



STATE BOARD OF EQUALIZATION

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KRISTINE CAZADD
Interim Executive Director

December 17, 2010

Dear Interested Party:

Enclosed is the Initial Discussion Paper on Regulation 1807, *Petitions for Reallocation of Local Tax* and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Discussion regarding proposed amendments to Regulations 1807 and 1828 is scheduled for the Board's April 26, 2011 Business Taxes Committee meeting.

However, before the issue is presented at the Business Taxes Committee meeting, staff would like to provide interested parties an opportunity to discuss the issue and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 on January 6, 2011 at 10:00 AM**, at the Board of Equalization; 450 N Street; Sacramento, California.

If you are unable to attend the meeting but would like to provide input for discussion, please feel free to write to me at the above address or send a fax to (916) 322-4530 before January 6, 2011. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Ms. Lynn Whitaker at (916)324-8483 or by e-mail at Lynn.Whitaker@boe.ca.gov prior to January 4, 2011. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing. In addition, please let Ms. Whitaker know if you wish to have future correspondence, including the second discussion paper and all attachments, sent to your e-mail address rather than to your mailing address.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses to staff's analysis is **January 20, 2011**. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Leila Hellmuth, Supervisor, Business Taxes Committee Team, at (916) 322-5271.

Sincerely,

Susanne Buehler
Acting Chief, Tax Policy Division
Sales and Use Tax Department

SB:llw

Enclosures

cc: (all with enclosures)

Honorable Betty T. Yee, Chairwoman, First District (MIC 71)

Honorable Jerome E. Horton, Vice Chair, Fourth District

Honorable Michelle Steel, Member, Third District

Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

Ms. Barbara Alby, Acting Member, Second District (MIC 78)

(Via E-mail)

Mr. Alan LoFaso, Board Member's Office, First District

Ms. Mengjun He, Board Member's Office, First District

Mr. Robert Thomas, Board Member's Office, Fourth District

Mr. Lee Williams, Board Member's Office, Second District

Mr. Ken Maddox, Board Member's Office, Third District

Mr. Neil Shah, Board Member's Office, Third District

Ms. Elizabeth Maeng, Board Member's Office, Third District

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Mr. Stephen Rudd

Mr. Kevin Hanks

Mr. James Kuhl

Mr. Geoffrey E. Lyle

Ms. Leila Hellmuth

Ms. Lynn Whitaker

Ms. Judith Pierce

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Issue

Should Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, be revised to change the processes for handling petitions from jurisdictions and districts?

Background

Sales and Use Tax [Regulation 1807](#) provides the process for reviewing requests by local jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called “district taxes”) is explained in [Regulation 1828](#). These regulations were substantially revised in 2008 to streamline the appeal processes. Currently, the local and district tax appeals processes involve review by the Allocation Group (AG), the Appeals Division (Appeals), and Board Members.

At the September 15, 2010 Business Taxes Committee meeting, Mr. Johan Klehs presented the Board with his suggestions for improving the local tax appeal process (see Exhibit 1). Ms. Christy Bouma from MuniServices, LLC and Mr. Robert Cendejas also spoke at the meeting and expressed concern about revising Regulation 1807 at this time. Specifically, Board Members and interested parties discussed whether enough time has passed to realize the full effect of the 2008 revisions. The Board asked staff to provide an update on the status of the local tax petition backlog, and referred the proposed revisions to the interested parties process for further review and discussion. The Business Taxes Committee is scheduled to discuss this issue at the April 26, 2011 Committee meeting.

Discussion - Status of Current Reallocation Petitions

As requested by the Board, staff reviewed the status of the local tax petition caseload since the 2008 revisions to Regulations 1807 and 1828. With regard to petitions at the AG level, the 2008 revisions did not significantly change how AG processes and investigates petitions for the reallocation of local tax or redistribution of district tax. Consequently, the inventory of petitions in AG has remained fairly consistent since the revised regulations became effective on September 10, 2008. The inventory in AG on January 1, 2009 was 4,820 petitions and the January 1, 2010, inventory was 5,383 petitions. Currently, AG has an inventory of 5,015 petitions, of which 888 have a date of knowledge (DOK) prior to September 10, 2008.

With regard to Appeals, the backlog of cases has been considerably reduced since the 2008 revisions. Since September 2008, Appeals has closed 1,327 petitions (involving 520 taxpayers), including 99.6% of the Mass Appeals cases.¹ Currently, Appeals has 225 open petitions

¹ The “Mass Appeals” cases refer to a large group of cases filed by MuniServices, LLC, which are being appealed based on similar criteria and have been processed by Appeals in groups. The Board Members have heard the Mass Appeals cases for 1,116 petitions (involving 467 taxpayers); the remaining Mass Appeals cases consist of 110 petitions (involving two taxpayers).

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

(involving 20 taxpayers), all of which were filed by petitioners under the pre-2008 procedures. Since 2009, only 11 petitions (involving four taxpayers) have been sent to Appeals.

Discussion - Proposed Revisions

When Regulations 1807 and 1828 were revised in 2008, it was decided the processes should be the same for both local tax and district tax cases. For convenience of discussion, this paper refers to proposed revisions to local tax procedures in Regulation 1807. However, any proposed revisions to the processes in Regulation 1807 will also be made in Regulation 1828 when the issue is presented to the Board.

The listing below summarizes the revisions suggested by Mr. Klehs and MuniServices and staff's responses. (See Exhibit 2 for the September 1, 2010 submission from MuniServices.) In addition, staff has suggested a revision to change the notification date for potentially affected jurisdictions. A comparison table of all suggested revisions is provided in Exhibit 3. Unless otherwise noted, the revisions below were suggested by Mr. Klehs.

Suggested revisions

1. Establish an overall time limit to bring a case to Board hearing – three years from the date of knowledge, with a possible extension of six months. (Suggested by MuniServices.)

Response: Although staff also wants petitions to be resolved expeditiously, it does not believe an overall time limit is practical. Petitions for reallocation may require substantial investigation by AG and Appeals to determine whether a misallocation occurred. For example, a petition could be at the AG level for year or more while it is being investigated. Investigation of local tax cases typically take longer than standard audit investigations because it can be more difficult for staff to get information from the reporting taxpayer. That is, local tax disputes only involve reallocation of reported amounts; the taxpayer holding the records is not disputing a deficiency or supporting a claim for refund and thus lacks incentive to provide records. Local tax appeal cases take more time primarily because of the delays in getting information from taxpayers.

Staff is concerned that to meet the time limit, AG and Appeals will not have sufficient time for a full investigation, resulting in incomplete cases being sent to Board hearing.

2. Subdivision (b)(2). Require AG to maintain a case log documenting the status of each petition and forward that case log to the Board monthly. Copies of these reports will be made available to each petitioner.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

Response: Staff does not believe this regulatory revision is necessary. AG currently maintains a case log of petitions and a monthly report summarizing decisions made on petitions that involve notified jurisdictions is provided to Board Member offices. When petitioners request a status of their petition from AG, staff provides the information, generally by email. Staff is open to adding this information to the procedures in the Compliance Policy & Procedure Manual (CPPM).

3. Subdivision (b)(3). After six months from the date AG receives the petition, allow the petitioner to request a status report.

Response: As noted in Item 2, this suggestion does not need to be incorporated into the regulation since AG currently provides status information to petitioners when requested.

4. Subdivision (b)(3). After six months from the date AG receives the petition, if the petitioner requests that AG issue a decision, reduce the time for AG to provide a decision from 90 days to 60.

Response: While AG believes that it could generally meet this proposed deadline, staff does not recommend this change due to concerns that the change will result in limiting the time AG has to get information from the taxpayer and could result in decisions being made based on incomplete investigations.

5. Subdivision (b)(4). Notify potentially affected jurisdictions of denied petitions at the AG level. (Suggested by staff.)

Staff recommends this revision in order to bring potentially affected jurisdictions into the appeal process at the earliest level. Currently, if a petition is denied by AG and Appeals, a potentially affected jurisdiction will not be notified until the matter is scheduled for a Board hearing. This suggestion is similar in concept to interested parties' suggestion in Item 13.

6. Subdivision (b)(7). Establish a 90-day time limit for AG to issue a supplemental decision.

Alternative suggestion from MuniServices: Establish a 60-day time limit for AG to issue a supplemental decision; however, if additional factual investigation is required, the same time limits for issuing the initial decision will apply.

Response: Again, staff does not recommend this change due to concerns that imposing a deadline to issue a decision will limit the time AG has to get information from the taxpayer. This likely would result in more investigation being needed at the Appeals level, thus prolonging the time the case is in Appeals. Staff believes it is better for AG to completely investigate a case before it is sent to Appeals.

7. Subdivision (b)(7). Add the provision that if a written objection was filed by a notified jurisdiction, future distributions of local tax reported by the taxpayer identified in the petition will be placed in trust until the administrative process has been exhausted and a final decision rendered.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

Interested parties also recommended that the BOE sponsor legislation to pay interest to the winning jurisdiction of an allocation case of any monies held in trust when a final decision has been made for all affected jurisdictions.

Response: The Board has held distributions of local tax in suspense in cases where staff's investigation shows that a reallocation may occur and it is in the best interest of the State to hold the funds. This action has rarely been taken and when done, was based on the particular circumstances of that case.

At the September BTC meeting, some interested parties expressed concern about holding distributions in trust when an objection is filed. They explained that such action was unnecessary because when jurisdictions are aware of a possible reallocation, they analyze the risk and reserve funds if they believe they could lose funds that were distributed to them. Holding distributions in trust could create unnecessary budgeting problems for cities while the issue is being resolved.

Although staff disagrees that distributions should be suspended in *all* cases, staff is open to discussion about establishing guidelines for when such action should be taken. However, instead of placing distributions in a trust account, staff recommends that distributions be placed into the local tax pooled money investment account (as currently done with suspended distributions). If legislation were passed to allow the appropriate jurisdiction to earn interest on held distributions, interest could be calculated based on the proportionate percentage of the total interest earned on the pooled money investment account.

8. Subdivision (c)(2). Establish a 30-day time limit for AG to transfer files to Appeals.

Response: Staff agrees to this revision; files are normally transferred within this timeframe.

9. Subdivision (c)(2). Establish a six-month time limit for Appeals to schedule an appeals conference once the file is received from AG.

Response: Although staff also wants to resolve cases expeditiously, this suggestion is not feasible. Local tax appeal cases involve complex issues and need to be handled by specialized staff. Currently, conferences are scheduled by the only attorney assigned full time to these cases as workload allows. In addition, staff believes that as the backlog of pre-2008 petitions is resolved, the delays currently experienced will be reduced. Staff notes that at this time, Appeals has only four conferences ready to be scheduled.

10. Subdivision (c)(2). Add an ordering rule to provide that appeals conferences will normally be scheduled in the order of time of receipt by Appeals. (Suggested by MuniServices.)

Response: In general, this is normally done; however, at times certain cases such as those where distributions have been held may move forward before appeal conferences are held on other cases. Staff does not believe this suggestion should be incorporated into the regulation, but is open to adding an administrative rule to the procedures in the CPPM.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

11. Subdivisions (c)(2)(B) & (C). In the situation where AG has continued to work with the petitioner or notified jurisdiction after the file has been sent to Appeals, establish a 60-day time limit for AG to issue a second supplemental decision.

Response: Staff is concerned that imposing a deadline to issue a decision will limit the time AG has to get information from the taxpayer. AG needs sufficient time to complete its investigation, which varies on a case by case basis. As noted in Item 6, staff believes it is better to investigate and resolve issues at the AG level thus reducing the time the case is in Appeals.

12. Subdivision (c)(2)(D). Add the provision that if either the petitioner or a notified jurisdiction files an objection to AG's second supplement decision, the case will be immediately forwarded to Appeals, and an appeals conference will be scheduled within 90 days of the objection.

Response: Staff does not believe this suggestion is feasible. Appeals conferences are typically scheduled in the order received and scheduled by the attorney assigned full time to these matters based on workload.

13. Subdivision (c)(3). Clarify that a notified jurisdiction may participate in the appeals conference regardless of whether AG ruled in favor of or against a petitioner.

Response: Staff agrees with this concept, but believes the potentially affected jurisdiction should be notified at the AG rather than the Appeals level. See Item 5.

14. Subdivision (c)(3). Require any subject taxpayer taking part in the appeals conference to disclose the existence and terms of any revenue sharing agreement involving local tax distributions.

Staff is open to discussion of this issue, although under the current provisions of Regulation 1807, taxpayers are not notified by staff until the Board hearing level [provided under 1807(d)(2)]; and, taxpayers are not parties to the case unless they choose to actively participate in the Board hearing [1807(d)(3)]. With regard to who would have a record of such agreements, staff notes that when jurisdictions are parties to an agreement, they would have access to the agreement. On the other hand, some taxpayer rebate agreements are made through third parties and the taxpayer, not necessarily the jurisdiction, would have access to the agreement.

15. Subdivision (c)(3). Revise "should" to "shall" to require participants to provide supporting documentation 15 days before the appeals conference.

Response: Staff does not believe this change is needed because staff would accept documentation from the participant even if it was received within 15 days of the appeals conference.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

16. Subdivision (c)(3). Reword the provision that the appeals conference holder may allow participants up to 30 days to provide additional information. Currently, the subdivision provides that the conference holder may grant conference participants 15 days to provide additional information, or 30 days with sufficient justification.

Response: Staff agrees with the concept of this revision, but believes that an opposing participant should also be given 30 days to submit arguments in response to the additional submission.

17. Subdivision (c)(3). Delete the provision that allows participants further extensions of time to provide information on the approval of the Assistant Chief Counsel of the Appeals Division.

Response: Staff does not agree with this revision because there are times when the parties participating in the appeals conference need more than 30 days to provide information. Staff does not believe the current request for extension process has been abused.

18. Subdivision (c)(3). Eliminate the provision that Appeals can request further submissions from any participant at or following the appeals conference.

Response: Staff does not believe that this suggestion would be in the best interest of the parties or the State. Appeals is tasked with issuing a well-reasoned and informed decision and thus *must* have access to obtaining the facts and other information necessary to do so.

19. Subdivision (c)(4). Require Appeals to notify participants once the final submission is received.

Response: Staff is open to this suggestion as this notification is currently done by Appeals. However, staff believes that it may be better to add the provision into the CPPM rather than incorporating it into the regulation.

20. Subdivision (c)(4). Shorten the request for an extension of time to prepare the Decision and Recommendation (D&R) from 90 to 30 days.

Response: Staff disagrees with this suggestion as additional time may be needed to prepare the D&R based on the complexity of the issues, the volume of information received at and after the appeals conference, and the workload of the Appeals attorney assigned full time to these cases. Staff also notes that the rules for other Sales and Use Tax petitions provided in Rules for Tax Appeals (RTA), [Regulation 5265](#), *Issuance and Contents of a Decision and Recommendation*, allows the Chief Counsel to continually extend the time for staff to prepare the D&R.

21. Subdivisions (c)(6), (7). Eliminate the request for reconsideration (RFR) and Supplemental D&R (SD&R) process.

Alternative suggestion from MuniServices [(c)(6)]: Establish a 90-day time limit for the issuance of the SD&R.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax**

Response: Staff disagrees that the RFR and SD&R process should be eliminated. Such action would be inconsistent with RTA [Regulation 5266](#), *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. Staff also notes that occasionally the request for a SD&R comes from Board Members requesting clarification to a D&R. The RFR process allows for any new issue to be addressed in a SD&R before the case moves forward to Board hearing. In addition, the decision in the SD&R may resolve the issue so that the appeal does not need to move forward to Board hearing.

With regard to setting a time limit to issue the SD&R, staff is concerned about its ability to meet a SD&R time limit and the current time limits for issuing D&Rs given staff resource and workload issues.

22. Subdivision (c)(8). Eliminate the provision that D&Rs and SD&Rs are final after 60 days if not appealed to the Board.

Response: Staff assumes that this provision was unintentionally deleted by Mr. Klehs when he suggested the request for reconsideration process be eliminated. Even if the SD&R process was eliminated, staff and interested parties likely agree that the provision that D&Rs are final after 60 days if not appealed to the Board should remain.

23. Subdivision (d). Require that either the hearing notice or a status report be issued within 90 days of the request for hearing.

Response: Staff does not agree with this suggested revision. Such action would be inconsistent with the rules for other Sales and Use Tax appeals provided in the Rules for Tax Appeals. In addition, staff does not believe there is currently a significant delay in calendaring local tax appeal cases for Board hearing.

24. Subdivision (d)(3). Require the taxpayer and any participating jurisdiction taking part in a Board hearing to disclose the existence and terms of any revenue sharing agreement between the taxpayer and any participating jurisdiction.

Response: As noted in Item 14, staff is open to discussion of this provision. Again, staff notes that under the current provisions of (d)(3), taxpayers are not parties unless they choose to actively participate in the Board hearing.

Summary

Staff believes the 2008 amendments have improved the local tax appeal process and that the number of aged cases will continue to be reduced as petitions that originated under the prior rules are resolved. Although staff does not agree with most of the proposed revisions and believes more time is needed to realize the full effect of the 2008 revisions, staff is open to reviewing the process for improvement. As suggestions are considered, staff and interested parties should think about whether the changes should be implemented retroactively or prospectively.

INITIAL DISCUSSION PAPER

Proposal to Amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties' meeting scheduled for January 6, 2010.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 12/16/2010

August 25, 2010

The Honorable Betty Yee, Chair
Board of Equalization
400 Capitol Mall, # 2580
Sacramento, CA 95814

Dear Board Member Yee:



On behalf of the City of Livermore, we thank you for your interest in beginning the process to amend “Sales and Use Tax Regulation 1807- Petitions For Reallocation Of Local Tax” in your capacity as Chair of the Board of Equalization (BOE) Business Taxes Committee.

We have enclosed a copy of Regulation 1807 with suggested changes which you may want to consider as a starting point as the Business Taxes Committee begins its deliberations. The suggested changes to Regulation 1807 are made within the following context:

1. The current Regulation 1807 process to reach a final decision is too long. In one case involving the City of Livermore and other jurisdictions, this “fast tracked case” has been going for almost two years with the date of knowledge going back to 2007. Another matter dates back to 1999. Your office may want to take an inventory of all tax allocation cases under consideration at the BOE. The BOE staff has been doing an excellent job in working with all affected parties in these cases. However, the staff is working within the guidelines provide by the current and past regulations. It seems that the current process is without adequate deadlines allowing certain parties to “game the regulation” resulting in needless delays before a final decision can ever be made. Neither affected local jurisdictions nor taxpayers should have to participate in a process that is longer than a legislative session or the amount of time a typical civil case takes in court—especially since BOE decisions are subject to judicial review in any event. The BOE may want to consider a process that takes no longer than one year.
2. In Regulation 1807, Section (b)(7), we are recommending that any disputed local tax monies be placed in a “trust” or similar account until a final decision has been reached by the BOE as to who might be legally entitled to the monies. The effect of such a trust account would force jurisdictions to finish participating in an allocation request since they would not have possession of



the funds. The jurisdictions would also not rely on monies that they may not be legally entitled to and lessen the burden of repaying those monies if an affected jurisdiction is at the losing end of an allocation case.

3. That the BOE sponsor legislation paying interest to the winning jurisdiction of an allocation case of any monies held in trust when a final decision has been made for all affected jurisdictions.

Hopefully, our comments will be part of the agenda when the Business Taxes Committee schedules this issue on September 15, 2010. We look forward to working with you on this issue.

Please feel free to contact me if we can be of any service to you in the future.

Sincerely,



JOHAN KLEHS

Enclosure As Stated

CC: Ms. Linda Barton, City of Livermore
Mr. John Pomidor, City of Livermore
Ms. Robin Sturdivant, HdL Companies

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

Reference: Sections 7209 and 7223, Revenue and Taxation Code

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group shall maintain a case log documenting the status of each petition. The case log shall be forwarded to the Board on a monthly basis. Copies of these reports shall be made available to each petitioner.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group provide a status report of the petition and/or issue its decision without regard to the status of its investigation. Within ~~90~~ 60 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, and within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision. If the written objection was filed by a notified jurisdiction all future local tax allocations from the account that is subject to the inquiry will be placed in trust until the administrative process has been exhausted and a "final" decision has been rendered.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision. Regulation 1807. (Contd.) 3

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or a notified jurisdiction it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. A notified jurisdiction may participate in the appeals conference regardless of whether the Sales and Use Tax Department has previously ruled in favor of, or in opposition to its position. Any subject taxpayer directly taking part in an appeals conference shall disclose to all participants the existence and terms of any revenue sharing or incentive agreement involving local tax monies. To make the conference most productive, each participant ~~should~~ shall submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals ~~conference, however~~ conference. Additional relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15 days~~ 30 days after the appeals conference, ~~or 30 days with sufficient justification, to submit to the conference holder,~~ with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted. ~~without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.~~

~~(4) The Appeals Division shall notify all participants once the final submission~~ Within 90 days after the final submission authorized by subdivision (c)(3), has been received. Within 90 days of receipt of the final submission: the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to ~~90~~ 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing. Any taxpayer or notified jurisdiction electing to participate in the hearing shall disclose the existence and terms of any revenue sharing agreements between the taxpayer and any notified jurisdiction.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. Regulation 1807. (Contd.) 5

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

History: Adopted August 1, 2002, effective February 22, 2003.

Amended May 28, 2008, effective September 10, 2008. Replaced all previous language to provide for a more comprehensive process for review of petitions for local tax reallocation, to restructure the request for extension process, and to provide earlier notification to substantially affected jurisdictions.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office.

Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

Initial Discussion Paper - Regulations 1807 & 1828



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September 1, 2010

The Honorable Betty T. Yee
Chairwoman and First District Member
State Board of Equalization
450 N Street
Sacramento, CA 95814

Subject: Revisions to Regulation 1807: MuniServices' Comments and Suggestions

Dear Chairwoman Yee:

We understand that the State Board of Equalization, under the leadership of your office, may recommend that the Board initiate a discussion regarding changes to Regulation 1807. We urge the Board to take this opportunity to review and clarify portions of this regulation that will help manage expectations and to continue to refine the efficiency and fairness of the process. Our comments below are consistent with the suggestions provided to the Board for discussion during the interested parties' process of the 2007-08 revision of regulation 1807.

1. Time limits generally.
 - a. Generally.

While we acknowledge and thank the Board for efforts to streamline the administrative process, we, as sales tax consultants for local governments, remain concerned with the length of the administrative process in processing reallocations. The longer the administrative process takes the more impact there is to both the recipient jurisdictions and those from whom money is being taken.

This vital issue could be addressed by establishing an overall administrative limit on bringing a dispute to a Board Member hearing, perhaps three years from the DOK (excluding extensions requested by the local jurisdictions or their sales tax consultants – pursuant to the existing regulations) with a possible extension of six months in extenuating circumstances.

- b. 1807(b)(7)—Second Review By Allocation Group.

To move cases along quickly, it would also help to have a deadline by which the Allocation Group must respond to an objection by a petitioner. Currently there is not such a deadline in regulation 1807. Language could be added in a final sentence at the end of subsection (b)(7) as follows:

"If an objection has been submitted, the matter will be reconsidered by the Allocation Group and a supplemental decision issued within 60 days of receipt of the objection. If the objection is on factual grounds, and an additional factual investigation is required, the same time limits for issuing the initial decision shall apply."

Initial Discussion Paper - Regulations 1807 & 1828

c. *1807(c)(6)—Time limits on Request for Reconsideration (RFR).*

There is no time limit for issuing a supplemental D&R after an RFR has been filed. Such a time limit could help keep the process moving. To that end, we suggest adding a 90-day time limit for issuance of the SD&R.

2. Other suggested changes.

a. *1807(c)(2)—Appeals Conference.*

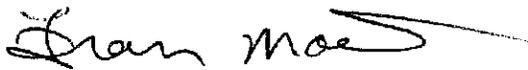
The addition of an ordering rule would allow consultants and their jurisdictions to have a better idea of when particular cases will come thru the process. To that end we request that the Board add the following sentence to the end of subsection (c)(2), "Normally appeals conferences will be scheduled in order of time of receipt of the appeal by BOE Appeals."

b. *1807(d)—Review by Board Members.*

It would be beneficial for the local jurisdictions and their consultants to be able to track and determine which cases are likely to be scheduled for hearing and in what order. To that end we suggest including language indicating that either the hearing notice or a status report should be issued within 90 days of the request for hearing.

Once again, we most appreciate the effort by the Board to implement a fair process and look forward to working with staff and members as it relates to Regulation 1807.

Sincerely yours,



Fran Mancía
MuniServices, LLC

cc: Alan LoFaso, Deputy Chief, Office of the Honorable Betty T.Yee
Eric Myers, MuniServices, LLC
Janis Varney, MuniServices, LLC
Christy Bouma, Capitol Connection

Comparison of Proposed Revisions to Regulation 1807

Current as of December 17, 2010

| Ref | Regulatory Language Proposed by Mr. Klehs | Suggested Revisions from Staff | Suggested Revisions from MuniServices |
|--------|--|--------------------------------|---|
| | | | Establish an overall time limit to bring a case to Board hearing – 3 years from the date of knowledge, with a possible extension of 6 months. |
| (b)(2) | <p>The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.</p> <p><u>The Allocation Group shall maintain a case log documenting the status of each petition. The case log shall be forwarded to the Board on a monthly basis. Copies of these reports shall be made available to each petitioner.</u></p> | | |
| (b)(3) | <p>If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group <u>provide a status report of the petition and/or</u> issue its decision without regard to the status of its investigation. Within 90 <u>60</u> days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.</p> | | |

Comparison of Proposed Regulatory Changes

Current as of December 17, 2010

| Ref | Regulatory Language Proposed by Mr. Klehs | Suggested Revisions from Staff | Suggested Revisions from MuniServices |
|--------|--|---|---|
| (b)(4) | If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petitioner should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6). | If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petitioner should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6). <u>The Allocation Group will also mail a copy of its decision to any potentially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).</u> | |
| (b)(7) | If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, <u>within 90 days</u> , issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision. <u>If the written objection was filed by a notified jurisdiction all future local tax allocations from the account that is subject to the inquiry will be placed in trust until the administrative process has been exhausted and a "final" decision has been rendered.</u> | | If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision. <u>If an objection has been submitted, the matter will be reconsidered by the Allocation Group and a supplemental decision issued within 60 days of receipt of the objection, if the objection is on factual grounds, and an additional investigation is required, the same time limits for issuing the initial decision shall apply.</u> |

Comparison of Proposed Regulatory Changes

Current as of December 17, 2010

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|-----------|--|--|--|
| (c)(2) | <p>If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division <u>within 30 days of receipt of the objection</u>. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. <u>The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.</u></p> | <p>If a timely objection to its supplemental decision is submitted, the Allocation Group <u>within 30 days of receipt of the objection</u> will prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.</p> | <p>If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. <u>Normally appeals conferences will be scheduled in order of time of receipt of the appeal by BOE Appeals.</u></p> |
| (c)(2)(B) | <p>If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision <u>within 60 days</u>, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> | | |
| (c)(2)(C) | <p>If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision <u>within 60 days</u>, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> | | |
| (c)(2)(D) | <p>Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy</p> | | |

Comparison of Proposed Regulatory Changes

Current as of December 17, 2010

| Ref | Regulatory Language Proposed by Mr. Klehs | Suggested Revisions from Staff | Suggested Revisions from MuniServices |
|--------|---|---|---------------------------------------|
| | <p>of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). <u>If an objection to a second supplemental decision is filed by either the petitioner or a notified jurisdiction it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection.</u> If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.</p> | | |
| (c)(3) | <p>The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. <u>A notified jurisdiction may participate in the appeals conference regardless of whether the Sales and Use Tax Department has previously ruled in favor of, or in opposition to its position. Any subject taxpayer directly taking part in an appeals conference shall disclose to all participants the existence and terms of any revenue sharing or incentive agreement involving local tax monies.</u> To make the conference most productive, each participant should <u>shall</u> submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference. however <u>Additional</u> relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals</p> | <p>The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45—30 <u>30</u> days after the appeals conference, —or—30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such</p> | |

Comparison of Proposed Regulatory Changes

Current as of December 17, 2010

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| | <p>conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15 days <u>30 days</u> after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted, without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.</p> | <p>additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 <u>30</u> days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.</p> | |
| (c)(4) | <p>The Appeals Division shall notify all participants once the final submission Within 90 days after the final submission authorized by subdivision (c)(3), has been received. Within 90 days of receipt of the final submission, the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 <u>30</u> additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.</p> | | |

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| (c)(6) | <p>The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.</p> | | <p>Establish a 90-day time limit for the issuance of the SD&R.</p> |
| (c)(7) | <p>Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.</p> | | |
| (c)(8) | <p>(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final.</p> | | |

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Current as of December 17, 2010

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| | as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (e)(7). | | |
| (d)(1) | The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R . Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position. | | Require that either the hearing notice or a status report be issued within 90 days of the request for hearing. |
| (d)(3) | The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing. <u>Any taxpayer or notified jurisdiction electing to participate in the hearing shall disclose the existence and terms of any revenue sharing agreements between the taxpayer and any notified jurisdiction.</u> | | |