

Final 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. Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

(No Changes Made to the Text Currently Published in the California Code of Regulations)

Chapter 2. Special Taxes and Fees

5200. Application of Chapter 2.

This chapter applies to appeals filed with the Board under the:

- (a) Tax on Insurers Law (pt. 7 of div. 2 of the Rev. & Tax. Code).
- (b) Alcoholic Beverage Tax Law (pt. 14 of div. 2 of the Rev. & Tax. Code).

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

5201. Application of the International Fuel Tax Agreement. [Repealed]

5202. Notice Requirements.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Section 15606(a), Government Code; Sections 11651 and 32451, Revenue and Taxation Code. Reference: Sections 11352 and 32313, Revenue and Taxation Code.

5210. Persons Who May File Petitions for Redetermination.

- (a) Any person, insurer or surplus line broker, against whom a notice of determination or notice of deficiency assessment is issued that disagrees with any item included in the notice of determination or notice of deficiency assessment may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.
- (b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued under section 32271 or 32291 of the Revenue and Taxation Code.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation under Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

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

5210.5. Successor's Petition for Reconsideration. [Repealed]

5211. Limitation Period for Filing Petitions and Stay of Collection Activities.

- (a) A petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the person against which the notice was issued.
- (b) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a).
- (c) A petition for redetermination is premature and not valid if it is filed before a notice of determination or notice of deficiency assessment is issued. However, a premature petition for redetermination may be treated as an administrative protest under section 5220.
- (d) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final.

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

5212. Contents of a Petition for Redetermination.

- (a) A petition for redetermination must:
 - (1) Be in writing.
 - (2) Identify the amounts the taxpayer wishes to contest (the taxpayer may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

(4) Be signed by the taxpayer or the taxpayer's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference, a request for a Board hearing, or both. If a petition for redetermination only includes a request for an appeals conference, a Board hearing may still be requested in accordance with section 5266.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A taxpayer may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301.5, Revenue and Taxation Code.

5212.5. Amendments to Petitions for Redetermination.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301.5, Revenue and Taxation Code.

5213. Accrual of Interest.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12632, 32271 and 32291, Revenue and Taxation Code.

5214. Additional Copy of Petitions for Redetermination Filed Under the Tax on Insurers Law.

An insurer or surplus line broker filing a petition for redetermination of a deficiency assessment issued under the Tax on Insurers Law must file a copy of its petition with the Commissioner of

Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination in accordance with section 5216.

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

5215. Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law. [Repealed]

5215.4. Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee. [Repealed]

5215.6. Scope of Petition for Redetermination Filed Under Water Rights Fee Law. [Repealed]

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

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

5217. Acknowledgment of Petitions for Redetermination.

(a) After receipt of a petition for redetermination, the assigned section will promptly send the taxpayer a letter acknowledging receipt of the petition for redetermination and containing the assigned section's contact information.

(b) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

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.

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.

5219. Preparation and Mailing of the Summary Analysis.

Before the assigned section forwards an appeal to the Board Proceedings Division for the scheduling of an appeals conference, it will first prepare a summary analysis which sets forth the taxpayer's contentions regarding the notice of determination or notice of deficiency assessment,

the position of the Department that issued the notice, and the reasons the assigned section believes that the Department's position should be sustained in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and forward the petition file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

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.

5220. Premature or Untimely Petition May Be Treated as an Administrative Protest.

(a) If an appeal is filed as a petition for redetermination prior to or after the expiration of the applicable time periods provided for in section 5211, the appeal does not qualify as a valid petition for redetermination. However, such an appeal may be treated as an administrative protest if the Deputy Director of the Department that issued the notice being disputed by the taxpayer determines, in his or her discretion, that there is a reasonable basis to believe that there may be an error in the taxpayer's notice.

(b) If a premature or untimely appeal is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination, except that requests for an appeals conference or Board hearing may be denied, although such requests will be liberally granted.

(c) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12951 and 32440, Revenue and Taxation Code.

5220.4. Accrual of Interest.

The treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12632, 32271 and 32291, Revenue and Taxation Code.

5220.6. No Stay of Collection Activities.

In general, the treatment of a premature or untimely petition for redetermination as an administrative protest does not stay efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or

notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

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

5221. Notice of Jeopardy Determination.

(a) If the collection of any tax or any amount of tax required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, a notice of jeopardy determination may be issued.

(b) The notice of jeopardy determination shall state the tax, or amount of tax required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32311, Revenue and Taxation Code.

5222. Filing a Petition for Redetermination of a Jeopardy Determination.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) A petition for redetermination of a jeopardy determination or related document may be filed as specified in section 5216. Such documents may also be mailed or electronically transmitted to the Board at the mailing address, fax number, or email address provided on the Notice of Jeopardy Determination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5222.4. Contents of Petition for Redetermination of Jeopardy Determination.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5222.6. Limitation Period for Petition for Redetermination of Jeopardy Determination.

- (a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or personally served.
- (b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5223. Security Requirement for Petition.

A petition for redetermination of a jeopardy determination will not be accepted unless the petitioner deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5222.6.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5224. Review of Petition for Redetermination of Jeopardy Determination.

- (a) A petition for redetermination of a jeopardy determination may raise any objections the taxpayer has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.
- (b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5225. Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

- (a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:
 - (1) To establish that the jeopardy determination is excessive.

(2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(5) To request administrative review of any other issue raised by the jeopardy determination.

(b) An application for an administrative hearing or related document may be filed in the manner specified in section 5222 for the filing of a petition for redetermination of a jeopardy determination.

(c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.

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

5226. Limitation Period for Filing Application for Administrative Hearing.

(a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

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

5227. Contents of Application for Administrative Hearing.

Every application for administrative hearing must:

(a) Be in writing.

(b) Identify the purpose for which the person has applied for an administrative hearing.

(c) State the specific factual or legal grounds upon which the application is founded.

(d) Be signed by the person or the person's authorized representative.

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

5228. Option to Post Security with Application for Administrative Hearing.

(a) A person is not required to post security to obtain an administrative hearing.

(b) Property seized under a notice of jeopardy determination or jeopardy assessment may not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense. Storage expenses may be waived, credited, or refunded.

(c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5223.

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

5229. Assignment of Application for Administrative Hearing to Appeals Division 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 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.

5230. Persons Who May File a Claim for Refund; Limitations on Certain Claims.

Any person, insurer or surplus line broker, who believes that it has overpaid a tax, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such a person's behalf.

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

5231.5. Failure to File Timely Claim for Refund.

A claim for refund must be reviewed to determine whether it is timely. The claimant's failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12980 and 32403, 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.

5232.4. Contents of Claims for Refund Under Diesel Fuel Tax Law. [Repealed]

5232.8. Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law. [Repealed]

5233. Filing Claims for Refund.

A claim for refund or related document may be filed as specified in section 5216 for the filing of a petition for redetermination.

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.

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.

5234.5. Review Process for Claims for Refund and Requests for Additional Information.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, Board Staff from the assigned section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

(1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director approval requirements of section 5237, if applicable); and

(2) 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.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5236. Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.

A request for an appeals conference conducted under article 6 of this chapter or oral hearing before the Board may be denied on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5237. 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 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 Deputy Director, the Deputy Director may approve the assigned section's recommendation or exercise discretion to make the 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 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 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 assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund 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 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 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 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 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 Deputy Director of the assigned section's Department for approval as provided in subdivision (b). If the 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 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.

5238. Credits and Offsets May Reduce Refunds.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant's refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12426 and 12977, Revenue and Taxation Code.

5239. Combined Claims for Refund on Behalf of Class of Taxpayers. [Repealed]

Article 4a. Requests for Innocent Spouse Relief

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.

(c) 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) 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) 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 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 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

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 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 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 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 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 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 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 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 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.

Article 4b. Successor's Request for Relief of Penalty Under the Sales and Use Tax Law [Repealed]

5243. Successor's Request for Relief. [Repealed]

5244. No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. A request for an oral hearing on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or claim for refund, the procedures applicable to such petitions or claims apply to the request for relief. A request for relief included in a petition for redetermination or claim for refund must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination or claim for refund filed by the same person and covering the same periods as the request for relief.

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.

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. Filing Requests for Relief.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5216 for the filing of a petition for redetermination concerning the same tax law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5233 for the filing of a claim for refund concerning the same tax law at issue in the request for relief.

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.

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.

5249.6. Reviewing Requests for Relief.

(a) The assigned Board Staff will review a request for relief to:

(1) Determine if the request satisfies the requirements of this article 4C; and

(2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned Board Staff may request additional information from the person requesting relief.

(c) Once the review is completed, the assigned Board Staff may determine that:

(1) No relief is warranted;

(2) Partial relief is warranted; or

(3) Full relief is warranted.

(d) Once the determination in subdivision (c) is made, the assigned Board Staff shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned Board Staff's decision, the person requesting relief may request reconsideration of the decision by the Deputy Director responsible for the tax law concerned. Thereafter, the Deputy Director will prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e), the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, a request for an oral hearing on a request for relief may be granted. If a request for an oral hearing is granted, the Board may require that the person requesting relief participate in an appeals conference conducted under article 6 of this chapter prior to the oral hearing.

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.

Article 5. Petitions for Reallocation of Local and District Taxes [Repealed]

5250. Petitions for Reallocation of Local and District Taxes. [Repealed]

Article 5.5: Cigarette and Tobacco Products Licensing Act Appeals and Petitions for Recovery of Seized Cigarette and Tobacco Products [Repealed]

5255. Cigarette and Tobacco Products Licensing Act Appeals. [Repealed]

5256. Petitions for Recovery of Seized Cigarette and Tobacco Products. [Repealed]

5260. Referral to Appeals Division 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 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 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 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 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: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097
ConferenceInfo@boe.ca.gov
(916) 324-3984

(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 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) 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 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 to take a fresh look at the law and the facts and make the Appeals Division'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. A party may submit additional written arguments and documentary evidence to the Appeals Division at any time before or during the appeals conference, but may do so after the conference only with the consent of the Appeals Division.

(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 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 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.

5265. Issuance and Contents of a Decision and Recommendation.

(a) Within 90 days after the submission of any additional documents as authorized in section 5264, subdivision (d), Appeals Staff must issue a written report containing Appeals Staff's findings, called a Decision and Recommendation, copies of which must be sent to all parties. The Chief Counsel may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time must be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation must include all of the following:

(1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;

(2) The position of Board Staff in the appropriate Department on each issue raised by the petitioner, claimant, or person requesting relief;

(3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;

(4) A clear application of the relevant law to all the relevant information presented to Appeals Staff;

(5) Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information; and

(6) A summary of any additional information or documentation that was not presented to Appeals Staff, which might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error should contact Appeals Staff immediately. Appeals Staff may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

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 Recommendations; Requests for Reconsideration; Requests for Board Hearings; Supplemental Decision and Recommendation.

(a) The Appeals Division 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 explaining the results of the reaudit:

(1) A written request for reconsideration to the Appeals Division. 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 believes the taxpayer accepts the recommendation of the Appeals Division or it is unclear whether the taxpayer disagrees with any portion of its Decision and Recommendation, the Appeals Division 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 within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division 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 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 will prepare a Supplemental Decision and Recommendation to respond to the request for reconsideration and address any other matter the Appeals Division deems warranted. The Appeals Division 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 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 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 will issue a Supplemental Decision and Recommendation in response to the request. Where the Appeals Division 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 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 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 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 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 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'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, 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 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 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'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'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 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.