

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

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 3: BRIEFING SCHEDULES AND PROCEDURES

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 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.

(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.

(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.

(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.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.