Tax Board. Chapter 4 of this division applies to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board.~~

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 744, 749, 1842, 5148, ~~6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.~~

5561. PETITION FOR REHEARING.

(a) Generally. A taxpayer with an appeal subject to chapter 2 of this division or described in section 5310, subdivision (a)(3) or (4), may file a Petition for Rehearing within 30 days of the date on which notice of the Board's decision is mailed to the taxpayer. The petition must be signed by the taxpayer or the taxpayer's authorized representative, and:

- (1) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the taxpayer's appeal;
- (2) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
- (3) Identify and provide newly discovered, relevant evidence, which the taxpayer requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
- (4) Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.

(b) A Petition for Rehearing or related document shall be filed in accordance with section 5570.

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

- (1) Upon receipt of a submission intended as a Petition for Rehearing, the Chief of Board Proceedings must determine whether the submission qualifies as a Petition for Rehearing and

whether it is timely. The Chief of Board Proceedings may consult with the Appeals ~~Division~~Attorney in making this determination.

(2) If the submission qualifies as a Petition for Rehearing and is timely, the Board Proceedings Division must accept the submission as a Petition for Rehearing and mail a letter to all parties acknowledging its acceptance.

(3) If the Chief of Board Proceedings determines that a submission intended as a Petition for Rehearing is not timely, the Board Proceedings Division must reject the submission.

(4) If the Chief of Board Proceedings determines that a submission intended as a Petition for Rehearing is timely, but does not otherwise qualify as a Petition for Rehearing, such as where the submission asks for a rehearing without identifying a basis for the rehearing or alleges that there is newly discovered and relevant evidence without providing that evidence, the Board Proceedings Division will notify the taxpayer in writing, identify the requirements of subdivision (a) that have not be satisfied, and allow the taxpayer up to 30 days to satisfy the necessary requirements. If the taxpayer satisfies the requirements of subdivision (a) within the time allowed, the Board Proceedings Division will accept the original submission and any subsequent submissions that satisfy the requirements of subdivision (a), combined, as a Petition for Rehearing and mail a letter to all parties acknowledging the acceptance. If the taxpayer does not satisfy the requirements of subdivision (a) within the time allowed for that purpose, the Board Proceedings Division must reject the taxpayer's submission.

(5) If the Board Proceedings Division rejects a taxpayer's submission intended as a Petition for Rehearing, the Board Proceedings Division shall mail a letter to the taxpayer, which shall explain that the submission was not accepted as a Petition for Rehearing and will advise the taxpayer of any alternative rights or remedies.

(6) A taxpayer may not file more than one Petition for Rehearing with regard to the same appeal.

~~(d) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from actions of the Franchise Tax Board.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections ~~6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157,~~

~~46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521 and 60581, Revenue and Taxation Code.~~

5562. RECOMMENDATION AND DECISION ON PETITION FOR REHEARING.

(a) After a Petition for Rehearing is accepted under section 5561, the Appeals ~~Division~~Attorney will prepare and submit a written recommendation to grant or deny the Petition for Rehearing to the Chief of Board Proceedings, generally within 90 days from the date of the letter accepting the Petition for Rehearing. The document may also recommend changes to the Board's decision on the appeal to which the Petition for Rehearing relates and that the Board deny the Petition for Rehearing after making such changes.

(b) The recommendation on Petition for Rehearing will be submitted to the Board for consideration as a nonappearance matter.

(c) The Chief of Board Proceedings must notify all the parties to an appeal of the Board's decision on a Petition for Rehearing.

(1) If the Board grants a rehearing, then the Board's prior decision will be held in abeyance and subject to change until the resolution of the rehearing, and the applicable briefing provisions of chapter 2 or 3 of this division and the Board hearing provisions of this chapter apply to that rehearing.

(A) Unless the taxpayer requesting the rehearing withdraws its request prior to the rehearing, the Board's prior decision on the taxpayer's appeal will be replaced by the Board's decision on the taxpayer's appeal following the rehearing.

(B) If, prior to the rehearing, the taxpayer requesting the rehearing notifies the Board Proceedings Division in writing that the taxpayer withdraws its request for a rehearing, the Board's prior decision on the taxpayer's appeal becomes final upon the receipt by the Board Proceedings Division of the taxpayer's withdrawal of its request for rehearing.

(2) If the Board denies a rehearing, notice of the Board decision will be issued to the taxpayer. If the Board has not voted to change its prior decision on the taxpayer's appeal, the notice will be based on the Board's prior decision and will become final 30 days after the notice is issued. If the Board has voted to change its prior decision on the taxpayer's appeal, the notice will be based on the revised decision and will become final 30 days after the notice is issued.

(3) A taxpayer may not file a Petition for Rehearing in response to a notice described in paragraph (2). If the Board Proceedings Division receives a submission intended as such a Petition for Rehearing, the Board Proceedings Division must reject the submission.

~~(d) Chapter 4 of this division applies to Decisions on Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.~~

Note: Authority cited: Section 15606, Government Code; and Sections ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601,~~ Revenue and Taxation Code. Reference: Sections ~~6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521 and 60581,~~ Revenue and Taxation Code.

5570. FILING DOCUMENTS.

During the Board's consideration of an appeal under this chapter, documents related to the appeal may be filed electronically pursuant to this section if a copy of such correspondence is transmitted to the Board Proceedings Division at the email address or fax number provided below or in accordance with instructions provided on the Board's website at www.boe.ca.gov.

Correspondence during the hearing process may also be hand delivered to the Board's headquarters at ~~450 N Street, in Sacramento, California,~~ or mailed to the following address:

Board Proceedings Division, MIC: 80
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-00810
MeetingInfo@boe.ca.gov
(916) 324-3984

Note: Authority cited: Article XIII, Section 11, California Constitution; ~~s~~Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601,~~ Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601,~~ Revenue and Taxation Code.

5571. TIMELINESS OF DOCUMENTS.

(a) A document or other correspondence is timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.

(b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 5511 of this chapter, is considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document is extended to the next business day.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: Government Code sections 15606, 15640; Revenue and Taxation Code section 254.5, 270, 724, 742, 1840, ~~6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.~~

5572. HEARING RECORD.

(a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of oral hearings conducted during open session at public meetings are public records and open to public inspection. Documents to which a waiver described in section 5573 applies are also disclosable public records.

(b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted on the Internet at www.boe.ca.gov and a complete set of approved minutes are bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(c) Transcripts.

(1) In general, the Board records its oral hearings. However, the recordings are not generally transcribed. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.

(2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision. Such requests must specifically identify the matters to be transcribed.

(3) If Board Staff is able to prepare a transcript of a recorded hearing, the Board will charge a fee to prepare the requested transcript in accordance with section 5576.

(4) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of requests for transcripts. A request for a transcript may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Written requests for transcripts may also be hand delivered to the Board's headquarters at ~~450 N Street, in Sacramento, California,~~ or mailed to the following address:

State Board of Equalization
~~Attn: Transcripts Coordinator~~
Board Proceedings Division, MIC: 80
P. O. Box 942879
Sacramento, CA 94279-0081

(5) A transcript prepared pursuant to this section is a public record and subject to disclosure.

(6) Completed transcripts, untranscribed shorthand notes, and recordings are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (4) of this subdivision. The Board will charge a fee in accordance with section 5576 for copying a completed transcript.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~ Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 833, 1840, ~~7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609.~~

5573. CONFIDENTIALITY.

Board hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

~~(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including, but not limited to, information contained in a hearing summary prepared under section 5444.~~

~~(b)(a) Sales and Use Tax, Private Railroad Car Tax, Timber Yield Tax, Tax on Insurers, and Alcoholic Beverage Tax, and Special Taxes and Fees. The filing of a written request for a Board hearing under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board hearing or included in the hearing summary prepared for the taxpayer's~~

Board hearing.

~~(e)~~(b) Property Taxes.

- (1) A taxpayer waives its right to confidentiality when the taxpayer:
 - (A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) of chapter 3, and submits a written request for a Board hearing; or
 - (B) Files an application described in section 5310, subdivision (a)(2) of chapter 3.
- (2) The waiver described in paragraph (1) of this subdivision only applies to:
 - (A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;
 - (B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;
 - (C) The Hearing Summary or Summary Decision prepared for the taxpayer's Board hearing; and
 - (D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board hearing.

~~(d)~~(c) Effective Date of Waiver.

- (1) A waiver described in subdivision (a) or (b) ~~or (e)~~ of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's Board hearing to which the waiver applies.
- (2) A waiver described in subdivision (a) or (b) ~~or (e)~~ may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its Board hearing. At the time a taxpayer waives a Board hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's appeal as a nonappearance matter or dismiss the taxpayer's appeal.

~~(e)~~(d) Exceptions.

- (1) Protection from Identity Theft.
 - (A) The waivers described in subdivisions (a); or (b), ~~and (e)~~ do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a Board hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (a) and (b) ~~and (c)~~ do not apply to:

(A) Information that is only discussed during a portion of a Board hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a Hearing Summary, if any, containing information that is only scheduled to be discussed during a closed session.

~~(f)(e)~~ Published Opinions. Even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board or Board staff includes in a written opinion that is required to be published pursuant to section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, ~~7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609~~, Revenue and Taxation Code.

5574. REQUEST FOR PORTION OF BOARD HEARING CONDUCTED DURING CLOSED SESSION.

(a) Board's Discretion to Conduct Hearings During Closed Session.

(1) In general, the Board may conduct portions of Board hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct Board hearings requested under ~~the following provisions during a closed session:~~

~~(A)~~ Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

~~(B)~~ Chapter 4 of this division regarding appeals from the actions of the Franchise Tax

~~Board.~~

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of a Board hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the appeal for which the taxpayer's Board hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's Board hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of a Board hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the appeal involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's Board hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The appeal involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's Board hearing is conducted solely during an open session at a public meeting.

(3) If a portion of a Board hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the Board hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire Board hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's Board hearing must be rescheduled so that the entire hearing can be conducted during an

open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.

(A) The waivers described in subdivision (a) or (b) ~~or (e)~~ of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled Board hearing.

(B) The waivers described in subdivision (a) or (b) ~~or (e)~~ of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its Board hearing.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of a Board hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision ~~(d)~~(c).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

(g) Notwithstanding the foregoing provisions, nothing in this division shall prevent the Board from publishing a written opinion on its Internet website when required under section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, ~~7051, 8251, 9251,~~ 11651, 13170, ~~30451,~~ 32451, ~~38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601,~~ Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, ~~7051, 7056, 8251, 8255, 9251, 9255,~~ 11651, 11655, 13170, ~~19542, 19545, 30451, 30455,~~ 32451, 32455, ~~38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609,~~ Revenue and Taxation Code.

5575. PRIVILEGE.

The waivers provided for in section 5573 do not abrogate the Board's privileges with regard to memoranda from attorneys in the Board's Legal Department and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Evidence Code section 952.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251,~~ 11651, 13170, ~~30451,~~ 32451, ~~38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301,~~ ~~60601.~~ Reference: Government Code section 6254; Evidence Code sections 952, 954.

5576. FEES: FILING, TRANSCRIPTS, AND COPIES.

(a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena.

(b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Government Code section 69950.

(c) Copies, including certified copies, of records that the Board is permitted by law to divulge will be furnished to taxpayers and other interested persons at cost as specified in Government Code section 6253 and Civil Code section 1798.33.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, ~~7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.~~
Reference: Civil Code section 1798.33; Government Code section 15613.

Text of Amendments to
California Code of Regulations
Title 18. Public Revenues

Division 2.1. State Board of Equalization - Rules for Tax Appeals
Chapter 6. Taxpayer Bill of Rights Reimbursement Claims

5600. DEFINITIONS, BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS CHAPTER.

(a) The definitions in section 5511 apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

~~Administration of the Franchise and Income Tax Laws--~~

~~Revenue and Taxation Code Sections 18401-19802~~

~~Business and Property Taxes--~~

~~Alcoholic Beverage Tax~~

~~California Constitution Article XX, Section 22;~~

~~Revenue and Taxation Code Sections 32001-32557~~

~~California Tire Fee Public~~

~~Resources Code Sections 42860-42895;~~

~~Revenue and Taxation Code Sections 55001-55381~~

~~Childhood Lead Poisoning Prevention Fee~~

~~Health and Safety Code Section 105310;~~

~~Revenue and Taxation Code Sections 43001-43651~~

~~Cigarette and Tobacco Products Tax~~

~~California Constitution Article XIII B, Section 12;~~

~~Revenue and Taxation Code Sections 30001-30481~~

~~Diesel Fuel Tax~~

~~Revenue and Taxation Code Sections 60001-60709~~

~~Emergency Telephone Users Surcharge~~

~~Revenue and Taxation Code Sections 41001-41176~~

~~Energy Resources Surcharge~~

~~Revenue and Taxation Code Sections 40001-40216~~

~~Hazardous Substances Tax~~

~~Revenue and Taxation Code Sections 43001-43651~~

~~Integrated Waste Management Fee~~

~~Revenue and Taxation Code Sections 45001-45984~~

~~Marine Invasive Species Fee Collection Law~~

~~Public Resources Code Sections 71200-71271;~~

~~Revenue and Taxation Code Sections 44000-44008, 55001-55381~~

~~Motor Vehicle Fuel Taxes~~

~~California Constitution Article XIX, Sections 1-9;~~

~~Revenue and Taxation Code Sections 7301-8526~~

~~Natural Gas Surcharge~~

~~Public Utilities Code Sections 890-900;~~

~~Revenue and Taxation Code Sections 55001-55381~~

~~Occupational Lead Poisoning Prevention Fee~~

~~Health and Safety Code Section 105190;~~

~~Revenue and Taxation Code Sections 43001-43651~~

~~Oil Spill Response, Prevention and Administration Fees~~

~~Revenue and Taxation Code Sections 46001-46751~~

~~Private Railroad Car Tax~~

~~California Constitution Article XIII, Section 19;~~

~~Revenue and Taxation Code Sections 11201-11702~~

~~Sales and Use Tax~~

~~(including State-administered local sales, transactions and use taxes)~~

~~Revenue and Taxation Code Sections 6001-7279.6~~

~~Timber Yield Tax~~

~~Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908~~

~~Underground Storage Tank Maintenance Fee~~

~~Revenue and Taxation Code Sections 50101-50162~~

~~Use Fuel Tax Law~~

~~Revenue and Taxation Code Sections 8601-9355~~

~~(c) To the extent that provisions in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.~~

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code;

and Sections ~~7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections ~~7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630~~, Revenue and Taxation Code.

5601. ELIGIBLE CLAIMS.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund ~~in business or property tax cases~~ are eligible for reimbursement. Fees and expenses incurred ~~in a business tax or Timber Yield Tax case~~ are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation ~~issued by the Appeals Division~~ and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim.

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, ~~or a denial of a claim for refund in franchise and income tax cases~~ are eligible for reimbursement. ~~Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.~~

Note: Authority cited: Section 15606(a), Government Code; ~~Section 893, Public Utilities Code;~~ and Sections ~~7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections ~~7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630~~, Revenue and Taxation Code.

5602. REASONABLE FEES.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; ~~Section 893, Public Utilities Code~~ Sections ~~7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections ~~7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630~~, Revenue and Taxation Code.

5603. CLAIM PROCEDURE.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/16), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff ~~and, when applicable, Franchise Tax Board staff~~, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff ~~or Franchise Tax Board staff~~ may be given an additional 30 days to respond to the new material.

Note: Authority cited: Section 15606(a), Government Code; ~~Section 893, Public Utilities Code;~~ and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

5604. ORAL HEARING ON REIMBURSEMENT CLAIM.

After the submission of documents described in section 5603, the claim will be scheduled for oral hearing before the Board. The claimant ~~and, when applicable, the Franchise Tax Board~~ will receive 60 days notice of the hearing date and time, and the procedures will be governed by chapter 5 of this division. Oral hearing may be waived by the taxpayer and the matter submitted

for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; ~~Section 893, Public Utilities Code;~~ Sections ~~7051, 8251, 9251,~~ 11651, 30451, 32451, ~~38701, 40171, 41128, 43501, 44003,~~ 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections ~~7091, 8269, 9269,~~ 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, ~~50156.9, 55330 and 60630,~~ Revenue and Taxation Code.

5605. NOTICE OF DECISION.

Whether or not an oral hearing is held on the claim, the Board will send written notice of its decision to the claimant, ~~and, where applicable, to the Franchise Tax Board.~~ Notwithstanding chapter 5 of this division, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement must be available as a public record for at least 10 days prior to the effective date of the award, ~~except appeals from actions of the Franchise Tax Board, which must be available as a public record for at least 10 days prior to the effective date of the determination.~~

Note: Authority: Section 15606(a), Government Code; ~~Section 893, Public Utilities Code;~~ Sections ~~7051, 8251, 9251,~~ 11651, 30451, 32451, ~~38701, 40171, 41128, 43501, 44003,~~ 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections ~~7091, 8269, 9269,~~ 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, ~~50156.9, 55330 and 60630,~~ Revenue and Taxation Code.

5700. ANNOTATIONS.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

- (1) "Annotations" are published in ~~either the Business Taxes Law Guide or the Property Taxes Law Guide~~ and are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.
- (2) "Legal ruling of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff.
- (3) "Current Legal Digest" means a publication containing drafts of new annotations proposed to be added, and/or annotations proposed to be amended or deleted in the ~~Business Taxes Law Guide or Property Taxes Law Guide.~~
- (4) "Tax" means any tax, ~~fee, surcharge,~~ assessment, assessment review, or exemption program administered by the Board or any tax over which the Board has oversight or advisory responsibility.

(5) "Taxpayer" means person liable for the payment of any tax as the term tax is defined above.

(6) "Board" means the State Board of Equalization.

(b) Elements of Annotated Legal Rulings of Counsel. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

(1) A summary of pertinent facts;

(2) An analysis of the issue(s);

(3) References to any applicable statutes, regulations, or case law; and

(4) A conclusion supported by the analysis of the issue(s).

(c) Use of Annotations.

(1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.

(2) Annotations are a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and Board regulations as applied by the Board staff to specific factual situations in legal ruling of counsel.

(3) ~~Except as provided in Regulation 1705,~~ Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest and penalty.

(d) Publication of Annotations.

(1) Before new annotations are added, or existing annotations are amended or deleted, the Board shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.

(2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to the Board's ~~Legal Division~~Department.

(e) Request for Depublication of an Annotation. An annotation published in the ~~Business Taxes Law Guide or the Property Taxes Law Guide~~ believed to be in error and/or appearing to conflict with another annotation may be depublished using the following procedure:

(1) A request for depublication of an annotation shall be directed to the Chief Counsel.

(2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.

(3) If a request for the depublication of an annotation is approved by the Chief Counsel, the Board shall publish the proposed depublication in a Current Legal Digest.

(4) If a request for the depublication of an annotation is denied, the requestor may bring the request before the Board's ~~Business Taxes or Property Taxes Committee~~ for consideration.

(f) Copies of Legal Rulings of Counsel. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information excised, that has been annotated in the ~~Business Taxes Law Guide~~ or Property Taxes Law Guide. Requests may be directed to the Board's Legal ~~Division~~department.

Note: Authority cited: ~~Section 7051, Revenue and Taxation Code~~. Reference: Sections 15606(c) and (e), Government Code; Reference: Sections ~~6596, 7051, 7084, 8262, 9262, 13170, 30458.2, 32462, 40202, 41162, 43513, 45858, 46613, 50156.2 and 55323,~~ Revenue and Taxation Code.