



STATE BOARD OF EQUALIZATION

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KRISTINE CAZADD  
Interim Executive Director

August 12, 2011

Dear Interested Party:

Enclosed are the Agenda and Informal Issue Paper for the August 23, 2011 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*.

This issue was previously presented to the Board at the April 26, 2011 Business Taxes Committee meeting. The formal issue paper presented at the April meeting is available on our website (<http://www.boe.ca.gov/meetings/pdf/1807-1828IP.pdf>).

If you are interested in other topics to be considered by the Business Taxes Committee, see the Business Taxes Committee webpage (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **August 23, 2011** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director  
Sales and Use Tax Department

JLM:llw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)

(Via E-mail)

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

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

Mr. Tim Treichel, Board Member's Office, Third District

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

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

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

Ms. Natasha Ralston Ratcliff, State Controller's Office

Ms. Kristine Cazadd

Mr. Randy Ferris

Mr. Robert Tucker

Mr. Cary Huxsoll

Ms. Susanne Buehler

Mr. Kevin Hanks

Mr. Steve Sisti

Mr. Thomas Hopkins

Mr. Geoffrey E. Lyle

Ms. Leila Hellmuth

Ms. Lynn Whitaker

Ms. Judi Pierce



**AGENDA — August 23, 2011 Business Taxes Committee Meeting**  
***Petitions for the reallocation of local and district taxes***

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
<p><b>Action 1</b></p> <p><b>1807 (a)(3)(G)</b></p>	<p><b>Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.</b></p> <p><b>(a) DEFINITIONS.</b>            (3) PETITION.  <b>(G)</b></p> <p>“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 <u>or within a period of extension described below.</u> 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, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p><u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection 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 jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.</u></p>	<p><b>Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.</b></p> <p><i>[SAME LANGUAGE AS PROPOSED BY STAFF]</i></p>

**AGENDA — August 23, 2011 Business Taxes Committee Meeting**  
***Petitions for the reallocation of local and district taxes***

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
1807 (b)(1)	<p><b>(b) REVIEW BY ALLOCATION GROUP.</b></p> <p>(1) The Allocation Group will promptly acknowledge a submission intended as a petition. <u>If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.</u></p>	[SAME LANGUAGE AS PROPOSED BY STAFF]
1807 (b)(6)	<p>(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)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.</p>	[SAME LANGUAGE AS PROPOSED BY STAFF]
1807 (b)(8)	<p><u>(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.</u></p>	<p><u>(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.</u></p>
1807 (b)(9)	<p>(9) 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)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.</p>	[SAME LANGUAGE AS PROPOSED BY STAFF]

**AGENDA — August 23, 2011 Business Taxes Committee Meeting**  
***Petitions for the reallocation of local and district taxes***

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
<b>1807 (b)(10)</b>	<p>(<del>9</del>10) 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)(<del>8</del>9), 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 <i>received</i> 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 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision.</p>	<p>[SAME LANGUAGE AS PROPOSED BY STAFF]</p>
<b>1807 (c)(1)</b>	<p><b>(c) REVIEW BY APPEALS DIVISION.</b></p> <p>(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)(<del>9</del>10). 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.</p>	<p>[SAME LANGUAGE AS PROPOSED BY STAFF].</p>
<b>1807 (c)(2)</b>	<p>(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, <u>within 30 days of receipt of the objection</u>, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, <u>any other jurisdiction that would be substantially affected if the petition were granted</u>, 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>[SAME LANGUAGE AS PROPOSED BY STAFF]</p>

**AGENDA — August 23, 2011 Business Taxes Committee Meeting**  
***Petitions for the reallocation of local and district taxes***

<b>Action Item</b>	<b>Regulatory Language Proposed by Staff (Exhibit 2)</b>	<b>Regulatory Language Proposed by MuniServices (Exhibit 3)</b>
<b>1807 (c)(2)(D)</b>	<b>(D)</b> 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)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	[SAME LANGUAGE AS PROPOSED BY STAFF]
<b>1807 (c)(3)</b>	(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. 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 <del>15-30</del> days after the appeals conference, <del>or 30 days with sufficient justification</del> , 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 <del>15-30</del> 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.	[SAME LANGUAGE AS PROPOSED BY STAFF]

**AGENDA — August 23, 2011 Business Taxes Committee Meeting**  
***Petitions for the reallocation of local and district taxes***

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
<p><b>1807</b> <b>(g)</b></p>	<p><b>(g) OPERATIVE DATE AND TRANSITION RULES.</b></p> <p>This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. <u>Regulation 1807 was repealed and readopted in 2008.</u> <del>It is</del> <u>The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that <del>are</del> were governed by prior Regulation 1807 (effective February 22, 2003).</u></p> <p>(1) <u>The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective</u> under Section 11343.4 of the Government Code (thirty days after <del>it has been approved</del> <u>approval</u> by the Office of Administrative Law and <del>forwarded</del> <u>forwarding</u> to the Secretary of State) and <del>it there shall have</del> <u>be</u> no retroactive effect.</p> <p>(2) <del>Petitions filed prior to the operative date of this regulation,</del> <u>Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after <del>that</del> its operative date or that of any amendments thereto.</u></p> <p>(3) <u>All such</u> petitions filed prior to January 1, 2003 and denied by Board Management must <u>have perfected</u> any access they may have <u>had</u> to a Board Member hearing no later than 60 days after the <u>September 10, 2008</u>, operative date of this regulation.</p>	<p><b>(g) OPERATIVE DATE AND TRANSITION RULES.</b></p> <p>This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. <del>It is</del> <u>This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that <del>are</del> were governed by prior Regulation 1807 (effective February 22, 2003).</u></p> <p>(1) <u>The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date it becomes effective</u> under Section 11343.4 of the Government Code (thirty days after <del>it has been approved</del> <u>approval</u> by the Office of Administrative Law and <del>forwarded</del> <u>forwarding</u> to the Secretary of State) and <del>it there shall have</del> <u>be</u> no retroactive effect.</p> <p>(2) <del>Petitions filed prior to the operative date of this regulation,</del> <u>Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after <del>that</del> its operative date or that of any amendments thereto.</u></p> <p>(3) <u>All such</u> petitions filed prior to January 1, 2003 and denied by Board Management must <u>have perfected</u> any access they may have <u>had</u> to a Board Member hearing no later than 60 days after the <u>September 10, 2008</u>, operative date of this regulation.</p>

- For Information
- For Discussion
- For Decision Making

BOARD OF EQUALIZATION  
**INFORMAL ISSUE PAPER**

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**Petitions for the reallocation of local and district taxes**

**Issue**

Should the process for handling local and district tax petitions be changed, including amending Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*?

**Background**

Staff's Issue Paper (<http://www.boe.ca.gov/meetings/pdf/1807-1828IP.pdf>) on proposed revisions to Regulations 1807 and 1828 was presented at the April 26, 2011 Business Taxes Committee (BTC) meeting. Following discussion at the meeting about the process of investigating petitions, the cause of delays, and whether additional deadlines would resolve those delays, the Committee directed staff to develop guidelines explaining what is expected of all parties involved in the local tax petition process. Staff's view of these expectations is included in the attached report, *Filing and Processing Local Tax Petitions*, Exhibit 1. While developing the report, staff recognized the need for improvement and clarification of our processes at the Allocation Group (AG) level. Changes to the AG processes, including additional proposed revisions to Regulations 1807 and 1828, are discussed in the next section.

The attached report was provided to several of the interested parties on August 4, 2011, along with additional changes to staff's revisions to Regulations 1807 and 1828. MuniServices' comments on the report and its revised alternative regulatory language are provided in Exhibit 3. Mr. Johan Klehs and The HdL Companies (HdL) are now in agreement with staff's proposed regulatory revisions. HdL's submission, including their comments on the non-regulatory issues presented in the staff report, are included in Exhibit 4. Mr. Klehs' comments are provided in Exhibit 5. Although he did not provide a submission, staff also spoke with Mr. Robert Cendejas, who indicated his support of staff's proposed regulatory changes.

**Discussion of the Issue**

Since the April BTC meeting, staff has been working with several of the interested parties to improve how petitions are reviewed, tracked, and followed up on by the AG. Staff's proposed new procedures are found under "Future Improvements" in Exhibit 1 (see pages 1 and 2). Except as noted below, these procedures are intended for incorporation into BOE's forms and procedural manuals (e.g., the Compliance Policy and Procedures Manual, Audit Manual, and the AG Procedures Manual). Staff will take the comments received from MuniServices and HdL under consideration as the forms and manuals are revised. Staff will also continue to work with interested parties to get their input as the proposed form and manual changes go through the revision and approval process.

**AG Level - Proposed regulatory changes.** In addition to the revisions to Regulations 1807 and 1828 proposed at the April BTC meeting, staff recommends two additional revisions:

- Subdivision (b)(1) - Allow a submitting jurisdiction 30 days to provide additional information when their original submission does not contain the elements of a "petition" as provided in subdivision (a)(3). If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge.

Staff believes this revision clarifies how staff will treat incomplete submissions, while allowing the submitting jurisdiction time to correct their submission without losing its date of knowledge. Interested parties did not note any objection to this new provision.

- Subdivision (b)(8) - Reduce the timeframes of the trigger provision at the AG supplemental decision level so that after three months the petitioner or notified jurisdiction may request the AG issue a supplemental decision. When such a request is made, the supplemental decision will be issued within 60 days. Staff's prior recommendation was that a petitioner or notified jurisdiction could make such a request after six months and the AG would issue its supplemental decision within 90 days. However, after re-evaluating the work to investigate petitions at this step, staff believes the shorter timeframes allow sufficient time for staff to investigate new facts and arguments that are frequently presented as the basis for objecting to the AG's previous decision.

As noted in Alternative 2, MuniServices believes the AG supplemental decision should be issued within 30 days.

Exhibit 6 provides an updated overview chart of the current local tax petition process and the main revisions proposed by staff and interested parties.

**Appeals Division and Board Member Level.** Staff does not propose any new changes to the staff recommendation presented at the April BTC meeting with regard to the Appeals Division and Board Proceedings Division processes.

In their submission, HdL noted its continued concern regarding the undefined timeframe at the Appeals Division level of review. Page 2 of its submission provides in part:

"There are currently no deadlines under Regulation 1807(c) for:

- The Appeals Division to notice a conference.
- The AG to issue a second supplemental decision should the Sales and Use Tax Department exercise its option under Section (c)(2)(A) to refer the case back to AG for further investigation.

HdL shares the Appeals Division's desire to maintain flexibility in scheduling so as to accommodate the schedules and workloads of all participants involved. We have further been assured that previous lengthy delays were due to extenuating circumstances which are not likely to repeat. Should further delays occur over the next 12 to 18 months, we would appreciate the opportunity to bring the issue back before the Business Taxes Committee for reconsideration."

Mr. Klehs, representing the City of Livermore, made similar comments explaining that he reserves the right to come back to the Board and continue to tighten up the deadlines in the regulations if he feels that petitions are not proceeding through the process in a timely manner. Staff agrees that this is a reasonable approach.

## Alternatives

### **Alternative 1 – Staff Recommendation**

Approve and authorize publication of staff's proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax* (see Exhibit 2). Staff's proposed amendments:

- Formalize the LRAU's existing policy to give jurisdictions a 30-day extension to respond to an LRAU notification regarding the misallocation of local or district tax. The regulations currently provide that a

“petition” includes an appeal from a notification from the LRAU that taxes were misallocated and will be reallocated. Jurisdictions may object to that notification, submitting a written petition to the AG within 30 days of the date of mailing of the notification.

- Allow a submitting jurisdiction 30 days to provide additional information when their original submission does not contain the elements of a “petition” as provided in subdivision (a)(3). If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge.
- Add a provision in the AG supplemental decision process to allow the petitioner or notified jurisdiction to request after three months that the AG issue its supplemental decision within 60 days from receiving the request, with the requester understanding the limitations it may be placing on the AG’s investigation and analysis. This provision is similar to the mechanism currently in subdivision (b)(3) with regard to the AG’s initial decision, but with shorter timeframes.
- Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG’s supplemental decision.
- Require the notice of an appeals conference be mailed to the petitioner, all notified jurisdictions, and any other jurisdiction that would be substantially affected if the petition were granted. Currently, if a petition is denied by the AG and the Appeals Division, a potentially affected jurisdiction will not be notified until the matter is scheduled for a Board hearing.
- Allow participants 30 days to provide additional information following the appeals conference, and allows the other participants 30 days to respond to that information. The current regulation provides participants up to 30 days to provide additional information and gives 15 for other participants to respond.
- Clarify in subdivisions 1807(g) and 1828(f), “Operative Date and Transition Rules,” that the proposed amendments have a prospective application. The current language in these subdivisions is specific to the 2008 revision of the regulations.

#### Pros

- By formalizing the LRAU extension procedure, jurisdictions avoid the issue of petitions technically filed late with the AG because the LRAU allowed additional time when the petition was filed after the 30-day deadline.
- When a submission sent to the AG does not contain the elements of “petition,” jurisdictions are allowed 30 days to provide additional information. If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge. This provision allows the submitting jurisdiction time to perfect its submission with a date of knowledge based on the date of receipt of the original submission.
- Provides the petitioner or notified jurisdiction a method to control the timeline of the AG review process by allowing the petitioner or notified jurisdiction to request that the AG issue its supplemental decision within 60 days of receiving a request to issue a supplemental decision.
- Formalizes the current procedure of transferring files from the AG to the Appeals Division within 30 days.
- Brings potentially affected jurisdictions into the appeals process starting at the Appeals Division level rather than the current Board Hearing level. By notifying more jurisdictions at an earlier level, staff believes issues can be more fully discussed and possibly resolved before the Board hearing.
- Clarifies and makes consistent the time allowed to each party to submit and respond to information provided after the appeals conference.
- Allows adequate time for staff to fulfill its responsibility to all jurisdictions affected by its decision whether or not to reallocate reported local or district tax.
- The current proposed revisions would be applied prospectively.

Cons

- Does not limit the local tax appeals process to a timeframe for completion.
- Does not prohibit participants from submitting additional responses after the specified period for post-appeals conference submissions.

**Alternative 2 - MuniServices**

Approve and authorize publication of proposed amendments to Regulations 1807 and 1828 as proposed by MuniServices (see Exhibit 3). MuniServices' proposed amendments are the same as staff's except for the following:

- Subdivision 1807 and 1828 (b)(8) – Supplemental decision by the AG. MuniServices recommends that when a petitioner or notified jurisdiction requests the AG to issue a supplemental decision, the AG provide that decision within 30 days.
- Subdivisions 1807(g) and 1828(f) – Transition rule. Although MuniServices agrees with staff that the current proposed amendments should apply prospectively, they propose language different from staff's to accomplish this application. MuniServices' transition rule language refers to the regulatory changes in 2008 as amendments; staff's recommendation explains that in 2008 the regulations were repealed and readopted.

Pros

- Requires the AG to issue its supplemental decision within 30 days instead of the 60 days proposed by staff.
- Addresses MuniServices' concerns with staff's proposed transition rule language.

Cons

- The 30 day deadline may not provide for adequate review of the AG supplemental decision. Staff had considered a 30 day deadline to issue the supplemental decision, but concluded that 60 was more appropriate due to the time required to complete additional investigation and the levels of review involved in issuing a supplemental decision.
- Staff believes its proposed transition rule language more accurately reflects the 2008 regulatory changes. In 2008, the titles and entire texts of the regulations were revised. The California Code of Regulations indicates that the regulations were repealed and readopted in 2008.

**Recommendation**

Staff recommends the Board approve Alternative 1 to approve and authorize publication of proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, as proposed in Exhibit 2.

**Critical Time Frames**

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

**Preparation and Reviews**

Tax Policy Division, Sales and Use Tax Department

Current as of: August 10, 2011

## Filing and Processing Local Tax Petitions

### I. INTRODUCTION

At the April 26, 2011 Business Taxes Committee meeting, the Committee directed staff to explain what is expected of the parties involved in the local tax petition process.

### II. EXPECTATIONS AT THE ALLOCATION GROUP (AG) LEVEL

The procedures described below include existing practices as well as new practices intended to make the petition process more efficient for all parties.

**A. Jurisdictions are expected to file petitions that meet the requirements of Regulation 1807(a)(3).** Jurisdictions and their consultants typically submit petitions in weekly batches. The number of petitions submitted at one time can range from just a few to hundreds. The greatest number is received at quarter end, and it is not unusual for over 1,000 petitions to be submitted in those months. Petitions are generally submitted on BOE-549 forms:

- BOE-549-S, *Claimed Incorrect Distribution of Local Tax – Short Form* - used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters
- BOE-549-L, *Claimed Incorrect Distribution of Local Tax – Long Form* - used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed

Future improvements: Currently, most petitions are filed using the short form. To speed up identifying and resolving simpler requests, staff plans to limit the use of the short form to Tax Area Code changes and use the long form for all other inquiries. This change will be added to the form instructions and updated in the AG procedures manual.

Staff is also revising the BOE-549 forms to improve the quality of information provided with submitted petitions. Staff is reviewing the information requested on the long form and will add fields for other items that may assist in investigations. For example, a box is being added for the contact person's email address, since staff has found that they receive more timely responses when they contact taxpayers by email rather than by telephone.

Petitions that do not meet the requirements of 1807(a)(3) will be returned to the petitioner. Staff proposes amending Regulation 1807 to allow the petitioner 30 days to resubmit the petition with additional information. If all requirements of 1807(a)(3) are met with the resubmitted petition, the original date of submission will be considered the date of knowledge. If all requirements of 1807(a)(3) are not met within 30 days, a date of knowledge will be established when a petition meeting all requirements of 1807(a)(3) is submitted.

After Regulation 1807 is amended, the form instructions will be revised to include a statement that a petition may be returned if the required information is not included.

**B. Jurisdictions are expected to provide as much information as possible to support a reallocation.** To make a reallocation, staff needs to know: the amount of the transfer, where the funds should be allocated to, where the funds are being allocated from, and why

the reallocation should be made. The AG estimates that currently 10% of petitions include all of this information along with sufficient supporting documentation that the AG can make a reallocation without further verification.<sup>1</sup> An estimated 30% include all of the information, but still require the AG to verify information with the taxpayer.<sup>2</sup> The remaining petitions are missing information, and while they may be complete enough to be considered valid petitions under the provisions of Regulation 1807(a)(3), they may require substantial investigation by the AG.

- C. Jurisdictions are expected to use the deadline trigger provisions in Regulation 1807(b)(3).** If after six months the petitioner believes the AG is taking too long to issue its decision, the petitioner should request that the AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the AG will issue a decision based on the information in its possession.

Future improvements: In the recent 1807 Issue Paper, staff proposed an identical trigger provision at the AG supplemental decision level. However, staff has re-evaluated this proposal, and now recommends reducing the time so that after three months the petitioner or notified jurisdiction may request the AG issue a supplemental decision. When such a request is made, the supplemental decision will be issued within 60 days. The combination of the two trigger provisions gives the petitioner and notified jurisdictions a mechanism to define the timeframe of the AG review process. Staff believes this is preferable to imposing hard deadlines at the AG level, because it provides staff the flexibility to investigate petitions without a strict time limit, while still allowing petitioners and notified jurisdictions to impose deadlines when they believe it is necessary.

- D. The AG must acknowledge and review petitions timely.** When petitions are received, the AG logs them in, sends acknowledgement letters to the petitioners, classifies the petitions based on difficulty, and assigns the petitions to appropriate staff based on classification.

Future improvements: To improve responsiveness to petitioners, staff will begin reviewing petitions for completeness within 30 days of receipt. Petitions that do not meet the requirements of 1807(a)(3) will be returned to the petitioner as explained in section A above.

In addition, while the AG staff maintains case notes for actions taken on a petition, staff plans to begin using general field audit form BOE-414-Z, *Assignment Activity History*, to record the status of work done (e.g., calls made, emails sent) on petitions at the AG level. Staff believes that using the BOE-414-Z will make it easier to respond to a petitioner's requests for status updates, as well as make it easier for supervisors to review how an investigation is progressing.

Staff is also standardizing how the AG lead and AG supervisor review the status of petitions as petitions age. There will now be monthly follow-ups with staff for any aged

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<sup>1</sup> For example, no additional verification is required for a reallocation related to a change on a taxpayer's Schedule F, *Detailed Allocation by City of 1% Combined State and Uniform Local Sales and Use Tax*, when the petition includes the related sales invoice or a revised schedule bearing the same signature as was on the original return.

<sup>2</sup> Although a reallocation petition may include a spreadsheet or other explanation of why a reallocation is warranted, staff must contact the taxpayer and verify that the taxpayer gave the jurisdiction or consultant the information and that the information is correct.

assignments over 180 days. The AG lead will follow up on assignments aged 180-270 days, and the AG supervisor will follow up on assignments aged greater than 270 days.

The AG has also reviewed its procedures for preparing and following up on information requests to taxpayers and is updating the AG procedure manual to formalize guidelines for contacting taxpayers. Cases where the taxpayer is uncooperative in providing records, or where investigation determines that records do not exist, will be evaluated by the AG auditor and discussed with the AG lead and/or AG supervisor. The auditor will then decide how to proceed, such as whether to deny the petition, contact the petitioner for assistance, forward the case to a field office for investigation, or issue a subpoena for records.

Procedures for sending information requests to field offices have also been reviewed. Cases will be discussed with the AG supervisor and the petitioner will be notified prior to the case being referred to the field office. Referrals will include specific instructions to field staff for the information sought. Procedures for follow up with the field office auditor and the auditor's supervisor have also recently been modified. These modifications include shortening the follow-up time with field offices (30 days for in-state offices and 60 days for out-of-state offices). Staff will review these procedures periodically to determine whether future changes are needed.

The current threshold for manually processing fund transfers is \$50 per quarter. This current threshold has been in place since 1990 and was supported by Government Code section 13943.2 which sets the dollar amount that state agencies are not required to collect. Although the amount in section 13943.2 was recently raised to \$500, staff proposes raising the threshold to \$250 per quarter, to be consistent with the Local and District Tax thresholds and reallocation policies applied to field audits since July 2010. The AG estimates 5% of fund transfers processed are for amounts below \$250.

The exception to the proposed threshold would be for registration changes. In cases where the investigation results in a change to the taxpayer's registration, BOE's computer system will continue to automatically process fund transfers for periods that have been funded within two quarters prior to the date of the registration update regardless of whether the threshold was met in those quarters.

- E. Taxpayers are expected to timely respond to information requests.** Taxpayers are required to make their records available for examination by the BOE. However, taxpayers often place a low priority on responding to requests to provide records since local tax disputes only involve reallocation of reported amounts and do not result in any change to the taxpayer's liabilities. As explained above, when the taxpayer is uncooperative, the AG auditor, lead, and supervisor will determine how to proceed with the case.

### III. EXPECTATIONS AT THE APPEALS DIVISION LEVEL

The information below describes current procedures in the Appeals Division.

- A. The Appeals Division is expected to timely schedule cases for conference.** When an AG supplemental decision is appealed, the AG forwards the file to the Appeals Division. The Appeals Division conference holder schedules conferences after considering the holder's workload and availability of the conference participants. For example, two conferences have been noticed and the conference holder anticipates noticing the remaining four in inventory (two of which were received in May 2011) promptly upon

coordinating with all participants. On average, an appeals conference is noticed within three and a half months (and held within 5 months) of receipt of a file that is ready for conference.

The petitioners and notified jurisdictions are sent the notice of conference at least 45 days prior to the scheduled date of the conference. Since there is no authority in the regulation to grant postponements, and because there are typically numerous jurisdictions participating in each conference, the conference holder normally contacts the participants or their representatives to determine availability prior to setting the conference date.

- B. The Appeals Division must timely issue a D&R.** The Appeals Division holds the appeals conference allowing participants the opportunity to explain their respective positions. Participants may submit written information prior to the conference, and the conference holder may allow participants to submit additional information following the conference. The Appeals Division issues a written Decision and Recommendation (D&R) within 90 days after the final submission of information following the appeals conference, or within 180 days if additional time is approved by the Chief Counsel. Copies of the request to the Chief Counsel for additional time to prepare the D&R and the Chief Counsel's response are provided to the petitioner, notified jurisdictions, and the Sales and Use Tax Department (SUTD). On average, D&Rs are completed within about 120 days after the final submission of information.

A copy of the D&R is sent to the petitioner, all notified jurisdictions, any other jurisdiction that will be substantially affected by the D&R, and the SUTD.

- C. Jurisdictions must submit information timely.** Appeals conference participants should submit all facts, law, argument, and other information in support of their position at least 15 days before the appeals conference. If the conference holder allows a participant to submit additional information following the conference, the participant must submit that information, with copies to all other participants, within the time allowed by the regulation (usually 30 days). Participants responding to that additional information are currently required to submit their response, with copies to all other participants, within 15 days (staff and interested parties propose changing this to 30 days). Participants may request additional time to submit argument and evidence; however, such requests are not granted unless approved by the Assistant Chief Counsel of the Appeals Division.

#### **IV. EXPECTATIONS AT THE BOARD PROCEEDINGS DIVISION LEVEL**

**The Board Proceedings Division is expected to timely schedule cases for hearing.** Currently, when the Board Proceedings Division receives a timely request for hearing, it will notify the SUTD, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer whose allocations are the subject of the petition, that the petition for reallocation is being scheduled for hearing. The notice of hearing is sent at least 75 days prior to the scheduled date of the hearing. Staff estimates that a notice of hearing is sent to all parties to the appeal about one to two months after the date a request for hearing is received.

## V. OTHER ISSUES

In addition to the information discussed in the preceding sections, the Committee discussion included asking staff to clarify whether additional staffing was needed and to report on the status of the AG cases over two years old.

**Is additional staff needed?** Under the current provisions of Regulation 1807 and under staff's proposed changes, the AG does not believe it needs additional permanent staff to address workload issues. The AG has recently added a Tax Technician II position and has tentatively been approved for an additional Associate Tax Auditor position (who will be responsible for the initial review of petitions and who will also work cases).

Historical inventory data shows that the AG is catching up with the backlog of petitions. On June 30, 2010, the AG had 5,656 total petitions in inventory. As of June 28, 2011, the AG had 4,174, a reduction of approximately 26%. Based on historically achieved hours per case, the number of petitions submitted over the last nine months, and the number of positions, it appears that AG staff should continue to complete more petitions than it receives. Staff estimates that if the number of submitted petitions remains consistent, AG staff should clear the backlog in 24 months. Additional temporary staff might be helpful in reducing the backlog; however, staff notes that in the short-term, adding staff will decrease production as trainers (usually the highest producers) will have less time to work cases.

The Appeals Division also believes that under the current provisions of Regulation 1807 and under staff's proposed changes, the Appeals Division can continue to meet its current workload without requesting additional staff. We note that since September 2008, of the 1,555 petitions (involving 542 taxpayers) in inventory, the Appeals Division has closed 1,349 petitions (involving 522 taxpayers), including 99.8% of the Mass Appeals cases.

With regard to the deadlines proposed by Mr. Klehs, the AG believes that if the proposed changes were applied immediately, the AG would likely deny hundreds of cases without full investigation. If the deadlines were applied prospectively (i.e., only to cases filed under the new rules), the AG is unsure if there would be a significant increase in cases denied by the AG and appealed to the Appeals Division. AG staff notes, however, that current inventory would need to be prioritized over aged inventory to meet the new deadlines. The Appeals Division believes that it would need additional staff if there was a significant increase in the number of cases appealed to the Appeals Division. It notes, however, that adding staff will temporarily decrease production as current staff trains new staff.

**AG cases over 2 years old.** At the April 2011 committee meeting, interested parties raised the issue of aged cases greater than 24 months at the AG level. At that time, there were approximately 1,030 petitions aged greater than 24 months pending at the AG level. Of those 1,030, approximately 60% were related to six taxpayer accounts. Since April, AG has reduced the total number of petitions aged greater than 24 months by just over 5%; however, none of the six accounts that make up the majority of this aged inventory have been fully resolved. Before the August 2011 committee meeting, the AG hopes to resolve the petitions related to at least two of these six accounts, which will result in a substantial reduction to AG's aged inventory

**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.**

**(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 or within a period of extension described below. 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, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection 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 jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.

(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. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid 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.

(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 issue its decision without regard to the status of its investigation. Within 90 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)(910). 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 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.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

~~(89)~~ 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)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

~~(910)~~ 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)(89), 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 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision.

**(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)(910). 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, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, 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.

**(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, 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, 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)(910). 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. 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 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 45-30 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) Within 90 days after the final submission authorized by subdivision (c)(3), 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 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.

(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.

**(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. ~~Regulation 1807 was repealed and readopted in 2008. It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) ~~The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it there shall have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation. Notwithstanding subdivision (g)(3), petitions shall~~ be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that its~~ operative date or that of any amendments thereto.

(3) ~~All such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

**Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.**

**(a) DEFINITIONS.**

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district 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 district tax has not been distributed or has been erroneously 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 distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

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

(G) The tax reporting periods involved.

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

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection 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 district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district 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 an error in distribution 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 DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

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

**(b) REVIEW BY ALLOCATION GROUP.**

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid 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 redistribution 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 an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(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 issue its decision without regard to the status of its investigation. Within 90 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 error in distribution 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 an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district 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)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district 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 district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

~~(89)~~ The petitioner or any notified district 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)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

~~(910)~~ The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), 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 districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district 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 districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision.

**(c) REVIEW BY APPEALS DIVISION.**

(1) The petitioner or any notified district 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)(10). Such an objection must state the basis for the objecting district'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, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, 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.

**(A)** Petitioner or any notified district 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 districts.

**(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, 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, 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 district, and any other district 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 no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts 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 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 15-30 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) Within 90 days after the final submission authorized by subdivision (c)(3), 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 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 districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district 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 district, 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 district 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 district 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 districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district 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 districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

**(d) REVIEW BY BOARD.**

(1) The petitioner or any notified district 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 district'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 district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts 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.

(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 redistribution exhausts all administrative remedies on the matter for all districts.

**(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.** For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

**(f) OPERATIVE DATE AND TRANSITION RULES.**

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it there shall have~~ it there shall have no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

**From:** [Myers, Eric](#)  
**To:** [Whitaker, Lynn](#)  
**Cc:** [Varney, Janis](#); [Mancia, Fran](#); [Wils, Robert](#)  
**Subject:** Regulation 1807 and 1828-response from MuniServices  
**Date:** Friday, August 05, 2011 4:35:41 PM  
**Attachments:** [1807-1828 Aug BTC - Regs - MuniServices 080511.docx](#)

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Ms. Whitaker,

We have reviewed the changes to Regulation 1807 and would like to submit the attached version as our version. It contains some changes to section (g) to avoid any unintended mischief and a change to section (b)(8) to shorten the time for issuing the supplemental decision—since it is supplemental it should not require a full 60-days to finish after having the matter for 3 months.

We have also reviewed the staff report. While we commend the Board's Staff for many of its recommendations, we were told that we would be given a draft of this report to review. We never were. Thus, while we commend the Board's staff for the informal process and the communication with the parties that took place, we must protest that this document presents only the Board Staff's position.

We have some concerns with some of the positions taken in the report and would like the opportunity to address them, here, in writing. We are aware that most of these will be addressed in the changes to the CPPM or internal guidelines but we want our concerns noted for the record.

1. There are a number of changes that are proposed to be made to the CPPM or internal guidelines, for example changes to the petition forms (II.A), the follow-up process (II.D), and the process for getting information from uncooperative taxpayers (II.E). These changes, at whatever level made, should only be made after meaningful consultation with and input from the jurisdictions and their representatives/consultants.
2. Staff, in section II. B, seem to be implying that the jurisdictions or their representatives have somehow not performed an obligation if the Board Staff has to do what it is paid to do—investigate a valid petition. We remain willing to give information that we have to help in the investigation but the line should not be blurred between submitting a valid petition and conducting the investigation.
3. We are concerned with the idea that we are “expected” to use the deadline trigger. We are willing to use that trigger if necessary. But this trigger is only valuable if it is preceded by thorough and timely investigation by Staff.
4. We appreciate the detail Staff provided in section V. We would like to point out that while staff believes it will soon resolve 600 or so claims that are more than 2 years old, that still leaves 400 claims that are more than 2 years old. We are cautiously optimistic that the changes proposed by staff will help reduce that number further but if not, we will return to the Board asking for firm deadlines with penalties for missed deadlines.
5. The paragraph on the threshold should be completely removed. The discussion of a threshold increase was never part of the interested party proceedings and this change has not been duly noticed under the Administrative Procedures Act. This should not be part of the discussion for this Board meeting to amend regulation 1807. We note, for the record, that if this matter is discussed we will oppose it and we further note that the Government Code section provides no authority for such a threshold.

Sincerely yours,

Eric Myers

MuniServices, LLC

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## Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

### (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 or within a period of extension described below. 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, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection 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 jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.

(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. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid 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.

(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 issue its decision without regard to the status of its investigation. Within 90 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)(910). 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 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.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(89) 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)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(910) 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)(89), 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 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision.

**(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)(910). 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, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, 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.

**(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, 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, 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)(910). 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. 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 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 45-30 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) Within 90 days after the final submission authorized by subdivision (c)(3), 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 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.

(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.

**(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~~ This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date it ~~becomes effective~~ under Section 11343.4 of the Government Code (thirty days after it ~~has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it there shall have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation.~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) ~~All such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

**Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.**

**(a) DEFINITIONS.**

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district 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 district tax has not been distributed or has been erroneously 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 distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

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

(G) The tax reporting periods involved.

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

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection 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 district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60<sup>th</sup> day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district 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 an error in distribution 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 DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

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

**(b) REVIEW BY ALLOCATION GROUP.**

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid 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 redistribution 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 an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(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 issue its decision without regard to the status of its investigation. Within 90 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 error in distribution 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 an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district 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)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district 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 district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

~~(89)~~ The petitioner or any notified district 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)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

~~(910)~~ The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~89~~), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), 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 districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district 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 districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60<sup>th</sup> day after the date of mailing of the decision or supplemental decision.

**(c) REVIEW BY APPEALS DIVISION.**

(1) The petitioner or any notified district 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)(10). Such an objection must state the basis for the objecting district'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, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, 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.

**(A)** Petitioner or any notified district 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 districts.

**(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, 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, 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 district, and any other district 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 no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts 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 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 15-30 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) Within 90 days after the final submission authorized by subdivision (c)(3), 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 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 districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district 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 district, 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 district 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 district 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 districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district 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 districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

**(d) REVIEW BY BOARD.**

(1) The petitioner or any notified district 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 district'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 district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts 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.

(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 redistribution exhausts all administrative remedies on the matter for all districts.

**(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.** For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

**(f) OPERATIVE DATE AND TRANSITION RULES.**

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. ~~It is~~ This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date it becomes effective under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it there shall have be~~ no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.



Hinderliter, de Llamas & Associates  
HdL Coren & Cone  
HdL Software, LLC

August 8, 2011

Lynn Whitaker, Policy Program Specialist  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279

Re: Regulation 1807/1828

Dear Ms. Whitaker:

Thank you for the opportunity to respond to the proposed changes to Regulation 1807 and 1828. We are in agreement with the revisions and appreciate the opportunity to work with both the Allocation Group and Appeals Division.

We have reviewed the staff report for improvements to the Local Tax Petition Procedures, and have outlined our suggestions and comments below:

**EXPECTATIONS AT THE ALLOCATION GROUP (AG) LEVEL**

**Jurisdictions are expected to file petitions that meet the requirements of Regulation 1807(a)(3).**

**FUTURE IMPROVEMENTS (BOE-549S AND BOE549-L)**

- There are other simple registration issues, aside from boundary errors, for which the short form would be more appropriate. For example, where a taxpayer has moved from City A to City B or an incorrect registration to an owner's home address or an accountant's office has been made. We recommend using the short form for all registration issues involving a simple change of business address or Tax Area Code.
- Both the short form and the long form should include a field for the taxpayer's email address, as well as contact information for the person or entity filing the petition.
- Although it may not always be known, a field should be added to specify which jurisdiction the funds are currently being misallocated. HdL generally includes this information in the "Reason for Questioning the Allocation" section.
- The HdL Companies would appreciate being included in the process for revising forms BOE-549S and BOE-549L.

**Jurisdictions are expected to provide as much information as possible to support a reallocation.**

- The petitioner may not always know the amount of the transfer. For example, a retailer with multiple outlets may consolidate their local tax payment to one jurisdiction. In this case, the petitioner would have no way of determining how much each jurisdiction should have received.

**The AG must acknowledge and review petitions timely.**

- The AG currently sends out acknowledgements for petitions (i.e., "*we acknowledge the receipt of 132 petitions on 6/30/2011*"). We suggest future acknowledgement include a case number or account number.

#### **THRESHOLD FOR FUND TRANSFERS**

- We believed that this change is unnecessary as it will have a negligible impact on the AG workload. The impact to the petitioning jurisdiction should also be considered. We often see cases involving a taxpayer that, while correctly registered, is reporting local tax incorrectly. Under the proposed threshold of \$250 per quarter, a petition that takes 18 months to resolve would result in that petitioning jurisdiction not receiving the benefit of any amount under \$4,500.
- We suggest raising the quarterly threshold to \$100 for cases other than registration.

#### **EXPECTATIONS AT THE APPEALS DIVISION LEVEL**

There are currently no deadlines under Regulation 1807(c) for:

- The Appeals Division to notice a conference.
- The AG to issue a second supplemental decision should the Sales and Use Tax Department exercise its option under Section (c)(2)(A) to refer the case back to AG for further investigation.

HdL shares the Appeals Division's desire to maintain flexibility in scheduling so as to accommodate the schedules and workloads of all participants involved. We have further been assured that previous lengthy delays were due to unique and extenuating circumstances which are not likely to repeat. Should further delays occur over the next 12 to 18 months, we would appreciate the opportunity to bring the issue back before the Business Taxes Committee for reconsideration.

#### **OTHER ISSUES**

Since January 1, 2011 HdL has filed 2,114 petitions, and BOE has sent 2,302 responses. While our net inventory dropped by 188 cases over 7 months, we are unsure if it will be possible for BOE staff to clear our current backlog in the next 24 months. However, we believe that the proposed procedural changes will have a substantial positive impact.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Sturdivant', with a large, stylized initial 'R'.

Robin Sturdivant  
Local Government Advocate

RLS:ppl

**From:** Johan Klehs [mailto:johanklehs@comcast.net]  
**Sent:** Tuesday, August 09, 2011 11:34 AM  
**To:** Whitaker, Lynn  
**Cc:** Troy Brown; John Pomidor; 'Robin Sturdivant'; 'Cristina Valdivia'  
**Subject:** RE: BOE - Local Tax Petitions - Regulations 1807 & 1828 to be presented at August BTC

Lynn:

After discussions with the City of Livermore this morning, we have decided to join HdL and the staff in supporting the new changes to the Regulation 1807 process.

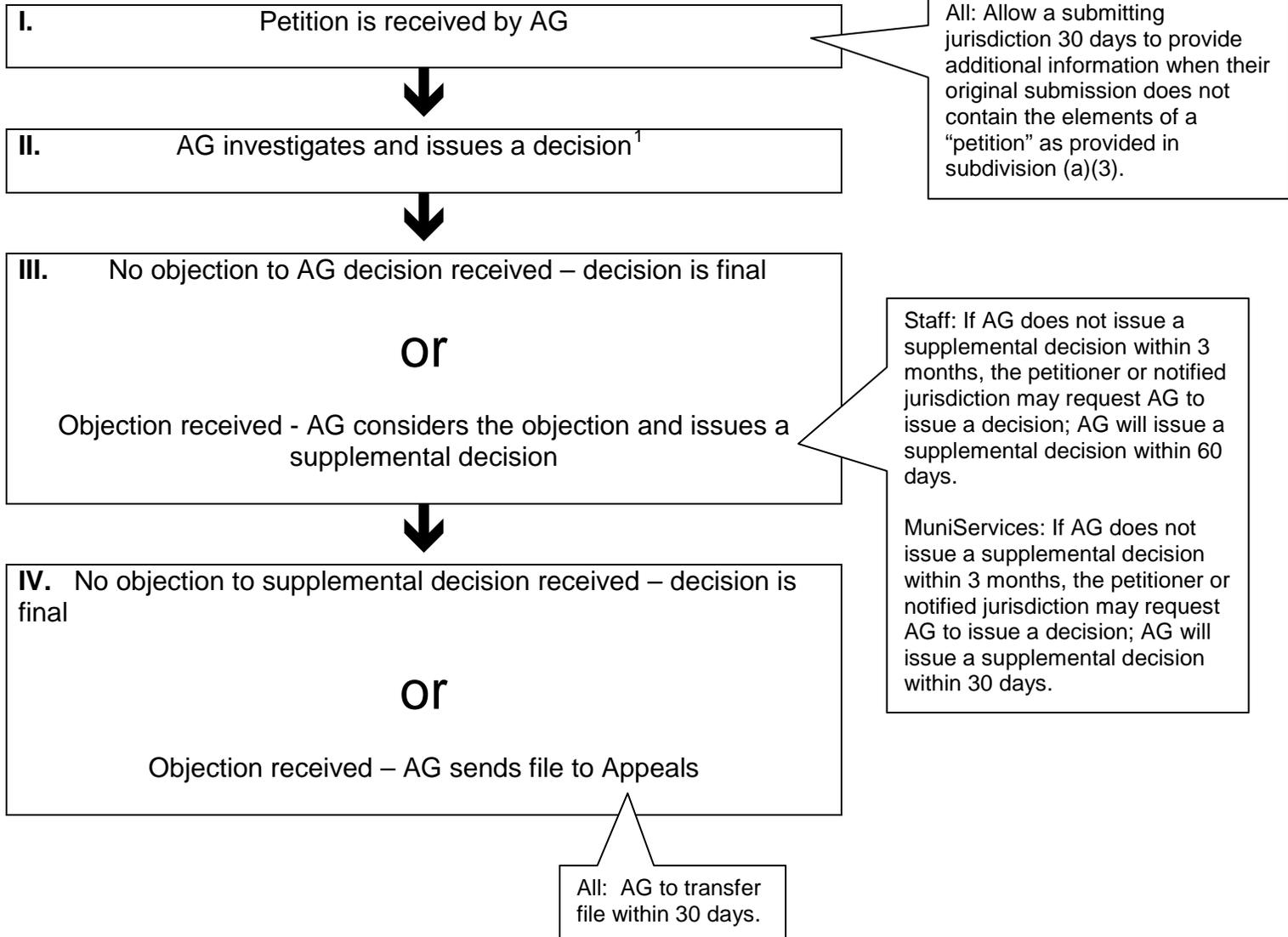
We will have no other official submission at this time. I will make sure we send a formal letter to each of the Board Members and will cc you. Finally, we will reserve the right to come back to the BOE and continue to tighten up the deadlines in Regulation 1807 if we feel that petitions are not proceeding through the process in a timely manner.

I hope this helps. Thank you for your partnership.

Johan Klehs  
Johan Klehs & Company Inc.  
1415 L Street, Suite 620  
Sacramento, CA 95814  
(916)551-1881, Telephone  
(510)409-5292, Cell  
(916)444-7114, FAX  
E mail: [johanklehs@comcast.net](mailto:johanklehs@comcast.net)  
[www.klehs.com](http://www.klehs.com)

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

### Allocation Group (AG) Level



<sup>1</sup> If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

**Appeals Division (Appeals) Level**

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.



VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

**or**

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference



VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.



VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals



IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.



X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

**or**

Request for Board hearing received in response to a D&R or SD&R

## Board Hearing Level

XI. Request for Board hearing received



XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- 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

Notification of Board hearing is sent at least 75 days before the hearing.