

Issue Paper Number 02-001

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Revenue Estimates in Briefs Filed with the Board of Equalization

I. Issue

Shall the Board grant authorization to publish an amendment to Regulation 5075 of the Rules of Practice (18 Cal. Code of Regulations, sections 5010-5095) stating that briefs filed with the Board of Equalization shall not include revenue estimates or statements regarding revenue impact? A copy of Regulation 5075 with the proposed amended language is attached.

II. Staff Recommendation

Staff is presenting a Board Member proposal to amend Regulation 5075 of the Rules of Practice to state that briefs filed with the Board of Equalization shall not include revenue estimates or statements regarding revenue impact. Staff's position on this recommendation is neutral.

III. Other Alternative(s) Considered

Do not amend Regulation 5075 of the Rules of Practice.

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IV. Background

At the November 29, 2001 Board meeting, the Board reheard the appeals of Yamaha Motor Corporation, USA and Pentel of America, Ltd. One of the issues raised by the parties was the revenue impact of the Board's decision. Members of the Board expressed the opinion that it was inappropriate to consider revenue impact in a tax appeal. After the board meeting, Board Member Dean Andal directed staff to draft a proposed amendment to the Rules of Practice stating that briefs filed with the Board of Equalization shall not include revenue estimates or statements regarding revenue impact.

On February 13, 2002, the Board held an interested parties meeting on the proposed amendment. Only Board staff attended the meeting, but the Board received four letters in support of the amendment from interested parties. Several changes were made to the language of the proposed amendment based on comments received from interested parties and board staff.

V. Staff Recommendation

Staff is presenting a Board Member proposal to amend the Rules of Practice to state that briefs filed with the Board of Equalization shall not address the revenue impact of the decision. Staff's position on this recommendation is neutral.

A. Description of the Staff Recommendation

Grant authorization to amend Regulation 5075 to state that the revenue impact of a decision is not relevant evidence in a tax appeal and shall not be included in briefs filed with the Board of Equalization.

B. Pros of the Staff Recommendation

The proposed amendment to the regulation informs parties that the Board considers the revenue impact of a decision to be inappropriate in a tax appeal.

C. Cons of the Staff Recommendation

The proposed amendment limits the information that can appropriately be made available to Board Members.

D. Statutory or Regulatory Change

Amend Regulation 5075 by adding a new provision (j) that states:

(j) Revenue Impact Statements/Revenue Estimates.

(1) Statements regarding revenue impact or revenue estimates are not relevant evidence in tax appeals. Briefs, including any exhibits, filed pursuant to Regulation 5075, 5075.1, 5082 or 5082.1 shall not include statements regarding revenue impact or revenue estimates. In the event a brief filed by a party contains a statement regarding revenue impact or a revenue estimate, the Chief, Board Proceedings Division, shall return the brief to the party. The party shall be given 10 days from the date on the return letter to resubmit the brief without the revenue estimate. The resubmitted brief may be faxed to the Board followed by a hard copy. Failure to comply within the 10 days shall constitute a waiver of the opportunity to submit the brief; however, briefing may be requested pursuant to subdivision (i) of this regulation or subdivision (e) of Regulation 5075.1.

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(2) If return of the brief to the party results in insufficient time for the other party to file a reply brief pursuant to subdivision (d), an extension of time for the reply brief may be granted by the Chief, Board Proceedings Division.

(3) If for any reason a brief containing a revenue impact statement or revenue estimate is not returned by the Chief, Board Proceedings Division, as set forth in subdivision (j)(1) above, Board Staff shall strike the statement or estimate from the brief. Board Staff shall strike revenue impact statements or revenue estimates from non-party briefs filed pursuant to subdivision (h).

E. Administrative Impact

Either the Board Proceedings Division or the Appeals Section must determine whether a brief contains a revenue estimate or statement regarding revenue impact. This creates additional workload for staff and may delay the briefing schedule.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. There is presently no requirement that the Board give any consideration to the revenue impact of a tax appeal.

G. Taxpayer/Customer Impact

This regulation will limit the available arguments that a party may appropriately make before the Board.

H. Critical Time Frames

None.

VI. Alternative 1

A. Description of the Alternative

Do not amend Regulation 5075 of the Rules of Practice.

B. Pros of the Alternative

Allows each Board Member to determine what weight, if any, he or she will give to any statement regarding revenue impact or revenue estimate presented.

C. Cons of the Alternative

This alternative fails to put parties on notice that some Board Members have expressed the opinion that they consider it to be inappropriate to consider revenue impact when deciding a tax appeal.

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D. Statutory or Regulatory Change

None.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact

None.

H. Critical Time Frames

None.

Prepared by: Legal Division

Current as of: April 9, 2002