



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092
TELEPHONE (916) 324-1825
FAX (916) 322-4530
www.boe.ca.gov

November 16, 2007

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, PH.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

Dear Interested Party:

Staff has reviewed comments received in response to our October 10, 2007, interested parties meeting regarding the proposed amended Regulations 1807, *Process for Reviewing Local Tax Reallocation Inquires*, and 1828, *Process for Reviewing Transactions and Use Tax Distributions*. After considering the comments and information provided to date, staff is recommending more amendments to Regulations 1807 and 1828.

Enclosed is the *Second Discussion Paper* on this subject. This document provides the background, a discussion of the issue and explains staff's recommendation in more detail. Also enclosed for your review are copies of the proposed amended Regulations 1807 and 1828 (Exhibits 1 and 3).

A second interested parties meeting is scheduled for **November 27, 2007, at 10:00 A.M. in Room 122** to discuss the proposed amendments to Regulations 1807 and 1828. If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the November 27, 2007 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting on November 27, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Ms. Lynn Whitaker at (916) 324-8483 or by e-mail at Lynn.Whitaker@boe.ca.gov prior to November 20, 2007. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the November 27, 2007 meeting must be received by December 10, 2007. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed amended Regulations 1807 and 1828 for discussion at the **Business Taxes Committee meeting** scheduled for **January 31, 2008**. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the January Business Taxes Committee meeting is welcomed. The meeting is scheduled for **9:30 a.m.** in Room 121 at 450 N Street, Sacramento, California.



Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

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

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

JLM: llw

Enclosures

cc: (all with enclosures)

Honorable Betty T. Yee, Chairwoman, First District (MIC 71)
Honorable Judy Chu, Ph.D., Vice Chair, Fourth District
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Michelle Steel, Member, Third District
Honorable John Chiang, State Controller, C/O Ms. Marcy Jo Mandel (via e-mail)
Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)
Mr. Mark Ibele, Board Member's Office, Fourth District (via e-mail)
Mr. Steve Shea, Board Member's Office (3 copies), Fourth District (via e-mail)
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)
Mr. Erik Caldwell, Board Member's Office, Third District (via e-mail)
Mr. Ken Maddox, Board Member's Office, Third District (via e-mail)
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Ms. Jennifer Williams, Board Member's Office, Third District (via e-mail)
Ms. Melanie Darling, State Controller's Office (via e-mail)
Mr. Ramon J. Hirsig (MIC 73)
Ms. Kristine Cazadd (MIC 83)
Ms. Randie L. Henry (MIC 43)
Mr. Robert Lambert (MIC 82)
Ms. Janice Thurston (via e-mail)
Ms. Jean Ograd (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Randy Ferris (MIC 82)
Ms. Trecia Nienow (MIC 82)
Ms. Deborah Cumins (MIC 85)
Mr. Tim Treichelt (MIC 82)
Mr. Steve Ryan (MIC 85)
Mr. Todd Gilman (MIC 70)
Mr. Dave Hayes (MIC 67)

Ms. Freda Orendt (via e-mail)
Mr. Stephen Rudd (via e-mail)
Mr. Joseph Young (via e-mail)
Mr. Robert Buntjer (via e-mail)
Mr. Larry Micheli (via e-mail)
Mr. Robert Wils (via e-mail)
Mr. James Kuhl (via e-mail)
Ms. Kathryn Taylor (via e-mail)
Ms. Cathy Wurst (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Charles Arana (MIC 50)
Ms. Cecilia Watkins (MIC 50)

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

I. Issue

Proposed regulatory changes to the processes for reviewing petitions for local tax reallocations and transaction and use tax redistributions.

II. Staff Recommendation

Staff recommends revising Regulations 1807 and 1828 to provide for a more comprehensive process for review of petitions for local tax reallocation, to restructure the request for extension process, and to provide notification of substantially affected jurisdictions at an earlier level so that a single review process will resolve disputes. Staff has also updated terminology and reorganized the regulations to prevent misinterpretation and improve readability. Based on the discussion at the interested parties meeting and submissions by interested parties, staff is recommending additional changes to the regulations.

Staff's new proposed revised Regulation 1807 is attached as Exhibit 1. The same regulation showing in tracking mode the changes from our prior version (included with the initial discussion paper) is attached as Exhibit 2. Proposed revised Regulation 1828 (without tracking) is attached as Exhibit 3 (all of the changes to Regulation 1807 are also reflected in proposed revised Regulation 1828, so the discussion below will focus on Regulation 1807).

III. Other Alternative Considered

Mr. Albin Koch on behalf of MuniServices, LLC (MuniServices); Mr. Robert Cendejas; Mr. Matt Hinderliter on behalf of the HdL Companies (HdL); and the City of Hayward have responded to the revisions proposed by staff in its initial discussion paper. Interested parties do not dispute the need for revising Regulations 1807 and 1828. However, they disagree with several of the revisions that had been proposed by staff, particularly the reduction in the time allowed for filing an objection to the decision at certain levels of the appeals process and elimination of the right to request an extension for filing such objections beyond the basic time allowed. Interested parties also do not agree with all of the terminology changes proposed by staff. MuniServices, Mr. Cendejas, and the City of Hayward also believe the revisions should be made within the framework of the current versions of the regulations. Interested parties have also recommended additional revisions such as clarification of the requirements to establish a date of knowledge, the addition of deadlines for staff action, and references to the Board's Rules of Practice.

The submission from MuniServices is attached as Exhibit 4. It includes the alternative revisions to Regulation 1807. Submissions are also attached from Mr. Cendejas (Exhibit 5) (also specifically endorsing the changes proposed by MuniServices), HdL (Exhibit 6), and the City of Hayward (Exhibit 7).

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

IV. Background

Sales and Use Tax Regulation 1807 provides the process for reviewing requests by local jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. Procedures for processing such requests were adopted by the Board in 1996, and relevant portions of these procedures were incorporated into Regulation 1807, which the Board adopted in August 2002. The process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called “district taxes”) is explained in Regulation 1828, which was adopted in March 2004, based in large part on Regulation 1807.

Regulations 1807 and 1828 currently provide for initial review of reallocation requests by the Allocation Group of the Audit Determination and Refund Section (within the Sales and Use Tax Department), and thereafter by the Supervisor of the Audit Determination and Refund Section (Refund Section Supervisor). The next level of review is the “Local Tax Appeals Auditor,” who was also within the Sales and Use Tax Department when these regulations were adopted. Under both regulations, a jurisdiction which is not satisfied with the decision of the Local Tax Appeals Auditor may appeal to “Board Management,” and if not satisfied with the resulting decision, may request a Board hearing. Compliance Policy and Procedures Manual Chapter 9, *Miscellaneous*, and Publication 28, *Tax Information for City and County Officials*, contain additional guidance regarding the administration of local and district tax reallocations.

In 2005, responsibility for considering appeals from adverse decisions of the Refund Section Supervisor was moved from the Sales and Use Tax Department to the Appeals Division. As part of its assumption of these duties and in conjunction with the Board’s project to revise its Rules of Practice (culminating in the Board’s recent adoption of the Board of Equalization Rules for Tax Appeals), the Appeals Division reviewed Regulations 1807 and 1828 to determine what changes might be required. The Appeals Division determined that its involvement in the review process created a level of review independent from any review by the Sales and Use Tax Department, thereby rendering review by Board Management obsolete and unnecessary. The Appeals Division further determined that the current regulations do not contain a sufficiently comprehensive review process so that a single petition will bring all substantially affected jurisdictions within the same administrative appeal, and that better organized regulations, more closely conforming to terminology in our other regulations would, in the long run, be easier to understand and apply. Finally, the Appeals Division determined that the specific requirements for reviewing local and district tax allocations warrants maintaining these regulations as separate regulations under their respective programs rather than having them incorporated into the Board of Equalization Rules for Tax Appeals, but that the project’s goals of making the Board’s regulations more efficient and easier to understand are equally applicable to the Regulation 1807 and 1828 revisions.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

Staff met with interested parties on October 10, 2007, to discuss the proposed revised Regulations 1807 and 1828. The Business Taxes Committee is scheduled to discuss this issue at its meeting on January 31, 2008.

V. Discussion

Staff included proposed revisions to the regulations with the initial discussion paper. The proposed revised Regulation 1807 attached to this paper reflects a number of changes from the version attached to the initial discussion paper, many of which are intended to address interested parties' suggestions and concerns. The discussion in this paper will therefore focus on staff's new substantive revisions and interested parties' suggestions for new revisions to Regulation 1807. References to subdivisions are references to staff's proposed language. Unless otherwise noted, suggestions from interested parties were made by MuniServices.

Staff's Revisions Since the Initial Discussion Paper

Subdivisions (a)(1) and (a)(2). These have been reversed and reworded for clarity.

Subdivision (a)(3). This subdivision explains the requirements for a valid petition. Staff moved the explanation of where a petition should be filed from the previously proposed subdivision (b)(1). This move places the information in the relevant subdivision and eliminates duplicate information in another subdivision. The list of factual data to support a reallocation has been changed from "must" be included to "should" be included. The current regulation includes the mandatory language, implying that an inquiry ("petition" in the proposed revisions) will not even be accepted to start an investigation until all information is received. However, the current regulation also implies that an investigation will be commenced upon such filing, even if it lacks "mandatory" information, but that the date of knowledge will be affected. The proposed revision cures this apparent inconsistency. The petition must still provide sufficient factual data to warrant the commencement of an investigation (i.e., the Allocation Group maintains the right to reject a filing as inadequate if it is totally deficient), but there will no longer be the theoretical possibility that an otherwise valid petition will be rejected because one of the listed facts is not included. The omission will bear, however, on the date of knowledge where applicable, just as is the case under the current regulation. We believe this change addresses the concerns of interested parties regarding the information to be included in the petition.

Staff added a paragraph at the end of subdivision (a)(3) to include in the definition of "petition" an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit that local taxes previously allocated to it were misallocated and will be reallocated. The added language explains that a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of notification, the notification of the Local Revenue Allocation Section is final as to the jurisdiction so notified.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

Subdivision (a)(4). Added the definition of “Petitioner” to subdivision (a)(4) and renumbered former subdivisions (a)(4), (a)(5), and (a)(6) accordingly.

Subdivision (a)(5). Subdivision (a)(4) in the prior version, Date of Knowledge, was renumbered as (a)(5) and reworded for clarity. Our proposed revised Regulation 1807 included with the initial discussion paper deleted current subdivision (d)(3) without replacement. That provision discusses “closure” (undefined) and establishment of a new date of knowledge. Staff has now added wording to subdivision (a)(5) to explain that the date of knowledge established in connection with the filing of a valid petition will apply to a misallocation that is discovered as a “direct result of investigating the petition, provided the misallocation is reasonably covered by the petition.” Staff believes that this addresses interested parties’ concern regarding the deletion of current subdivision (d)(3) in the proposal provided with the initial discussion paper.

Subdivision (b). Former subdivisions (b) and (c) were combined (and former subdivisions (d) through (h) were renumbered as subdivisions (c) through (g), respectively). Former subdivision (b)(1) was eliminated (its provisions having been incorporated into subdivision (a)(3)), and the remaining subdivisions were renumbered accordingly.

New subdivision (b)(3). The current regulation allows a jurisdiction to request advancement to the next level of review where there is no action taken for a period of six months, but does not specify the mechanism for making the request. The proposed revision included with the first discussion paper retained this concept for review by the Allocation Group and the Refund Section Supervisor, and added the procedures for implementation. The proposed revision changes this to an absolute right to ask for a decision by the Allocation Group once six months has passed from the filing of a valid petition. Thus, rather than relying on a member of staff to decide whether “action” has not been taken for six months, the jurisdiction is provided with an absolute right to ask for a decision within 90 days. Whichever method is used, a petitioning jurisdiction would not normally want its petition to be acted on before the Allocation Group’s investigation was completed because that would normally mean that the Allocation Group would not yet have obtained sufficient information to warrant granting the petition. However, a petitioning jurisdiction may informally ask the Allocation Group about the status of its investigation without the need for filing a formal request for the petition to move on to the next level of appeal, and based on that information can decide for itself whether it wishes to move the appeal to the next level without additional investigation. Thus, under proposed subdivision (b)(3), once six months has passed and the jurisdiction decides that further investigation by the Allocation Group will not be worthwhile (or worth waiting for), it will have the sole power to cause the case to move forward, even if the Allocation Group would otherwise wish to continue its investigation because it believes further relevant information would be obtained.

Subdivisions (b)(4) through (b)(8). These subdivisions have been renumbered from former subdivisions (c)(2) through (c)(4) and reworded to clarify how a decision and a supplemental decision issued by the Allocation Group can be appealed. The requirement in the prior proposed subdivision (c)(3) that an objection to the decision of the Allocation Group include all

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

information in its possession *or available to it* has been eliminated in proposed subdivision (b)(5) so that only the information in the appealing jurisdiction's possession is required.

New subdivisions (b)(9), (c)(4), and (d)(6): 30-day extension. Although the current regulation sets forth deadlines, it also allows the petitioning jurisdiction a 30-day extension at each level of review through the Board Management level of review. The proposed version of the regulation included with our initial discussion paper eliminated the extension provision. However, based on discussions at the first interested parties' meeting and interested party submissions, staff now better understands why a jurisdiction may require additional time for investigation at the Allocation Group level of review, since it is at that level where the significant staff investigation is performed. Staff also recognizes that a jurisdiction that is first notified as a substantially affected jurisdiction may need additional time to review the decision, since that jurisdiction will not normally be aware of the dispute until receipt of that decision (unlike the petitioner and any previously notified jurisdiction). During the first interested parties' meeting, staff suggested the possibility of simply lengthening the time for appeal at the Allocation Group and Refund Section Supervisor levels to 60 days, but interested parties indicated that they only wanted the longer time *if* a jurisdiction deemed it necessary. Accordingly, staff has added subdivisions (b)(9), (c)(4), and (d)(6), which balance the various interests to allow 30-day extensions for good cause at the Allocation Group level of review as well as for any jurisdiction first notified as a substantially affected jurisdiction at a later level of review. The request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all the other jurisdictions notified at that level, and must be received by the applicable Board level of review within 30 days of the mailing of the decision. Within five days of receipt of the request, the applicable Board section will mail notification to the petitioner and to all notified jurisdictions whether the request for extension is granted. If granted, the extension applies to *all* jurisdictions.

Subdivision (c). Former subdivisions (d)(1) and (d)(2) have been combined into subdivision (c)(1) because appeals from decisions of the Allocation Group are now covered in subdivision (b), and only appeals from supplemental decisions of the Allocation Group are made to the Refund Section Supervisor. Similar to changes in subdivision (b) discussed above, the phrase "or available to it" was removed from what is now subdivision (c)(1), and what is now subdivision (c)(4) is worded to take into account the possibility of a 30-day extension.

Subdivision (d)(2). Consistent with the recommendation of interested parties, this subdivision now explains the procedures at the Appeals Division level in detail.

Subdivisions (d)(3) – (d)(7). These provisions further clarify the procedures for appealing a decision of the Appeals Division, either by way of request for reconsideration to the Appeals Division, or a request for Board hearing.

Subdivision (e)(1). This subdivision was reworded to take into account the possibility of a 30-day extension for filing a request for Board hearing.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

Subdivision (e)(3). The former version (in subdivision (f)(3)), states that a jurisdiction “with an interest” in the appeal can become a party to the Board hearing. Subdivision (e)(3) now clarifies the meaning so that only a jurisdiction who will be directly affected financially can become a party (that is, a jurisdiction that is financially affected, but below the “substantially affected” threshold). We note that MuniServices has indicated its belief that jurisdictions that were not notified should be able to participate as amici, but not as parties because doing so could prolong oral argument unnecessarily. We believe that the clarification should address these concerns. We note further that, although interested parties believe that even a jurisdiction with a direct financial interest (but below the substantially affected threshold) should not be a party because it could unduly prolonging the oral argument, we do not believe this will present a problem. Under Rule 5523.5, subdivision (c), of the recently adopted Board of Equalization Rules for Tax Appeals, the Chief of Board Proceedings advises the parties of their time allotments for the oral hearing, and just because a jurisdiction becomes a party under this provision does not mean it will automatically qualify for oral argument time.

Subdivision (e)(4). The current Regulation 1807 prohibits the introduction of new evidence at Board hearings under specified circumstances, and this concept was incorporated into the proposed revised regulation included with the initial discussion paper. Consistent with suggestions from interested parties, this prohibition has been eliminated, and replaced with subdivision (e)(4) allowing briefs in accordance with the Board’s newly adopted Board of Equalization Rules for Tax Appeals. (The regulations have not yet been approved by OAL, but we have written this provision in the hopes that will occur before these regulations are adopted by the Board and transmitted to OAL for approval.) Together with the reference in subdivision (e)(5) that the Board hearing will be conducted in accordance with Chapter 5 of the new rules (unless there is a specific conflict with this regulation), this makes it clear that the rules for introducing new evidence at a Board hearing are the same for these appeals as for other business taxes appeals before the Board.

We believe that subdivisions (e)(4) and (e)(5) address the concerns expressed by MuniServices regarding the “no new evidence” rule. We believe our changes have accounted for this concern by simply following the same rules in this regard as applicable to other business tax appeals before the Board.

Interested Parties’ Suggested Revisions Not Incorporated

Expand notification to apply to all BOE initiated negative adjustments. (Exhibit 6, page 1.) HdL agrees with staff’s proposal to notify substantially affected jurisdictions at each level of review, and suggests that this notification be expanded in other situations, such as for upcoming losses related to refunds to taxpayers due to court decisions or bad debt losses. However, staff believes this notification is outside the scope of Regulations 1807 and 1828. (HDL itself notes that these circumstances are not subject to appeal as disputes covered by these regulations.)

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

References to Bradley-Burns Bill of Rights. (Exhibit 4, page 14.) Add Revenue and Taxation Code sections 7224 and 7225 to the Reference Section of Regulation 1807. The Bradley-Burns Bill of Rights is contained in sections 7221-7226. Currently, the only reference reflected for Regulation 1807 is section 7223 which provides that local jurisdictions have the right to (1) depend on Board staff to provide informative and responsive services to help local jurisdictions to understand the local tax, and (2) receive open, uniform, and consistent administration of the local taxes. Section 7224 provides that each local jurisdiction has the right to have the law administered in a uniform manner. Section 7225 provides that local jurisdictions have the right to (1) rely on the board's written information and answers to questions, (2) prompt and accurate responses from the Board, and (3) a written response to questions, and resolution of, any inquiry submitted in writing to the Board.

Initially, we note the observation of MuniServices that the draft included with the initial discussion paper did not include statutory references. The reason for this is that such references are *not* part of the regulation. In any event, although staff agrees that jurisdictions are entitled to the rights provided in sections 7224 and 7225, staff does not believe these provision specifically relate to the provisions in Regulation 1807. The sections were not referenced in the current version of 1807 and nothing has been added in staff's revised Regulation 1807 that warrants adding the references.

Use current regulation format. (Exhibit 4, page 14, item 1.) MuniServices, Mr. Cendejas, and the City of Hayward recommend Regulations 1807 and 1828 be revised within the framework of the current versions of the regulations. Interested parties believe that any revisions finally proposed will be easier to understand and analyze if they are drafted as revisions to the present Regulations 1807 and 1828, rather than whole replacements of the current language.

Staff appreciates the effort that went into developing the current versions of the regulations, and recognizes some individuals might find it more difficult to compare a comprehensive rewrite to the current version. However, organizational structure is a weakness in the current regulations that has caused confusion, and there are other significant problems throughout the current regulations. Not only does staff disagree that building on the current regulations would make it easier to understand the rewrite, staff also believes that doing so would result in a weaker end product. Staff believes that the overriding goal of this process must be to ensure that the end result of our work produces regulations which clearly lay out the appeal process and address all relevant concerns, and we believe that all interested parties agree. Staff believes that the current proposed regulations accomplish these goals, particularly after the changes we have made in response to interested parties' suggestions and concerns. In short, we believe that the proposed revised regulations are better organized and will be easier for jurisdictions to understand in the future than the current regulations, and adopting the approach proposed by interested parties would not produce regulations of the quality that all of us seek.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

“Inquiry” vs. “petition.” (Exhibit 4, page 15, item 2.) Retaining the term “inquiry” rather than “petition” because “inquiry” is a term used in the Bradley-Burns Bill of Rights. The term “petition” should be used only when the case reaches the Appeals Division level. Staff believes “petition” and “petitioner” are the best terms to use all levels of review. The term is clearly defined in the proposed regulations and conforms to the same basic terminology used in other business taxes appeals. The filing of a petition clearly signifies to the jurisdiction that it is entitled to certain procedural rights. Further, the proceeding under consideration here is one that is triggered by a particular submission, by whatever name it is called. An appeal to the Appeals Division is *not* a separate proceeding from the prior levels of review, and is not properly characterized as such by the use of a different term. Finally, using the same term at all levels of review reduces potential confusion.

Procedures for documenting date of knowledge. (Exhibit 4, page 15, item 4.) Require Local Revenue Allocation Unit (LRAU) to fill out a “goldenrod” form to operationally document that it has ascertained facts necessary to establish a date of knowledge.

Initially, we note that LRAU is not generally involved in establishing a date of knowledge in connection with a petition, and would thus generally have no basis to create such a form for petitions filed under Regulation 1807. Where, however, there is a date of knowledge operationally documented prior to the date of the petition, that will be explained in the decision of the Allocation Group. Thus there is no need for a separate form, even where the date of knowledge was established by LRAU.

Allocation Group to issue a ruling within 180 days. (Exhibit 4, page 15, item 5, and page 16, item 10; Exhibit 6, page 2.) Add a provision that the Allocation Group should issue a written ruling within 180 days. If the Allocation Group does not issue a ruling within 180 days, the inquiring jurisdiction may submit a Request for Review to the Refund Section Supervisor. The Refund Section Supervisor may send a strongly worded letter to the information source requesting a response. Refund Section Supervisor would then send the file back to the Allocation Group to complete the investigation and issue a ruling within 90 days.

Staff does not believe that adding a deadline to obtain information will speed up the Allocation Group’s ability to obtain the necessary information to properly decide the petition. The delay in resolving cases at the Allocation Group level is often caused by delays in obtaining information from taxpayers. In fact, imposing a deadline may result in the need for the Allocation Group to quit its pursuit of information in order to meet the deadline. In addition, staff does not believe taxpayers will be more responsive to correspondence from the Refund Section Supervisor. In any event, we believe that this request is addressed, in large part, by staff’s proposed change to give the petitioner the power to cause the petition to be moved to the next level after six months, as now provided in subdivision (b)(3).

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

In this subdivision and others, MuniServices has suggested changing “decision” to “ruling.” Staff does not believe this is appropriate. Under our terminology, only the Board may issue a ruling, and decisions made various levels of Board staff are just that, decisions.

Include Allocation Group reinvestigation processes. (Exhibit 4, page 16, item 7.) Add a new subdivision explaining that if an inquiring jurisdiction submits an objection to the Allocation Group’s decision, the Allocation Group will conduct a reinvestigation of the matter, including any information and sources provided by the inquiring jurisdiction. The Allocation Group will then discuss the results of its reinvestigation with the inquiring jurisdiction and contact any additional sources provided by the inquiring jurisdiction before issuing a supplemental ruling or denying the inquiry.

Staff believes it is unnecessary to explain in the regulation how the Allocation Group obtains information. The duty of the Allocation Group is to do its best to obtain relevant information, and we do not believe it is helpful to specify in the regulation the specific manner in which this is done because it will vary depending on the specific circumstances, nor is there any indication that interested parties believe that the Allocation Group is not fulfilling its duties in this regard.

Deadline for Refund Section Supervisor decision. (Exhibit 4, page 16, items 12, 13, and 14.) Impose a 90-day time limit for Refund Section Supervisor to issue a decision. Interested parties believe this time limit will speed up the review process. The time limit would be suspended during the period of any additional investigation.

Staff does not believe that imposing this time limit would result in a time savings. Generally, long delays in the review process are related to delays in obtaining information from the taxpayer, not in inaction by staff.

Request reconsideration from Appeals Division. (Exhibit 4, page 17, item 19.) Appears to suggest that, in the absence of an Request for Reconsideration (RFR), the Appeals Division can issue an SD&R only based on a change in the law or the discovery of new evidence. Also adds right of jurisdiction to submit an RFR on this basis, at any time prior to final action by the Department or the Board hearing, although the right of a jurisdiction to file an RFR is already covered in prior subdivision.

Staff does not agree with this proposal. Proposed subdivision (d)(4) provides in detail for the submission of an RFR, explaining that the Appeals Division must issue an SD&R in response to an RFR filed within the period during which a jurisdiction may request a Board hearing, and that the Appeals Division may, in its discretion, issue an SD&R in response to an RFR filed after a jurisdiction has requested a hearing. Subdivision (d)(5) provides that, in its discretion, the Appeals Division may also issue an SD&R 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, in order to clarify or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. We believe it is imperative that this discretion to

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

issue an SD&R to correct a mistaken D&R or prior SD&R is retained by the Appeals Division. As Mr. Cendajas points out, the goal of this process is to insure that the local tax allocation is done correctly (Exhibit 5, page 2), which is why the Appeals Division must be able correct any mistakes that it determines have been made.

Time allowed for filing request for Board hearing. (Exhibit 4, page 17, items 20 and 21.) Retain the current 90-days provision to file a request for Board hearing. Interested parties believe this additional time is needed.

Staff believes that the level during which a jurisdiction is most likely to need additional time to perform further investigation or to determine whether it believes its petition was well taken is at the level of the Allocation Group, and a right to request a 30-day extension has been added twice at that level for all jurisdictions in subdivision (b)(9) (i.e., it would be possible for a petitioning jurisdiction to request a 30-day extension after receiving the initial decision of the Allocation group and *another* 30-day extension after receiving the supplemental decision of the Allocation Group). Thereafter, there should be no surprise on the part of any jurisdiction notified at the Allocation Group level when it receives a decision at a later level of review, and we believe that making a decision as to whether to appeal further or not should not take more than the standard 30-day period. The jurisdictions who may need more than 30 days to decide whether to appeal a decision are those jurisdictions who were not aware of the dispute until receiving the decision first finding that they will be substantially affected by the petition. We have therefore provided for the right of such jurisdictions to request a 30-day extension in subdivisions (c)(4) and (d)(6). We do not believe further extensions or different time periods should be required.

Clarify subdivision (f)(5). (Exhibit 4, page 18, item 25.) Add “substantially” to the last sentence: “Any jurisdiction that does not participate in the hearing process waives any right to petition or appeal the results of the Board’s decision, whether notified as a substantially affected jurisdiction or not, and the Boards’ decision exhausts all administrative remedies on the matter.” Interested parties believe this would eliminate ambiguity to who is bound by the decision.

Staff believes there is no ambiguity and does not believe this revision is necessary.

Restore the 30-day extension at each level of review. (Exhibit 4, page 18, item 27; Exhibit 6, page 1.) Interested parties wish to retain jurisdictions’ ability to obtain a 30-day extension at each of the three review levels prior to filing a petition for Board hearing. They believe that allowing as much time as reasonably possible to obtain the correct and relevant factual information at each level of review is clearly preferable to forcing a jurisdiction to advance a case up the appeals ladder, simply to keep it alive when faced with a hard 30-day deadline.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

For the reasons discussed above, staff believes that a better approach to balance interested parties' own interests in moving the cases forward is to retain the right to request a 30-day extension after either or both Allocation Group decisions, and to allow any newly notified jurisdiction to also request an extension after the decision for which they were first notified as a substantially affected jurisdiction.

Retain current transition rule language. (Exhibit 4, page 18, item 29.) Interested parties believe that subdivision (h) in the proposed wording included with this discussion paper includes a revision in the language of the transition rule that could affect current disputes regarding inquiries filed before January 1, 2003.

Subdivision (h) explains that the provisions of Regulation 1807 apply to requests for reallocation after January 1, 2003. Inquiries and appeals that had been filed prior to this date continue to be subject to the procedures contained in the "Process for Reviewing Reallocation Inquiries" except if the inquiry or appeal has not been decided and the jurisdiction elects, in writing, to proceed under the provisions of Regulation 1807. Staff believes this proposed language merely restates the current provision.

Effective date or transition rule for proposed revisions. (Exhibit 4, page 19, item 30.) Interested parties question whether there is a need for an additional effective date or transition rule to accommodate these new revisions. MuniServices explains the concept as follows: all inquiries still valid under existing rules will remain valid under the new regulations, but the new regulations would govern everything occurring thereafter, except for inquiries filed prior to January 1, 2003, which will remain subject to the existing transition rule still contained in the regulation.

Staff disagrees that an effective date or transition rule is needed for the proposed revisions.

Regulation 1828 - Assembly Bill 1748

Assembly Bill 1748 (Stats. 2007, Ch. 342) added Revenue and Taxation code section 7269 which limits redistributions of district tax to amounts originally distributed in the two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution, which is the same limitation period applicable to local tax reallocations. Thus, when the date of knowledge is established on or after January 1, 2008, redistributions of district tax will be limited to amounts originally distributed in the prior two quarterly periods. Inquiries where the date of knowledge is before January 1, 2008, will be subject to the three-year statute of limitations. Proposed Regulation 1828, subdivision (g) has been revised to reflect both of these limitation periods.

SECOND DISCUSSION PAPER

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

VI. Summary

Staff agrees with interested parties that the goal of these revisions is to ensure that local tax allocation is done correctly and efficiently. Staff believes that its proposed regulations provide jurisdictions with clear guidance regarding the appeals process. Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties' meeting scheduled for November 27, 2007, in Sacramento.

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

Current as of 11/14/2007

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

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

(B) Taxpayer’s permit number or a notation stating “No Permit Number.”

(C) Complete business address of the taxpayer.

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

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

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

(G) The tax reporting periods involved.

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

(4) PETITIONER. “Petitioner” is a jurisdiction that has filed a valid petition.

(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 petition that includes all the facts and evidence listed in subdivision (a)(3) or includes information describing to the satisfaction of the Allocation Group the jurisdiction’s efforts to obtain any omitted facts or evidence. Otherwise, the date of knowledge is the date on which the Allocation Group receives from the petitioner the facts or evidence that had been omitted from, or incomplete in, the petition. Where the date of knowledge is established by the submission of a petition, or by submission of a petition plus the later submission of additional facts or evidence, that date of knowledge applies to a misallocation discovered as a direct result of investigating the petition, provided the misallocation is reasonably covered by the petition.

(6) **SUBSTANTIALLY AFFECTED JURISDICTION.** “Substantially affected jurisdiction” is a jurisdiction for which the decision on a petition results in a decrease to its total allocation by \$50,000 or more or by 5 percent or more of its average quarterly allocation, 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) **ACKNOWLEDGEMENT OF PETITION.** The Allocation Group will promptly acknowledge the petition, but such acknowledgement does not mean that the petition qualifies to establish a date of knowledge under subdivision (a)(5).

(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.

(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, even if it believes more time might have enabled it to obtain information supporting a decision more favorable to the petitioner.

(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, or that the date of knowledge was other than the date on which the petition was received, 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 60 days of the date of mailing if an extension is granted to any jurisdiction under subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and 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) 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 60 days of the date of mailing if an extension is granted to any jurisdiction under subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision, 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. If the request is granted, the time for the petitioner and all notified jurisdictions to object to the decision or supplemental decision of the Allocation Group is extended to 60 days after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Audit Determination and Refund Section Supervisor (Refund Section Supervisor) within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to the supplemental decision of the Allocation Group is submitted, the Refund Section Supervisor will review the objection and issue a written decision to grant or deny the objection, including the basis for that decision. A copy of the decision will be mailed to the petitioner, to all notified jurisdictions, and to any other jurisdiction that is substantially affected by the decision of the Refund Section Supervisor.

(3) The petitioner or any notified jurisdiction may appeal the decision of the Refund Section Supervisor by submitting a written objection under subdivision (d)(1) within 30 days of the date of mailing of the decision, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (c)(4). If no such timely objection is submitted, the decision of the Refund Section Supervisor is final as to the petitioner and all notified jurisdictions.

(4) A jurisdiction that is first notified as a substantially affected jurisdiction as the result of the decision of the Refunds Section Supervisor may request a 30-day extension to submit a written objection to that decision under subdivision (c)(3). 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 Refund Section Supervisor mailed a copy of his or her decision, and must be *received* by the Refund Section Supervisor within 30 days of the date of mailing of his or her decision. Within five days of receipt of the request, the Refund Section Supervisor will mail notification to the requesting jurisdiction, to the petitioner, and to all other notified jurisdictions whether the request is granted. If the request is granted, the time for the petitioner and all notified jurisdictions to object to the decision of the Refund Section Supervisor is extended to 60 days after the date of mailing of that decision.

(d) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the decision of the Refunds Section Supervisor by submitting a written objection to the Refund Section Supervisor within 30 days of the date of mailing of his or her decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (c)(4). Such an objection must state the basis for the objecting jurisdiction's disagreement with the decision and include all additional information in its possession that supports its position.

(2) If a timely objection to his or her decision is submitted, the Refund Section Supervisor will prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be notified of the appeals conference. 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 15 days after the appeals conference, or 30 days with sufficient justification, to submit 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 are allowed the same amount of time (15 or 30 days, as applicable) to submit 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. Within 90 days after the final submission authorized by this subdivision, 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 additional time beyond the 90 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.

(3) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the D&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6).

(4) 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 (d)(5) 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 (e)(1) within 30 days of the date of mailing of the SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6).

(5) 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 clarify or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(6) A jurisdiction that is first notified as a substantially affected jurisdiction as the result of the D&R or any SD&R may request a 30-day extension to request a Board hearing. Such request for extension must provide a reasonable explanation for the requesting jurisdiction's inability to submit its request for Board hearing within 30 days of the date of mailing of the D&R or SD&R, must be copied to all other jurisdictions to whom the Appeals Division mailed a copy of the D&R or SD&R, and must be *received* by the Appeals Division within 30 days of the date of mailing of the D&R or SD&R in which the jurisdiction was first held to be a substantially affected jurisdiction. Within five days of receipt of the request, the Appeals Division will mail notification to the requesting jurisdiction, to the petitioner, to all other notified jurisdictions, and to the Sales and Use Tax Department whether the request is granted. If the request is granted, the time for the petitioner and

all notified jurisdictions to submit a request for Board hearing is extended to 60 days after the date of mailing of the D&R or SD&R.

(7) If no RFR is submitted under subdivision (d)(4) or request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6), 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 (d)(5).

(e) 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 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension has been granted to a newly notified jurisdiction under subdivision (d)(6). 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 (e)(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 (e)(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. A jurisdiction who is not a notified jurisdiction but who could be directly affected financially as a result of the decision (that is, below the substantially affected threshold) may also become a party and participate in the hearing process by notifying the Board Proceedings Division of its desire to do so.

(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.). Any jurisdiction that does not participate in the hearing process waives any right to petition or appeal the results of the Board's decision, whether notified as an affected jurisdiction or not, and the Board's decision exhausts all administrative remedies on the matter.

(f) 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.

(g) 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 (c), (d), and (e) also apply to appeals from reallocation determinations made under section 6066.3.

(h) TRANSITION RULES.

The provisions of this regulation apply to requests for reallocation filed after January 1, 2003. Inquiries and appeals that had been filed prior to this date continue to be subject to the procedures contained in the "Process for Reviewing Reallocation Inquiries" (June 1996, amended October 1998), except if the inquiry or appeal has not been decided and the jurisdiction elects, in writing, to proceed under the provisions of this regulation. Failure to make such a written election prior to appealing to the next step of review under the prior procedures constitutes the jurisdiction's election not to proceed under the provisions of this regulation, and that election cannot be revoked. If the jurisdiction files a timely written election to proceed under the provisions of this regulation, that election is also irrevocable, and the provisions of this regulation become applicable as of the date the election is received by the Board.

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

~~(1) JURISDICTION. “Jurisdiction” for purposes of this regulation means any city, county, city and county, or redevelopment agency which has adopted a sales and use tax ordinance and which has entered into a contract with the Board to administer that ordinance.~~

~~(2) LOCAL TAX. “Local tax” for purposes of this regulation means a local sales and use tax adopted pursuant to by a jurisdiction pursuant to Revenue and Taxation Code, Part 1.5, Division 2 (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. A “pPetition” for purposes of this regulation means a written request 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, other than a submission under Revenue and Taxation Code section 6066.3. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data must should include, at a minimum, all of the following 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, the petition must include 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 Regulation-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, the petition must include evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.~~

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

~~(G) The tax reporting periods involved.~~

~~“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the~~

jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of the mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

(4) PETITIONER. “Petitioner” is a jurisdiction that has filed a valid petition.

(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 petition that includes all the facts and evidence listed in subdivision (a)(3) or includes information describing to the satisfaction of the Allocation Group the jurisdiction’s efforts to obtain any omitted facts or evidence. Otherwise, the date of knowledge is the date on which the Allocation Group receives from the petitioner the facts or evidence that had been omitted from, or incomplete in, the petition. Where the date of knowledge is established by the submission of a petition, or by submission of a petition plus the later submission of additional facts or evidence, that date of knowledge applies to a misallocation discovered as a direct result of investigating the petition, provided the misallocation is reasonably covered by the petition. “Date of knowledge” is the date that the Board receives a petition that includes all the facts required by subdivision (a)(2), unless an earlier such date is operationally documented by the Board. If the Board receives a petition that does not include all of the required facts, the date of knowledge is the date on which the Board receives from the jurisdiction the facts that had been omitted from, or incomplete in, the petition. If, however, the Board receives a petition that does not include all of the required facts, the date of knowledge will nevertheless be the date the petition is received if the petition includes information that describes to the Board’s satisfaction the jurisdiction’s efforts to obtain each of the facts required by subdivision (a)(2).

(56) SUBSTANTIALLY AFFECTED JURISDICTION. “Substantially affected jurisdiction” is a A jurisdiction is “substantially affected” if for which the decision on a petition for reallocation results in a decrease to its total allocation decreasing by the lesser of \$50,000 or more or by 5 percent or more of its average quarterly allocation, and includes a jurisdiction whose decreased allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(76) NOTIFIED JURISDICTION. ~~A~~ “Notified jurisdiction” is a jurisdiction that has been is notified as a substantially affected jurisdiction.

(b) PETITION REVIEW BY ALLOCATION GROUP.

(1) SUBMITTING A PETITION. ~~A petition for reallocation of local tax must include the information set forth in subdivision (a)(2) of this regulation and be submitted in writing to the Allocation Group of the Audit Determination and Refund Section of the Board’s Sales and Use Tax Department.~~

(2) ACKNOWLEDGEMENT OF PETITION. The Allocation Group will promptly acknowledge the petition, but such acknowledgement does not mean that the petition qualifies to establish a date of knowledge under subdivision (a)(~~35~~) of this regulation.

(c) REVIEW BY ALLOCATION GROUP.

(12) The Allocation Group will review the petition and issue to the petitioning jurisdiction 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.

(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, even if it believes more time might have enabled it to obtain information supporting a decision more favorable to the petitioner.

(24) 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, or that the date of knowledge was other than the date on which ~~on a date after~~ the petition was received, the petitioning jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6)(d)(1). ~~If the petitioning jurisdiction does not submit a written objection within 30 days of the mailing of the decision of the Allocation Group, that decision is final as to the petitioning jurisdiction.~~

(35) If the decision of the Allocation Group is concludes that a misallocation did occurred, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group ~~object to the decision by submitting~~ a written objection to the decision under subdivision (b)(6).Allocation Group which includes the basis for the objection and all information in the possession of the objecting jurisdiction or available to it that supports its position. ~~If no such objection is submitted within 30 days of the mailing of the decision of the Allocation Group, that decision is final as to the petitioning jurisdiction and all notified jurisdictions.~~

(4)-(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting ~~If a written objection is submitted by the petitioning jurisdiction or by a notified jurisdiction to the Allocation Group~~ within 30 days of the date of mailing of the Allocation Group's decision, or within 60 days of the date of mailing if an extension is granted to any jurisdiction under subdivision (b)(9). ~~If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.~~

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and 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 petitioning jurisdiction, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8)- The petitioning jurisdiction or any notified jurisdiction may appeal the supplemental decision of the Allocation Group ~~object to the decision~~ by submitting a written objection under subdivision (d)(2)(c)(1). ~~If no such objection is submitted~~ within 30 days of the date of mailing of that supplemental decision ~~of the Allocation Group,~~ or within 60 days of the date of mailing if an extension is granted to any jurisdiction under subdivision (b)(9). ~~If no such timely objection is~~

submitted, the supplemental decision of the Allocation Group is final as to the petitioning jurisdiction and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision, 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. If the request is granted, the time for the petitioner and all notified jurisdictions to object to the decision or supplemental decision of the Allocation Group is extended to 60 days after the date of mailing of the decision or supplemental decision.

~~(5) If steps necessary to issue a decision on the petition or objection are not taken by the Allocation Group for a period of six months, the petitioning jurisdiction or any notified jurisdiction may submit a request for review to the Audit Determination and Refund Section Supervisor. If the Audit Determination and Refund Section Supervisor concludes that there has been six months of inactivity by the Allocation Group, then he or she will issue a decision under subdivision (d)(3). Otherwise, the Audit Determination and Refund Section Supervisor will notify the petitioning jurisdiction and any notified jurisdiction of the basis for denying the request, and the appeal will be returned to the Allocation Group for its decision.~~

(dc) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR.

(1) The petitioner ~~ing jurisdiction or any notified jurisdiction~~ may appeal the supplemental ~~submit an objection to the~~ decision of the Allocation Group by submitting a written objection if it does so in writing to the Audit Determination and Refund Section Supervisor (Refund Section Supervisor) within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (b)(9). Such an objection must state the basis for the ~~object~~petitioning jurisdiction's disagreement with the supplemental decision and include all additional information in its possession ~~or available to it~~ that supports its position.

~~(2) The petitioning jurisdiction or any notified jurisdiction may submit an objection to a supplemental decision of the Allocation Group if it does so in writing to the Audit Determination and Refund Section Supervisor within 30 days of the date of mailing of that supplemental decision. Such an objection must state the specific basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession or available to it that supports its position.~~

~~(3) If a timely objection to the decision or supplemental decision of the Allocation Group is submitted, the Audit Determination and Refund Section Supervisor will review the objection and issue a written decision to grant or deny the objection, including the basis for that decision. A copy of the decision will be mailed to the petitioning jurisdiction, to all notified jurisdictions, and to any~~

other jurisdiction that is substantially affected by the decision of the ~~Audit Determination and Refund Section Supervisor~~.

~~(3) The petitioning jurisdiction or any notified jurisdiction may appeal the decision of the Refund Section Supervisor object to that decision~~ by submitting a written objection under subdivision (ed)(1) within 30 days of the date of mailing of the decision, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (c)(4).

~~(4) If no such timely written objection is submitted, to the decision of the Audit Determination and Refund Section Supervisor is submitted under subdivision (e)(1) within 30 days of the mailing of the decision, that decision is~~ final as to the petitioning jurisdiction and all notified jurisdictions.

(4) A jurisdiction that is first notified as a substantially affected jurisdiction as the result of the decision of the Refunds Section Supervisor may request a 30-day extension to submit a written objection to that decision under subdivision (c)(3). 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 Refund Section Supervisor mailed a copy of his or her decision, and must be received by the Refund Section Supervisor within 30 days of the date of mailing of his or her decision. Within five days of receipt of the request, the Refund Section Supervisor will mail notification to the requesting jurisdiction, to the petitioner, and to all other notified jurisdictions whether the request is granted. If the request is granted, the time for the petitioner and all notified jurisdictions to object to the decision of the Refund Section Supervisor is extended to 60 days after the date of mailing of that decision.

~~(5) If steps necessary to issue the decision are not taken by the Audit Determination and Refund Section Supervisor for a period of six months, the petitioning jurisdiction or any notified jurisdiction may submit a request to the Audit Determination and Refund Section Supervisor that he or she forward the appeal to the Appeals Division for its review under subdivision (e)(2). The Audit Determination and Refund Section Supervisor will then either forward the file to the Appeals Division for its review or will notify the petitioning jurisdiction and any notified jurisdiction of the basis for denying the request.~~

(ed) REVIEW BY APPEALS DIVISION.

(1) The ~~petitioning jurisdiction~~ or any notified jurisdiction may appeal the decision of the Refunds Section Supervisor by submitting a written objection to the ~~decision of the Audit Determination and Refund Section Supervisor~~ if it does so to the Audit Determination and Refund Section Supervisor within 30 days of the date of mailing of his or her that decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (c)(4). Such an objection must state the ~~specific~~ basis for the objecting jurisdiction's disagreement with the decision and include all additional information in its possession ~~or available to it~~ that supports its position.

(2) If a timely objection to his or her decision is submitted, the ~~Audit Review and~~ Refund Section Supervisor will prepare the file and forward it to the Appeals Division. The ~~petitioning jurisdiction~~, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be notified of the appeals conference. 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 15 days after the appeals conference, or 30 days with sufficient justification, to submit 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 are allowed the same amount of time (15 or 30 days, as applicable) to submit 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. Within 90 days after the final submission authorized by this subdivision, the Appeals Division will issue ~~After considering all information and documentation provided during the appeals conference process, the Appeals Division will prepare a written~~ 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 additional time beyond the 90 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 ~~petitioning jurisdiction~~, 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.

~~, any of which may object to the D&R by submitting, within 30 days of the mailing of the D&R, a written request for reconsideration; the petitioning jurisdiction or any notified jurisdiction may also object to the D&R by submitting, within 30 days of its mailing, a written request for Board hearing under subdivision (f)(1).~~

(3) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the D&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6).

~~If the petitioning jurisdiction, a notified jurisdiction, or the Sales and Use Tax Department submits a request for reconsideration of the D&R within 30 days of its mailing, (4) 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 Supplemental Decision and Recommendation (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 (d)(5) will be mailed to the petitioning jurisdiction, 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 petitioning jurisdiction or any notified jurisdiction may appeal object to the SD&R by submitting a written request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6), within 30 days of its mailing, a written request for Board hearing under subdivision (f)(1).~~

~~(45) Whether or not an RFR request for reconsideration 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 clarify or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R. A copy of the SD&R will be mailed to the petitioning jurisdiction, all notified jurisdictions, any other jurisdiction that will be substantially affected by the SD&R, and the Sales and Use Tax Department. The petitioning jurisdiction or any notified jurisdiction may object to the SD&R by submitting, within 30 days of its mailing, a written request for Board hearing under subdivision (f)(1).~~

~~(6) A jurisdiction that is first notified as a substantially affected jurisdiction as the result of the D&R or any SD&R may request a 30-day extension to request a Board hearing. Such request for extension must provide a reasonable explanation for the requesting jurisdiction's inability to submit its request for Board hearing within 30 days of the date of mailing of the D&R or SD&R, must be copied to all other jurisdictions to whom the Appeals Division mailed a copy of the D&R or SD&R, and must be received by the Appeals Division within 30 days of the date of mailing of the D&R or SD&R in which the jurisdiction was first held to be a substantially affected jurisdiction. Within five days of receipt of the request, the Appeals Division will mail notification to the requesting jurisdiction, to the petitioner, to all other notified jurisdictions, and to the Sales and Use Tax Department whether the request is granted. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a request for Board hearing is extended to 60 days after the date of mailing of the D&R or SD&R.~~

~~(57) If no written request for reconsideration-RFR is submitted under subdivision (d)(4) or request for Board hearing is submitted under subdivision (fe)(1) within 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified jurisdiction under subdivision (d)(6), unless the Appeals Division issues an SD&R pursuant to subdivision (e)(4), the D&R is final as to the petitioning jurisdiction and all notified jurisdictions; if no written request for Board hearing is submitted under subdivision (f)(1) within 30 days of the mailing of the SD&R, unless the Appeals Division issues another SD&R under subdivision (e)(4), the D&R or SD&R as applicable is final as to the petitioning jurisdiction and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (d)(5).~~

(fe) REVIEW BY BOARD.

(1) The petition~~er~~ing jurisdiction or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension has been granted to a newly notified jurisdiction under subdivision (d)(6). Such a request must state the ~~specific~~ basis for the ~~requestor's jurisdiction's~~ disagreement with the D&R or SD&R as applicable and include all additional information in its possession ~~or available to it~~ that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (~~fe~~)(1), it will notify the Sales and Use Tax Department, the petition~~er~~ing jurisdiction, 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 petition~~er~~ing jurisdiction, and all jurisdictions notified of the Board hearing pursuant to subdivision (~~fe~~)(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. A jurisdiction who is not a notified jurisdiction but who could be directly affected financially as a result of the decision (that is, below the substantially affected threshold)with an interest in the appeal that was not notified of the hearing may also become a party and participate in the hearing process by notifying the Board Proceedings Division of its desire to do so.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.~~If a party wishes to present new arguments or evidence at the hearing that were not presented prior to the issuance of the D&R and any SD&R, it must provide such argument or evidence directly to the Appeals Division. The Appeals Division will then determine whether to issue a SD&R or update the summary it had prepared for the Board hearing to address the new arguments or evidence. If the Appeals Division determines that an SD&R or updated summary is not appropriate, such as when there is inadequate time to consider the new arguments or evidence to issue an SD&R or updated summary before the hearing, then such new arguments or evidence may not be included in any hearing briefs or presented at the Board hearing. The party may, however, request at the Board hearing that it be allowed to submit a post hearing brief to present the new arguments or evidence. If such a request is granted, any other party may submit a response within the time limit specified by the Board.~~

(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.). Any jurisdiction that does not participate in the hearing process waives any right to petition or appeal the results of the Board's decision, whether notified as an affected jurisdiction or not, and the Board's decision exhausts all administrative remedies on the matter.

(gf) 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.

(hg) 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 ~~an inquiry submission~~ under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a ~~submission n inquiry~~ 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 (c), ~~(d), and (e through (f) of this regulation~~ also apply to appeals from reallocation determinations made under section 6066.3.

(ih) TRANSITION RULES.

The provisions of this regulation apply to requests for reallocation filed after January 1, 2003. Inquiries and appeals that had been filed prior to this date continue to be subject to the procedures contained in the "Process for Reviewing Reallocation Inquiries" (June 1996, amended October 1998), except if the inquiry or appeal has not been decided and the jurisdiction elects, in writing, to proceed under the provisions of this regulation. Failure to make such a written election prior to appealing to the next step of review under the prior procedures constitutes the jurisdiction's election not to proceed under the provisions of this regulation, and that election cannot be revoked. If the jurisdiction files a timely written election to proceed under the provisions of this regulation, that election is also irrevocable, and the provisions of this regulation become applicable as of the date the election is received by the Board.

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 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. 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, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

(4) **PETITIONER.** “Petitioner” is a district that has filed a valid petition.

(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 petition that includes all the facts and evidence listed in subdivision (a)(3) or includes information describing to the satisfaction of the Allocation Group the district’s efforts to obtain any omitted facts or evidence.

Otherwise, the date of knowledge is the date on which the Allocation Group receives from the petitioner the facts or evidence that had been omitted from, or incomplete in, the petition. Where the date of knowledge is established by the submission of a petition, or by submission of a petition plus the later submission of additional facts or evidence, that date of knowledge applies to a misallocation discovered as a direct result of investigating the petition, provided the misallocation is reasonably covered by the petition.

(6) **SUBSTANTIALLY AFFECTED DISTRICT.** “Substantially affected district” is a district for which the decision on a petition results in a decrease to its total distribution by \$50,000 or more or by 5 percent or more of its average quarterly distribution.

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

(b) REVIEW BY ALLOCATION GROUP.

(1) **ACKNOWLEDGEMENT OF PETITION.** The Allocation Group will promptly acknowledge the petition, but such acknowledgement does not mean that the petition qualifies to establish a date of knowledge under subdivision (a)(5) of this regulation.

(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.

(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, even if it believes more time might have enabled it to obtain information supporting a decision more favorable to the petitioner.

(4) If the decision of the Allocation Group is that the asserted error in distributing district tax did not occur and that the petition should be denied, in whole or in part, or that the date of knowledge was other than the date on which the petition was received, 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 distributing district tax 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 60 days of the date of mailing if an extension is granted to any district under subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified 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) 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 60 days of the date of mailing if an extension is granted to any district under subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(9) 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)(8), 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, 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. If the request is granted, the time for the petitioner and all notified districts to object to the decision or supplemental decision of the Allocation Group is extended to 60 days after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Audit Determination and Refund Section Supervisor (Refund Section Supervisor) within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (b)(9). 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 the supplemental decision of the Allocation Group is submitted, the Refund Section Supervisor will review the objection and issue a written decision to grant or deny the objection, including the basis for that decision. A copy of the decision will be mailed to the petitioner, to all notified districts, and to any other district that is substantially affected by the decision of the Refund Section Supervisor.

(3) The petitioner or any notified district may appeal the decision of the Refund Section Supervisor by submitting a written objection under subdivision (d)(1) within 30 days of the date of mailing of the decision, or within 60 days of the date of mailing if an extension is granted to a newly notified district under subdivision (c)(4). If no such timely objection is submitted, the decision of the Refund Section Supervisor is final as to the petitioner and all notified districts.

(4) A district that is first notified as a substantially affected district as the result of the decision of the Refunds Section Supervisor may request a 30-day extension to submit a written objection to that decision under subdivision (c)(3). 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 Refund Section Supervisor mailed a copy of his or her decision, and must be *received* by the Refund Section Supervisor within 30 days of the date of mailing of his or her decision. Within five days of receipt of the request, the Refund Section Supervisor will mail notification to the requesting district, to the petitioner, and to all other notified districts whether the request is granted. If the request is granted, the time for the petitioner and all notified districts to object to the decision of the Refund Section Supervisor is extended to 60 days after the date of mailing of that decision.

(d) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the decision of the Refunds Section Supervisor by submitting a written objection to the Refund Section Supervisor within 30 days of the date of mailing of his or her decision, or within 60 days of the date of mailing if an extension has been granted under subdivision (c)(4). Such an objection must state the basis for the objecting district's disagreement with the decision and include all additional information in its possession that supports its position.

(2) If a timely objection to his or her decision is submitted, the Refund Section Supervisor will prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, and the Sales and Use Tax Department will thereafter be notified of the appeals conference. 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 15 days after the appeals conference, or 30 days with sufficient justification, to submit 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 are allowed the same amount of time (15 or 30 days, as applicable) to submit 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. Within 90 days after the final submission authorized by this subdivision, 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 additional time beyond the 90 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.

(3) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the D&R, or within 60 days of the date of mailing if an extension is granted to a newly notified district under subdivision (d)(6)

(4) 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 (d)(5) 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 (e)(1) within 30 days of the date of mailing of the SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified district under subdivision (d)(6).

(5) 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 clarify or correct the information, analysis, or conclusions contained in a D&R or any prior SD&R.

(6) A district that is first notified as a substantially affected district as the result of the D&R or any SD&R may request a 30-day extension to request a Board hearing. Such request for extension must provide a reasonable explanation for the requesting district's inability to submit its request for Board hearing within 30 days of the date of mailing of the D&R or SD&R, must be copied to all other districts to whom the Appeals Division mailed a copy of the D&R or SD&R, and must be *received* by the Appeals Division within 30 days of the date of mailing of the D&R or SD&R in which the district was first held to be a substantially affected district. Within five days of receipt of the request, the Appeals Division will mail notification to the requesting district, to the petitioner, to all other notified districts, and to the Sales and Use Tax Department whether the request is granted. If the request is granted, the time for the petitioner and all notified districts to submit a request for Board hearing is extended to 60 days after the date of mailing of the D&R or SD&R.

(7) If no RFR is submitted under subdivision (d)(4) or request for Board hearing under subdivision (e)(1) within 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension is granted to a newly notified district under

subdivision (d)(6), 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 (d)(5).

(e) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does to the Board Proceedings Division within 30 days of the date of mailing of the D&R or any SD&R, or within 60 days of the date of mailing if an extension has been granted to a newly notified district under subdivision (d)(6). 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 (e)(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 (e)(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. A district who is not a notified district but who could be directly affected financially as a result of the decision (that is, below the substantially affected threshold) may also become a party and participate in the hearing process by notifying the Board Proceedings Division of its desire to do so.

(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.). Any district that does not participate in the hearing process waives any right to petition or appeal the results of the Board's decision, whether notified as an affected district or not, and the Board's decision exhausts all administrative remedies on the matter.

(g) 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.



October 26, 2007

Mr. Jeffrey L. McGuire
Chief, Tax Policy Division,
Business Taxes Committee Section
State Board of Equalization
450 "N" Street
P.O. Box 942879
Sacramento, CA 94279-0092

Re: Response to Request for Comments on Proposed Revisions to Regulations 1807 and 1828.

Dear Mr. McGuire:

This letter responds to the interested party discussions held in Sacramento on October 10 regarding the Initial Discussion Paper dated September 24, 2007. MuniServices appreciates the opportunity to comment on this important and timely topic.

MuniServices feels that the past twelve years' experience of working on procedures for disposing of reallocation issues as reflected in Regulation 1807, and its younger twin, Regulation 1828, and their informal predecessors, has been a mutually constructive process. Although much has changed and much has been accomplished, we agree that the proposed changes clarify and improve significant portions of the present regulations and deserve serious consideration for adoption. We also feel that Board Staff, local jurisdictions and taxpayers alike may benefit substantially from taking this opportunity to review and improve the processes for considering and resolving local sales and use tax reallocation inquiries.

For example, the proposed elimination of the Board management review could help speed processing of the most difficult type of case, those that may require a formal Board hearing. The proposed elimination of the "Review Process" sections of the present regulation and their replacement with four distinct and clarified levels of review should also eliminate any confusion in those provisions.

Notwithstanding the need for these and other revisions to the existing regulations, MuniServices also feels that any amendments finally proposed will be easier to understand and analyze if they are drafted as amendments to present Regulations 1807 and 1828, rather than wholesale replacements of the current language which is based on the progress and experience since 1995. Otherwise, interested parties, as well as those most directly involved in these matters, will have difficulty understanding the nature of all the changes being recommended and the reasoning behind them. We also feel that attempting to entirely replace the existing regulations which reflect the current procedures, flawed though they may be, risks creating new problems unintentionally.

One striking recent improvement in processing of inquiries at the first level of review by the Allocation Group is not reflected in the present BOE draft, but should be. This improvement addresses former difficulties in successfully completing the factual phase of investigations following initial submission of a claim. In the 90's, reallocation claims often became stuck in the investigative phase for long periods because of difficulty in resolving factual disagreements between taxpayer field personnel and centralized taxpayer officials. This difficulty has been alleviated in recent years, largely because of new cooperative approaches to initial and follow-up investigations that have been implemented with the Allocation Group. MuniServices recommends that these methods be reflected in proposed revisions to Regulation 1807.

We also have noticed that the elimination of the Local Tax Appeals Auditor ("LTAA") position (which has now been essentially vacant for almost two years) as reflected in the proposed drafts, must apparently be postponed for at least another year, while a new LTAA is introduced to the process and trained, only to be replaced by the Appeals Division once the revised regulations have become effective. We are concerned that this solution may lengthen a transition that has already been long and wonder whether there could be another approach which would permit cases now awaiting LTAA conferences to begin to be considered in accordance with the procedures now proposed to be reflected in the revised regulations.

There are also certain important technical matters which appear to have been overlooked in the proposed redrafts of these regulations. For example, although there is a reference in proposed subdivision 1807 (f) (5) providing that the hearing procedures are to be governed by Chapter 5 of the proposed new general practice rules that are now being prepared for submission to OAL, no detailed rules governing briefing are contained in Chapter 5. We recommend that a reference incorporating the detailed briefing rules contained in Chapter 2 (Sections 5270-5271) of the proposed new Board rules for hearing taxpayer sales and use tax disputes be added to proposed subdivision (f) (5).

Another technical problem is the lack of any reference in subdivision (e) to the detailed procedures also contained in Chapter 2 that govern Appeals Division conferences. We propose that a cross-reference to Sections 5260-5268 be added to subdivision 1807 (e). Since the shift of this level of review from the LTAA to the Appeals Division appears to be one of the center pieces of the changes being proposed by Staff (which could reduce the potential hearing load for Board Members) this is a very important change which requires careful review before full implementation. Appeals Division procedures are not familiar to most local jurisdictions and possibly should not be included in the proposed regulation before a trial period has been experienced, as with other key portions of the present regulations. In any event, however, their conduct should not be left open in the regulation if the change to the Appeals Division is to be made.

MuniServices also believes that these proposals need to be reviewed in light of the procedural rights conferred on local government participants in Bradley-Burns by RTC Sections 7223-7225 as enacted by SB 110 in 1997. For example, use of the term

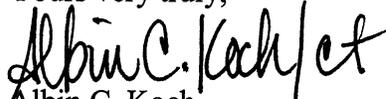
“inquiry” in RTC Section 7225 stems from its appearance in the informal processes to consider reallocation inquiries that were first implemented in 1996 and revised in 1998, before their reflection in Regulations 1807 and 1828 in 2003 and 2004.

In an attempt to reflect the foregoing considerations we are forwarding with this letter a proposed Alternative Draft of Regulation 1807 that attempts to address the issues outlined above; and a memorandum that lists and explains the reasoning behind each of the tracked changes in the Alternative Draft. The basic text of the Alternative Draft is present Regulation 1807 with the current “Review Process” provisions removed and replaced by the four levels of review contained in the BOE draft of proposed regulation 1807 of September 21, 2007. The suggested changes to both basic documents are as marked in the tracked Alternative Draft.

We do not intend the Alternative Draft to be viewed as a rejection of the need for revising Regulations 1807 and 1828, including the major changes proposed in the Initial Discussion Paper. We have been working on an Alternative Draft based on existing Regulation 1807 in cooperation with other interested parties as a means of identifying additional issues and problems and providing constructive proposals to solve them. By no means do we view this draft as a finished product. It is intended primarily to stimulate further consideration and discussion of mutual problems. Our goal is to continue the substantial progress made since 1995 in processing reallocation submittals.

Please contact us at your convenience if these materials are unclear in any respect or if they raise issues we have not considered or addressed. We are available to confer regarding these matters prior to issuance of the next discussion paper if it would be helpful to reduce or eliminate any minor or unnecessary policy or technical differences of concern while maintaining the scheduled completion goal. There are more issues here than we had originally anticipated.

Yours very truly,



Albin C. Koch
Special Tax Counsel
MuniServices LLC

Cc: Randy Dryden
Janis Varney
Fran Mancía
Matt Hinderliter
Robert E. Cendejas
Cecelia Watkins
Lynn Whitaker

Attachments

STATE BOARD OF EQUALIZATION
SALES AND USE TAX REGULATION

Regulation 1807. PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES.

Reference: Sections 7209, ~~and 7223, 7224, and 7225~~, Revenue and Taxation Code

(a) DEFINITIONS. For inquiries under Revenue and Taxation Code section 6066.3, see subdivision (g) of this regulation.

(1) ~~INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC).~~ “Inquiring Jurisdictions ~~and their Consultants (IJC)~~” (“IJ”) means any city, county, city and county, or transactions and use tax district of this state which has submitted a claim or inquiry described in subdivision (a) (2) and which has adopted a sales or transactions and use tax ordinance and ~~which~~ has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. ~~Except for submittals under Revenue and Taxation Code section 6066.3,~~

~~IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.~~

(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX. Except for submittals under Revenue and Taxation Code section 6066.3, “claim or inquiry” means a written request from an IJ~~E~~ for investigation of suspected improper distribution of local tax. The inquiry must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data ~~must~~may include ~~at a minimum as necessary~~ all of the following for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or d.b.a. (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. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

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

(G) The tax reporting periods involved.

(3) DATE OF KNOWLEDGE. “Date of knowledge” shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board with the facts required by subdivision (a) (2). If the IJC or the board is not able to obtain the above ~~minimum~~ factual data, but provides a letter with the inquiry documenting IJC or board efforts to obtain each of the facts required by subdivision (a)(2) of this regulation, the Board will use the date this inquiry is received as the date of knowledge.

(b) INQUIRIES.

(1) SUBMITTING INQUIRIES. Every inquiry of local tax allocation must be submitted in writing and shall include the information set forth in subdivision (a)(2) of this regulation. Except for submittals under Revenue and Taxation Code section 6066.3, all inquiries are to be sent directly to the Allocation Group in the Refund Section of the Board’s Sales and Use Tax Department.

(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a date of knowledge under subdivision (a)(2) of this regulation. The Allocation Group will review the inquiry and notify the IJC if the inquiry does not qualify to establish a date of knowledge.

(c) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will review the inquiry petition and should, within 180 days, issue to the petitioning IJ jurisdiction a written ruling decision to grant or deny the petition, including the basis for that decision. The written ruling decision will also note the date of knowledge, and if other than the date the inquiry petition was received, will include the basis for that date.

(2) If the ruling decision of the Allocation Group is that the asserted misallocation did not occur and that the inquiry petition should be denied, in whole or in part, or that the date of knowledge was on a date after or before the petition was received, the IJ petitioning jurisdiction may submit a written objection to the decision under subdivision (d)(1). If the IJ petitioning jurisdiction does not submit a written objection within 30 days of the mailing of the decision of the Allocation Group, that decision is final as to the IJ petitioning jurisdiction.

(3) If an objection is submitted by the IJ based on facts revealed by its investigation of a taxpayer’s activities in California, the Allocation Group will conduct a thorough reinvestigation of the matter, including any information and its sources provided by the IJ. The Allocation Group will then discuss the results of its reinvestigation with the IJ and contact any additional information sources provided by the IJ before issuing a supplemental ruling denying the inquiry.

(43) If the Allocation Group concludes that a misallocation occurred, it will also mail a copy of its ruling or supplemental ruling decision to any substantially affected jurisdiction. Any such notified jurisdiction may object to the ruling or supplemental ruling decision by submitting a written objection to the Allocation Group which includes the basis for the objection and all information in the possession of the objecting jurisdiction that supports its position. ~~or available to it that supports its position.~~ If no such objection is submitted within 30 days of the mailing of the ruling decision or supplemental ruling of the Allocation Group, that ruling decision is final as to the IJ petitioning jurisdiction and all notified jurisdictions.

(54) If a written objection is submitted by the IJ petitioning jurisdiction or by a notified jurisdiction within 30 days of mailing of the Allocation Group's ruling decision, or supplemental ruling the Allocation Group will consider the objection and issue a written supplemental ruling decision to grant or deny the objection, including the basis for that conclusion, decision. A copy of the supplemental ruling decision will be mailed to ~~the the~~ IJ petitioning jurisdiction, any notified jurisdiction, and any other jurisdiction that is substantially affected by the supplemental ruling decision. The IJ petitioning jurisdiction or any notified jurisdiction may object to the supplemental decision ruling by submitting a written objection under subdivision (d)(2). If no such objection is submitted within 30 days of the mailing of the supplemental ruling decision of the Allocation Group, that supplemental ruling decision is final as to the petitioning jurisdiction and all notified jurisdictions.

(56) If a ruling or supplemental ruling on an inquiry is not issued ~~steps necessary to issue a decision on the petition or objection are not taken~~ by the Allocation Group within 180 days of receiving the inquiry for a period of six months, the IJ petitioning jurisdiction or any notified jurisdiction may submit a Request for Review to the Audit Determination and Refund Section Supervisor ("RSS"). ~~If the RSS will review the file in accordance with subdivision (d). Alternatively, if the RSS concludes that there is a need for additional investigation of the inquiry, he or she may initiate appropriate correspondence with information sources designated by the IJ and the Allocation Group. Upon the initiation of such correspondence copies will be sent to the IJ and any notified jurisdiction, and the file shall be returned to the Allocation Group for a follow-up investigation and ruling. Upon completing the follow-up investigation, or within 90 days of the return of the file, whichever is sooner, the Allocation Group will forward its final ruling to the IJ and to any notified jurisdiction. The IJ and all notified parties will be informed of the basis for the final decision as well as all additional information uncovered by the follow-up investigation. Audit Determination and Refund Section Supervisor concludes that there has been six months of inactivity by the Allocation Group, then he or she will issue a decision under subdivision (d)(3). Otherwise, the Audit Determination and Refund Section Supervisor will notify the petitioning jurisdiction and any notified jurisdiction of the basis for denying the request, and the appeal will be returned to the Allocation Group for its decision.~~

(d) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR.

(1) The ~~IJ~~petitioning jurisdiction may submit an objection to ~~any the ruling decision~~ of the Allocation Group if it does so in writing to the Audit Determination and Refund Section- Supervisor (“RSS”) within 30 days of the date of mailing of the Allocation Group’s ~~drulingdecision~~. Such an objection must state the basis for the ~~objecting petitioning~~ jurisdiction’s disagreement with the ~~decision-ruling~~ and include all additional information in its possession ~~or available to it~~ that supports its position.

(2) The ~~IJ~~petitioning jurisdiction or any notified jurisdiction may submit an objection to the supplemental ~~rulingdecision~~ of the Allocation Group if it does so in writing to the Audit Determination and Refund Section Supervisor within 30 days of the date of mailing of that supplemental ~~rulingdecision~~. Such an objection must state the specific basis for the objecting jurisdiction’s disagreement with the supplemental ~~rulingdecision~~ and include all additional information in its possession ~~or available to it~~ that supports its position.

(3) If a timely objection to the ~~ruling decision~~ or supplemental ~~rulingdecision~~ of the Allocation Group is submitted, the ~~RSS Audit Determination and Refund Section Supervisor~~ will review the objection and issue a written decision to grant or deny the objection, ~~within 90 days of the mailing of the objection~~, including the basis for that decision. ~~This time limit will be suspended during the period of any additional investigation if the RSS determines, in accordance with subsection (e) (3), that there is a need for additional investigation of the inquiry, initiates correspondence with the taxpayer, or returns the file to the Allocation Group.~~ A copy of the decision will be mailed to the ~~IJ~~petitioning jurisdiction, all notified jurisdictions, and any other jurisdiction that is substantially affected by the decision of the ~~RSS Audit Determination and Refund Section Supervisor~~. The ~~IJ~~petitioning jurisdiction or any notified jurisdiction may object to that decision by submitting a ~~timely~~ written objection under subdivision (e)(1).

(4) If no written objection to the decision of the ~~RSS Audit Determination and Refund Section Supervisor~~ is submitted under subdivision (e)(1) within 30 days of the mailing of the decision, that decision is final as to the ~~IJ~~petitioning jurisdiction and all notified jurisdictions.

(5) If steps necessary to issue the decision are not taken by the ~~RSS Audit Determination and Refund Section Supervisor~~ for a period of ~~90 six months, days~~ the ~~IJ~~ petitioning jurisdiction or any notified jurisdiction may submit a request to the ~~RSS Audit Determination and Refund Section Supervisor~~ that he or she ~~issue a decision or~~ forward the appeal to the Appeals Division for its review under subdivision (e)(2). The ~~RSS Audit Determination and Refund Section Supervisor~~ will then ~~issue a decision or either prepare and~~ forward the file ~~on~~ to the Appeals Division for its review ~~within 30 days of the mailing of such request- and or will~~ notify the ~~IJ~~petitioning jurisdiction and any notified jurisdiction of ~~thethat action- basis for denying the request.~~

(e) REVIEW BY APPEALS DIVISION.

(1) The ~~petitioning jurisdiction~~ or any notified jurisdiction may submit a written ~~petition~~ objection to the decision of the Audit Determination and Refund Section Supervisor (“RSS”) if it does so to the ~~RSS Audit Determination and Refund Section Supervisor~~, or to the Appeals Division if the file has been forwarded to it, within 30 days of the date of mailing of that decision. Such an objection must state the specific basis for the ~~objecting petitioning~~ jurisdiction’s disagreement with the decision and include all additional information in its possession ~~or available to it~~ that supports its position.

(2) If a timely ~~petition objection~~ is submitted, the ~~RSS Audit Review and Refund Section Supervisor~~ will prepare the file and forward it to the Appeals Division. The ~~Petitioner, petitioning jurisdiction~~, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be notified of the appeals conference at least 60 days prior to its scheduled date. After considering all information and documentation provided during the appeals conference process, the Appeals Division ~~will will, within 90 days of the conference, or such additional time period as may be permitted by subsection 5265 (a) of Chapter 2 of the Sales and Use Tax Rules for Tax Appeals,~~ prepare a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. A copy of the D&R will be mailed to the petitioning jurisdiction, all notified jurisdictions, any other jurisdiction that will be substantially affected by the D&R, and the Sales and Use Tax Department, any of which may object to the D&R by submitting, within 30 days of the mailing of the D&R, a written request for reconsideration; the petitioning jurisdiction or any notified jurisdiction may object to the D&R by submitting, within 30 days of its mailing, a written ~~petition request~~ for Board hearing under subdivision (f) (1).

(3) To the extent consistent with the provisions of this subdivision (d), the conduct of the appeals conference will be governed by Chapter 2 of the Board of Equalization Rules For Tax Appeals, Article 6, (Cal. Code Regs. Tit.18, sections 5260 through 5268.) Normally such conferences will be held in Sacramento. The additional written arguments and documentary evidence to be filed by the petitioner under subsection 5261 (c) may be submitted within 30 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference. Normally, a representative of the Allocation Group will represent the Department’s point of view at the conference.

~~(4)~~ If the petitioning jurisdiction, a notified jurisdiction, or the Sales and Use Tax Department submits a request for reconsideration of the D&R within 30 days of its mailing, the Appeals Division will issue a Supplemental Decision and Recommendation (SD&R) to consider the request, after obtaining whatever additional information or arguments from the taxpayer or the parties that it deems appropriate. A copy of the SD&R will be mailed to the petitioning jurisdiction, all notified jurisdictions, any other jurisdiction that will be substantially affected by the SD&R, and the Sales and Use Tax Department. The petitioning jurisdiction or any notified jurisdiction may object to the SD&R by submitting, within 30 days of its mailing, a written ~~petition request~~ for Board hearing under subdivision (f) (1).

(54) In the case of a change in the law or the discovery of new evidence, a~~Whether or not a request for reconsideration is submitted,~~ at any time prior to the time the recommendation in the D&R is acted on by the Sales and Use Tax Department by making distribution in accordance with the D&R as a final matter or the Board has held an oral hearing on the petition, either the petitioning or a notified jurisdiction may request reconsideration or the Appeals Division may issue a SD&R as necessary to reflect the new law or evidence~~clarify or correct the information, analysis, and correct the~~ ~~or~~ conclusions contained in a D&R or any prior SD&R. A copy of the SD&R will be mailed to the petitioning jurisdiction, all notified jurisdictions, any other jurisdiction that will be substantially affected by the SD&R, and the Sales and Use Tax Department. The petitioning jurisdiction or any notified jurisdiction may object to the SD&R by submitting, within 9030 days of its mailing, a written request for Board hearing under subdivision (f) (1).

(65) If no written petition request for Board hearing is submitted under subdivision (f)(1) within 9030 days of the mailing of the D&R, unless the Appeals Division issues or is requested to issue an SD&R pursuant to subdivision (e) (4), the D&R is final as to the petitioning jurisdiction and all notified jurisdictions; if no written request for Board hearing is submitted under subdivision (f) (1) within 9030 days of the mailing of the SD&R, unless the Appeals Division issues another SD&R under subdivision (e) (4), the SD&R is final as to the petitioning jurisdiction and all notified jurisdictions.

(f) REVIEW BY BOARD.

(1) The petitioning jurisdiction or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 9030 days of the date of mailing of the D&R or any SD&R. Such a request must state the specific basis for the requestor's disagreement with the D&R or SD&R and include all additional information in its possession ~~or available to it~~ that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (f)(1), it will notify the Sales and Use Tax Department, the petitioning jurisdiction, 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. That notification will contain information advising the recipients of each of the following: (i) the date, location and approximate time of the hearing; (ii) the rights of notified and petitioning jurisdictions to participate in the hearing and all related deadlines for submission of briefs or additional evidence; (iii) any other information required to be submitted prior to the hearing.

(3) The petitioning jurisdiction and all jurisdictions notified of the Board hearing pursuant to subdivision (f)(2) may participate in the Board hearing. The taxpayer is not a party to the proceeding unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing. A jurisdiction with an interest in the appeal that was not notified of the hearing and is not a substantially affected jurisdiction within the meaning of subdivision (g) may ~~not also~~ become a party but may, after and participate in the hearing process by notifying the Board Proceedings Division

of its desire to do so, participate in the hearing by submitting an amicus brief in accordance with Chapter 2, Article 7 of the Board of Equalization Rules For Tax Appeals, (Cal. Code Regs., tit. 18. section 5270 (f) (2).) It may also present a brief oral statement of interest at the Board Member hearing-

(4) If a party wishes to present new arguments or evidence at the hearing that were not presented prior to the issuance of the D&R and any SD&R, it ~~should must~~ provide such argument or evidence directly to the Appeals Division at least 14 days prior to the scheduled hearing date. The Appeals Division will then determine whether to issue a SD&R or update the summary it had prepared for the Board hearing to address the new arguments or evidence. ~~If the any new SD&R or Summary is issued later than seven days before the scheduled hearing date the hearing will be continued at the request of any party. If new arguments or evidence are presented to the Appeals Division or to Board Proceedings later than 14 days prior to the scheduled hearing date by any party, the Board Chair may, in his or her sole discretion, rule that such evidence shall be admitted or excluded. If the evidence is admitted the Board Chair may, in his or her sole discretion, grant a continuance for good cause shown by any party. Appeals Division determines that an SD&R or updated summary is not appropriate, such as when there is inadequate time to consider the new arguments or evidence to issue an SD&R or updated summary before the hearing, then such new arguments or evidence may not be included in any hearing briefs or presented at the Board hearing. The party may, however, request at the Board hearing that it be allowed to submit a post hearing brief to present the new arguments or evidence. If such a request is granted, any other party may submit a response within the time limit specified by the Board.~~

(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, section 5510, et seq.). Briefing will be conducted in accordance with Chapter 2, Article 7 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, sections 5270-5271.) Any jurisdiction that does not participate in the hearing process waives any right to petition or appeal the results of the Board's decision, whether notified as an substantially-affected jurisdiction or not, and the Board's decision exhausts all administrative remedies on the matter.

(c) REVIEW PROCESS.

~~(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion was based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.~~

~~(2) REVIEW BY REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of~~

mailing of the decision to file a “petition for reallocation” with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor’s findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor a conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

(4) REVIEW BY BOARD MANAGEMENT. If the D&R’s recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board Management’s decision. If a written request for review of the D&R is not filed with Board Management within the 30 day period, the D&R becomes final at the expiration of that period.

(5) REVIEW BY BOARD MEMBERS. If Board Management’s decision is adverse to the IJC, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.

(A) **Petition for Hearing.** The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management’s decision. If a petition for hearing is not filed within the 90 day period, the Board Management’s decision becomes final at the expiration of that period.

(B) **Persons to be Notified of the Board Hearing.** After receiving the IJC’s petition for hearing, the Board Proceedings Division will notify the IJC and the following persons of the Board hearing:

1. The taxpayer(s) whose allocations are the subject of the petition.

(g) **Substantially Affected Parties.**

2. All jurisdictions that would be substantially affected if the Board does not uphold the taxpayer’s original allocation (including the jurisdictions within the statewide and countywide pools that would gain or lose money solely as a result of a reallocation to or from the pools in which they participate). For the purpose of this subdivision a jurisdiction is “substantially affected” if its total reallocation would increase or decrease by the amount of 5% of its average quarterly allocation (normally generally, for the prior four calendar quarters) or \$50,000, whichever is less, as a result of a reallocation of the taxpayer’s original allocation.

~~The notification will state that the claimed misallocation is being placed on the Board's Hearing Calendar to determine the proper allocation and that the IJC and all jurisdictions so notified are considered parties to the hearing.~~

~~(C) **The Hearing and Parties to the Hearing.** The petitioning IJC and all jurisdictions notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board will make a final decision at the hearing on the proper allocation. The Board's decision exhausts all parties' administrative remedies on the matter.~~

~~(D) **Presentation of New Evidence.** If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.~~

~~(h)~~ TIME LIMITATIONS.

(1) An IJC will be limited to one 30-day extension of an applicable the time limit established for each of the three levels of review prior to filing a Petition for a Board member hearing through the Board Management level.

(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.

(3) By following the time limits set forth in subdivisions (c), ~~(d)(1), (e) and (f) and (d)(2)~~, any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided later during the administrative process prior to closure. If the time limits or any extensions are not met, or if the Sales and Use Tax Department has made distribution based on a ruling by the Allocation Group, a decision of the RSS, a D&R or SD&R of the Appeals Division or if a Board closure decision has been issued occurred and no request for reconsideration has been timely filed, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.

~~(e) APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION.~~

~~(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described~~

~~in subdivisions (c) and (d) of this regulation. “Losing jurisdiction” includes a gaining jurisdiction where the original decision in favor of the gaining jurisdiction was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.~~

~~(2) If the losing jurisdiction contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed reallocation, the reallocation postponement will be extended pending the final outcome of the petition.~~

~~(if)~~ LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.

~~(jg)~~ APPLICATION TO SECTION 6066.3 INQUIRIES.

(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.

(2) The terms and procedures set forth in subdivisions ~~(c), (d), (e) and (f)(2) through (e)(5)~~ of this regulation shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.

~~(kh)~~ The provisions of this regulation shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to the existing inquiries and appeals procedures contained in the “Process for Reviewing Reallocation Inquiries”, (June 1996, amended October 1998) incorporated herein by reference in its entirety. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.

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

MEMORANDUM

TO: File. Local Practice Rules

FROM: Al Koch

SUBJECT: Alternative Draft of Regulation 1807 (10/22/07 version.)

DATE: October 26, 2007

Introduction

This memo will list the changes recommended in the BOE draft of Regulation 1807, procedures for resolving Bradley-Burns reallocation inquiries. Attached to this memo is a proposed Alternative Draft that attempts to identify all the changes and related issues.

The philosophical basis for some important changes in the Alternative Draft is the Bradley-Burns Bill of Rights (“BBBR”) as enacted in 1997 by the Legislature (S. B. 110) and contained in RTC Sections 7221-7226. The present version of Regulation 1807 refers to RTC Section 7223¹ only of the BBBR. I recommend that sections 2224 and 2225 be added to the reference section in support of certain changes included in the Alternative Draft.² (No statutory references appear in the initial draft that was discussed at the October 10 Interested Party meeting.)

There is a consensus among some interested parties that the factual investigation phase of the initial level of inquiry review has improved markedly recently and that inquiries are being handled much more expeditiously than was sometimes the case in the past. Certain changes proposed in the Alternative Draft are intended to reflect the new practices that have led to this improvement in processing.

List of Changes Proposed in Alternative Draft

1. Retain present Regulation 1807, rather than “gut and amend” it, so that each proposed change is identified to permit the legal and practical need for it to be evaluated individually. Thus, present Regulation 1807 provides the basic framework for the

¹ RTC subdivision 7223 (a) gives each local jurisdiction having an administration contract with the Board the “right to depend on the board’s staff to provide informative and responsive services to help . . . [them] understand the local sales and use tax. . . .” Subdivision 7223 (b) obligates the board to provide “open, uniform, and consistent administration of the local taxes. . . .”

² RTC section 7224 requires that the local tax law “be administered in a uniform manner.” Section 7225 states:

“Each local jurisdiction has the right to rely on the board’s written information and answers to questions. Each local jurisdiction has the right to **prompt and accurate responses from the board or its staff**. Each local jurisdiction has the right to **a written response to questions, and resolution of any inquiry submitted in writing to the board**. (Emphasis supplied.)

Alternative Draft. The material beginning with subdivision (c), “Review By Allocation Group” through subdivision (f), “Review By Board” has been lifted from the BOE proposal and revised as tracked. (It appears in 12 pt type rather than the 9 pt type used for present Regulation 1807 and its proposed revisions. (All changes have been tracked to either present Regulation 1807 or the Board proposals for subdivisions (c) through (f).)

2. Subdivision (a) (1). Retain and amend the term “Inquiring Jurisdiction” to remove any implication that a consultant may constitute a “party.” Consultants may act only as authorized agents of a local jurisdiction. Retention of the term “inquiry” is recommended, because it ties in directly to the BBBR, RTC section 7225, as quoted in footnote 2. Reallocation submissions are “inquiries” under that provision. The term “petition” is first introduced at the Appeals Division level, because it is only at that time that an inquiry submitted for review by the Allocation Group has become a disagreement that requires resolution. In fact, a substantial majority of reallocation inquiries submitted by MuniServices result in voluntary corrections by the Allocation Group and have for many years.

3. Subdivision (a) (2). The requirements for establishing a valid date of knowledge have been made somewhat flexible to reflect that many of the listed requirements have not been viewed as necessary by the Allocation Group. Another possible way to address this issue would be to revise the requirements to include only those that are actually necessary, so as to save time and effort.

4. Subdivision (a) (3). Amend this provision to require board staff (LRAS) to fill out a “golden rod” form in order to “operationally document” that it has ascertained the facts necessary to establish a good DOK under subdivisions (a) (2) and (a) (3). The test should be the same for IJ and LRAS, because BBBR, RTC sections 7223 (b) and 7224 require “consistent” and “uniform administration” of the local sales and use tax, and only one standard for establishing a good date of knowledge for a correction is provided in RTC Section 7209. LRAS should also be able to obtain a good DOK if obtains the necessary facts independently or can demonstrate that a substantial effort was made by it to obtain the necessary facts.

5. Subdivision (c) (1). Beginning in subdivision (c) (1), a time limit objective of 180 days for issuance of a definitive ruling by the Allocation Group has been added to implement the “prompt” standard mandated by RTC Section 7225. See also, subdivision (c) (5). Whether this time period is appropriate needs to be evaluated and coordinated with other time limits, including any goal for completing the entire process as promptly as possible. The intent of this suggestion is to permit the Allocation Group to explain the reason for any delays and to give the IJ an opportunity to move the inquiry to the Refund Section Supervisor under subdivision (c) (6) for a decision or additional investigation.

6. Subdivision (c) (2). Terminology changes only recommended. (“Inquiry” for “petition,” “IJ”.) Prior or subsequent dates of knowledge made appealable.

7. Subdivision (c) (3). This is a new provision that has been added to reflect present best practices of the Allocation Group in Regulation 1807.

8. Subdivision (c) (4). Terminology change from “petitioning jurisdiction” to “IJ” in last line. “Ruling or supplemental ruling” added in place of “decision” which has been reserved for RSS conclusions in this draft. The words “or available to it” have been stricken from this subparagraph and all others in the BOE draft where it appears, because the phrase is ambiguous and could create unnecessary problems.

9. Subdivision (c) (5). Terminology change from “petitioning jurisdiction” to “IJ” in first line and other conforming wording changes.

10. Subdivision (c) (6). Substantial revision proposed to provide for cases where Allocation Group has been unable to issue a ruling on an inquiry or objection within 180 days because of failure of taxpayer to respond fully and accurately to requests for information, or otherwise and IJ requests review by RSS. Proposal’s intent is to establish procedure for eliminating factual discrepancies as soon as possible at the Allocation Group level. In some cases forwarding inquiry to Audit Review and Refund Section Supervisor (“RSS”) for initiation of direct correspondence between RSS (or higher BOE official) to communicate importance of securing voluntary cooperation of taxpayer in responding fully to requests for information may be appropriate. Reallocation Questionnaire in Lieu of Subpoena might be worked out on a trial-and-error basis for use at this level. After initiation of correspondence at RSS level, file would be returned to Allocation group for follow-up investigation and issuance of ruling which is to take place within 90 days of the date of the response to the correspondence from the taxpayer to the RSS. Thus the overall time limit for Allocation Group consideration of an inquiry would be approximately 270 + days.

11. Subdivisions (d) (1) and (d) (2). Terminology changes. (“IJ” and “RSS”; “objecting” and “ruling” for “petitioning” and “decision.”

12. Subdivision (d) (3). Terminology changes (“ruling” for “decision,” “IJ” and “RSS.”) RSS required to issue written decision within 90 days of mailing of a timely objection.

13. Subdivisions (d) (3) and (d) (4). Terminology changes in both subdivisions. 90-day time limit from submission of objection for action by RSS suspended during period of any additional investigation.

14. Subdivision (d) (5). Terminology changes added. RSS to issue decision within 90 days or forward matter to Appeals Division.

15. Subdivision (e) (1). Terminology changes. IJ can appeal to Appeals Division if file forwarded to it by RSS.

16. Subdivision (e) (2). Terminology changes. Appeals Division to provide at least 60 days notice of date of appeals conference. D&R to be issued within 90 days of

conference. We also propose addition to subdivision 1807 (e) (3) below of a cross-reference incorporating Sections 5260-5268 of Chapter 2 of the Sales and Use Tax practice rules recently approved for submission to OAL. The shift of this level of review from the LTAA to the Appeals Division is a very important change which requires careful review before implementation. Appeals Division procedures are not familiar to most local jurisdictions and possibly should not be implemented before a trial period has been experienced, as with other portions of the present regulation. The time limits suggested in this subdivision may need additional coordination with the detailed Appeals Division procedures described in Chapter 2, as proposed here for issuing a D&R following the submission of additional evidence after the conference under subdivision 5265 (a) of Chapter 2.

17. Subdivision (e) (3). Chapter 2, Article 6 incorporated by reference to guide conduct of the Appeals conference. After conference, Appeals Division able to secure additional information from taxpayer before issuing D&R and will have additional time to issue D&R in such case.

18. Subdivision (e) (4). Terminology change from “request” to “petition” in last line.

19. Subdivision (e) (5). Parties enabled to request reconsideration based on new law or evidence before oral hearing or final action by Sales and Use Tax Department, and Appeals can also do so and issue SD&R. Board proposed Appeals be able to do this without new law or evidence, based only on expression of a new argument. Need to make sure this provision coordinates well with subdivision (f) (4) as proposed to be revised.

20. Subdivision (e) (6). Terminolgy change to “petition.” Period to request Board hearing restored to 90 days from the 30 proposed by Staff. The present time provided is not unneeded.

21. Subdivision (f) (1). 90 days to submit written “petition” (instead of “request”) for Board hearing.

22. Subdivision (f) (2). Wording of hearing notice requirements expanded to cover date of hearing briefing deadlines, etc. Although there is a reference in proposed subdivision 1807 (f) (5) providing that the hearing procedures are to be governed by Chapter 5 of the proposed new general practice rules that are now being prepared for submission to OAL, no detailed rules governing briefing are contained in Chapter 5. We propose that a reference incorporating the detailed briefing rules contained in Chapter 2 (Sections 5270-5271) of the proposed new Board rules for hearing taxpayer sales and use tax disputes be added to proposed subdivision (f) (5). Board Proceedings was recently instructed to prohibit a petitioning jurisdiction from submitting a response to the Board’s Reply Brief. The proposed cross-reference would return to the prior informal briefing procedures instituted by Board Proceedings and local jurisdiction representatives several years ago when Board reallocation hearings first began to be heard.

23. Subdivision (f) (3). The petitioning jurisdiction and any notified jurisdiction are parties that may fully participate in a Board oral hearing and submit briefs, etc. Other interested jurisdictions are amici only and not entitled to full participation as parties. Permitting amici to fully participate as parties could prolong oral argument unnecessarily.

24. Subdivision (f) (4). Permits new evidence and arguments to be presented to Appeals Division at least 14 days prior to the scheduled hearing date. Appeals then has 7 days to issue a new SD&R or update the Board summary to address the new submittals. If such is issued by Appeals less than 7 days prior to the scheduled hearing date, any party may request and receive a continuance. If new arguments or evidence are submitted later than 14 days prior to the hearing date, the Chair shall have discretion to admit or exclude the evidence, but if admitted, the Board Chair shall also have discretion to grant a continuance to any party for good cause shown. This approach is intended to maximize the amount of relevant, helpful information to be considered by the Members in order to assure, as much as possible, accurate findings and legal conclusions, based on the facts. A continuance may be granted to any party able to prove surprise, or other prejudice.

25. Subdivision (f) (5). Adds the word “substantially” to eliminate any ambiguity as to who is bound by the Board’s decision. Any other jurisdiction should not be able to establish a good DOK for any retroactive correction. Any that might seek a prospective DOK would be subject having to prove a change in the law or the governing facts. Chapter 2, Article 7 briefing rules incorporated by reference.

26. Subdivision (g). Substitutes “normally” for “generally” to indicate what the rule is in the usual case where the taxpayer has four preceding calendar quarters.

27. Subdivision (h) (1). Restores local jurisdiction right to obtain one 30-day extension at each of the three review levels prior to filing a petition for Board hearing. Wording changes recommended to eliminate any ambiguity.

28. Subdivision (h) (3). Retains rule that new supporting information will not disqualify the original DOK. Eliminates undefined term, “closure” and substitutes “distribution by the Sales and Use Tax Department” after a final administrative ruling at any of the four levels of review. Submission of any new supporting information after such events will result in establishment of a new DOK. Note this would usually mean that a denial of a reallocation request would become final after issuance and no further administrative objection, petition or request for rehearing filed, since the revenue would usually already have been distributed in accordance with the denial.

29. No changes recommended in subdivisions (i) through (k) in order to preserve those rules intact from Regulation 1807. The BOE draft contained a revision in the language of the transition rule contained in present subdivision (i) that is not reflected in this draft, because it could have affected current disputes regarding inquiries filed before January 1, 2003.

30. Is there a need for an additional effective date or transition rule to accommodate these revisions? I suspect there may be, but have not attempted to draft one. The concept would be along the following lines: all inquiries still valid under existing rules will remain valid under the new regulations, but the new regulations would govern everything occurring thereafter, except for inquiries filed prior to January 1, 2003 which will remain subject to the existing transition rule still contained in subdivision (k). Provision should also be made that new time limits applicable to Board Staff actions should apply prospectively only or perhaps only when an inquiry or petition moves to the next review level, as opposed to whatever one is now in process. (i.e., The Allocation Group would not become subject to the new time limits with respect to its present inventory, but only with respect to new filings. Query should this problem be examined more closely to root out all cases older than, say 2 years?)

* * * * *

Robert E. Cendejas
Attorney at Law
1725 North Juliet Court
Brea, CA 92821

Telephone (714) 256-9595
Mobile Telephone (213) 361-0642

Facsimile (928) 396-1292
E-mail: Robertecendejas@AOL.com

VIA E-MAIL: Cecilia.Watkins@boe.gov

October 26, 2007

Mr. Jeffrey L. McGuire
Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
450 N Street
Sacramento, CA 94279-0092

**RE: BTC Regarding Regulations 1807
and 1828 – Interested Party Comments**

Dear Mr. McGuire:

On behalf of my city clients, I attended the interested parties meeting on October 10, 2007. Since then, I have been working with my city clients, other consultants and businesses to complete an alternative version of Regulation 1807. Although there were many good ideas in staff's entirely new Regulation 1807, like my city clients, I found it difficult to follow each deletion and modification from the current Regulation 1807. Also, Board Members, their staff and OAL may have similar difficulties.

Therefore, we felt working from the current Regulation 1807 was overall an easier way for all of us to participate in the process. I hope you can accommodate us. MuniServices will send you our revised Regulation 1807 with an explanation of each change from your proposed new Regulation 1807.

Additionally, our alternative version includes some modifications and additions to reflect the comments I received from the business community. Some businesses have commented that the investigation process is sometimes repetitive, lengthy and occasionally open-ended. Our modifications attempted to consolidate the number of inquiries to the taxpayers and provide a time limit on investigations. Of course, you may have other ideas on how this may be accomplished.

An important element missing from staff's proposed Regulation 1807 is a reference to the applicable briefing rules for Board Hearings. Having participated in virtually all the local tax allocation Board Hearings over the last twelve years, I strongly recommend that petitioner be allowed to submit both an Opening Brief and a Rebuttal Brief. Several past,

as well as present, Board Members and their staff have told me that the briefing is very helpful to their deliberation.

The final point is that we should not lose sight of our goal. That goal is to insure that the local tax allocation is done correctly, timely and with as little inconvenience as reasonably possible to the taxpayer. This is an extremely important source of revenue to local government. Therefore, above all, it must be done correctly.

Again, I appreciate staff's efforts and look forward to working with you to improve the appeal process.

Sincerely,

Robert E. Cendejas

Robert E. Cendejas

cc: Al Koch
Matt Hinderliter
City Client List
Cecilia Watkins
Leila Khabbaz



October 25, 2007

Mr. Jeffrey L. McGuire, Chief
Tax Policy Division (MIC: 92)
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Mr. McGuire:

In considering any revision(s) to Regulations 1807 & 1828, we strongly urge the Board to do the following:

Maintain the 30-day Extension Provision.

Resolving inquiries in the shortest amount of time possible is clearly in the best interest of all parties concerned. While at face-value removal of this provision seems to advance this goal, we believe that it would actually be counter-productive. Allowing as much time as reasonably possible to obtain the correct and relevant factual information at each level of review is clearly preferable to forcing a jurisdiction to advance a case up the appeals ladder, simply to keep it alive when faced with a hard 30-day deadline.

Furthermore, a "losing jurisdiction" facing a large reallocation is notified for the first time only *after* the Board has completed its own investigation. Board staff may have worked the case for 6 months, 9 months, a year or longer, before it reached its conclusion. To allow 30 days and 30 days only for the losing jurisdiction to launch and complete its own independent review of the matter is clearly unfair.

Expand Notification to Substantially Affected Jurisdictions.

We believe that a substantially affected jurisdiction, as defined in the Regulation, should absolutely be notified at each level of review. This applies to a proposed reallocation of *any* funds previously credited to the agency, whether a direct allocation, an indirect allocation through the state or county pools, a transactions tax allocation, etc...

The notification provisions should also apply to any and all BOE initiated negative adjustments. This includes refunds to taxpayers due to court decisions (i.e. the aerospace decision), bad debt losses, etc... While not subject to appeal in the same way

as reallocation inquiries, jurisdictions must be made aware for budgetary purposes when a large loss is imminent.

Clarify Date of Knowledge and Burden of Proof Requirements.

Section (a)(3) of the proposed Regulation 1807 lists 7 separate pieces of factual data which must be included, at a minimum, for a petition to establish a date of knowledge. However, it should be recognized that what is sufficient or relevant factual data depends upon the issue being raised. We suggest changing the last sentence of Section (a)(3) from *"Sufficient factual data must include, at a minimum, all of the following for each business location being questioned."* to *"Sufficient factual data may include, as necessary, any or all of the following."*

With respect to providing "evidence" that a questioned location is a selling location, or that title passed in California, as per Section (a)(3)(E), only the Board has the authority to compel a taxpayer to provide written documentation in support or denial of a claim. The "evidence" offered in a petition is generally the name and phone number of the taxpayer representative who provided the information to the jurisdiction (or its consultant) during a telephone call. It should be made clear that this is acceptable, at least until/unless the Board obtains written evidence which contradicts the claims being made.

Enhance Review at the Allocation Group Level.

A timely, accurate, and complete investigation at the Allocation Group level is a crucial first step in any case. Investigations at this stage should be an open and cooperative effort between BOE staff, taxpayers and the affected jurisdiction(s). Ideally only those cases involving specific legal arguments, or disagreements as to the meaning or intent of a specific regulation, should advance beyond this level.

Section (c)(5) of the proposed Regulation stipulates that, if steps necessary to issue a decision are not taken by the Allocation Group for a period of six months, the petitioning jurisdiction may request that the case be moved to the next level of review. While we accept that responsibility for advancing a case remains with the petitioner, we also believe there should be more active case management at the Board level.

If a case has gone six months without *resolution* (not just "activity") there should be an established and escalating response within the Allocation Group. If faced with an uncooperative taxpayer this may include more strongly worded written requests for information, signed by supervisors or Board management. If there has simply been no documented activity for six months or longer, that issue should be addressed with the auditor assigned to the case. If the relevant facts have been established and are not in dispute, but there remains a legal disagreement, then the case should be advanced to the Appeals Division without further delay.

The Allocation Group does an exceptional job in handling the 1,500+ inquiries submitted each year. In the vast majority of cases there is no dispute, a jurisdiction and/or its consultant is simply providing new or additional information. Upon confirmation of that information a registration and/or reporting change is made, and no one argues that the change is incorrect.

Streamlining procedures for cases that advance beyond this level is clearly a desirable goal. However, enhancing the Allocation Group level of review, providing any and all tools and resources necessary, is clearly the most effective way positively impact the entire process.

Sincerely,

A handwritten signature in black ink that reads "Matt Hinderliter". The signature is written in a cursive, flowing style.

Matt Hinderliter

cc: Lynn Whitaker
Chuck Arana
Leila Khabbaz
Cecilia Watkins
Bob Wils
Larry Micheli
Lloyd de Llamas



CITY OF
HAYWARD
HEART OF THE BAY

October 26, 2007

Ms. Cecilia Watkins
State Board of Equalization
450 N Street
Sacramento, CA 94279

Re: Request for Comments –Proposed Revisions to State Board of Equalization Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

Dear Ms. Watkins:

The City of Hayward is responding to the Board of Equalization's September 25, 2007 request for comments regarding the first issue paper on proposed revisions to Regulation 1807 and Regulation 1828.

The City appreciates Staff's efforts to address issues regarding the local practice rules particularly as they relate to petitions for local tax reallocations and transactions and use tax redistributions. We commend the Board and its staff for its efforts to ensure that localities preserve their rightful revenues.

It is our request that any final regulation preserve the length of time it now takes to secure a Board hearing on important claims. In the current proposal no effective time limits apply to Board Staff's consideration of inquiries after initial submission, but would reduce the time limits for local jurisdictions to rebut inaccurate or incomplete denials. We look forward to working with Staff to ensure that reasonable timelines are in place.

Finally, the City respectfully requests clarification from Staff as they relate to the mechanics of the proposed regulation. In our review of the first paper and the proposed regulatory language it *appears* rather than interested parties are asked to consider an entirely new regulation. The City would appreciate Board Staff providing all interested parties with proposed versions that reflects amendments to the existing regulation rather than "new" language to ensure fairness in interpretation of what is of consideration and possible adoption of binding language.

We look forward to working with Board Staff on the development of regulations that protect the integrity of the legal obligations imposed by the Bradley-Burns statute and particularly ensure that the distribution of local revenues are based on complete facts.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra C. Auker".

Debra C. Auker
Director of Finance and Internal Services