

Memorandum

To : Mr. John Davies
Deputy State Controller

Date : April 20, 1992

From : Mary C. Armstrong
Legal

Subject : REQUEST TO RESCIND PETITION FOR REHEARING
CONTRIBUTION DISCLOSURE OPINION 92-4

On November 7, 1991, at the Board meeting in Torrance, a question arose regarding the following fact situation:

A taxpayer has had an adjudicatory hearing on a personal income tax matter before the Board. The matter is determined against the taxpayer. Taxpayer files a Petition for Rehearing. The Petition is denied. Taxpayer files a request (by letter to each Board Member) that the Board rescind its previous motion denying the Petition for Rehearing.

You have requested our opinion regarding whether a discussion by the Board regarding the request to rescind the Petition for Rehearing would be considered an adjudicatory proceeding within the meaning of Government Code Section 15626.

Government Code Section 15626(h)(5) defines the term "adjudicatory proceeding" as "a matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a non-consent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party."

The matter described above is a request to rescind a Petition for Rehearing. We have consistently advised the Board that a Request or Petition for Rehearing, which is listed on a "non-appearance" agenda, is not an adjudicatory proceeding within the meaning of Section 15626. This is true whether or not the original hearing was an adjudicatory proceeding because the Petition for Rehearing is, in our opinion, an entirely new matter before the Board. In the instant situation, however, the request

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to rescind a previous request is, by its very nature, an adjudicatory proceeding since, in order to be considered, it involves a separate discussion. We are, therefore, of the opinion that, under the facts presented, such a discussion would be considered adjudicatory and Section 15626 would apply.

If you have further questions concerning this matter, we will be happy to discuss them with you.

Mary Armstrong

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cc: Ms. Janice Masterton
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