



STATE BOARD OF EQUALIZATION

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January 18, 2008

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:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the January 31, 2008, Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulations 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, and 1828, *Process for Reviewing Transactions and Use Tax Distributions*.

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

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **January 31, 2008**, in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director
Sales and Use Tax Department

RLH: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. Steve Shea, Board Member's Office (*3 copies*), Fourth District (via e-mail)
Mr. Mark Ibele, Board Member's Office, Fourth 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. Elizabeth Maeng, 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)
Mr. Robert Lambert (MIC 82)
Mr. Randy Ferris (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (MIC 85)
Ms. Deborah Cumins (MIC 85 – 17th Floor)
Mr. Rey Obligacion (via e-mail)
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. Jeffrey L. McGuire (MIC 92 and via e-mail)
Mr. Robert Buntjer (via e-mail)
Mr. Larry Micheli (via e-mail)
Mr. Steve Sisti (via e-mail)
Mr. Robert Wils (via e-mail)
Mr. James Kuhl (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Charles Arana (MIC 50)

AGENDA — January 31, 2008 Business Taxes Committee Meeting
Proposed Revisions to Regulations 1807 and 1828

<p>Action 1 — Agreed Upon Items Agenda, pages 2– 12</p>	<p>Adopt proposed amendments for Regulations 1807 and 1828 (except as indicated in Actions 2 and 3) as agreed upon by interested parties and staff.</p>
<p>Action 2 — Transition Rule – Regulation 1807 1807(g) Agenda, page 13 Issue Paper, page 4</p>	<p>Adopt:</p> <p>A. Staff’s recommendation which does not include transition rule language.</p> <p align="center">OR</p> <p>If it is determined that transition rule language is needed, adopt either:</p> <p>B. Staff’s alternative transition rule language.</p> <p align="center">OR</p> <p>C. Interested parties’ recommendation which includes the transition rule language essentially as in current Regulation 1807.</p> <p align="center">OR</p> <p>D. Interested parties’ alternative transition rule language.</p>
<p>Action 3 – Transition Rule – Regulation 1828 1828(f) Agenda page 14 Issue Paper, page 4</p>	<p>Adopt:</p> <p>Staff’s recommendation which does not include transition rule language.</p> <p align="center">OR</p> <p>Interested parties’ recommendation which includes transition rule language.</p>
<p>Action 4 — Authorization to Publish</p>	<p>Recommend publication of amendments to Regulations 1807 and 1828 as adopted in the above actions.</p> <p>Implementation: 30 days following OAL approval</p>

Action Item	Staff and Industry’s Proposed Regulatory Language for Regulations 1807 and 1828
<p>Action 1 — Agreed Upon Items</p>	<p>Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.</p> <p>(a) DEFINITIONS.</p> <p>(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.</p> <p>(2) JURISDICTION. “Jurisdiction” means any city, county, city and county, or redevelopment agency which has adopted a local tax.</p> <p>(3) PETITION. “Petition” means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:</p> <ul style="list-style-type: none"> (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. <p>“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p>(4) PETITIONER. “Petitioner” is a jurisdiction that has filed a valid petition.</p> <p>(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, “date of knowledge” is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.</p>

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<p>Regulation 1807 continued</p>	<p>(6) SUBSTANTIALLY AFFECTED JURISDICTION. “Substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.</p> <p>(7) NOTIFIED JURISDICTION. “Notified jurisdiction” is a jurisdiction that has been notified as a substantially affected jurisdiction.</p> <p>(b) REVIEW BY ALLOCATION GROUP.</p> <p>(1) The Allocation Group will promptly acknowledge a submission intended as a petition.</p> <p>(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.</p> <p>(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.</p> <p>(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).</p> <p>(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).</p> <p>(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.</p> <p>(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.</p> <p>(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to</p>
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<p>Regulation 1807 continued</p>	<p>the petitioner and all notified jurisdictions.</p> <p>(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be <i>received</i> by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.</p> <p>(c) REVIEW BY APPEALS DIVISION.</p> <p>(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s supplemental decision, or within a period of extension authorized by subdivision (b)(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.</p> <p>(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.</p> <p>(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.</p> <p>(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> <p>(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> <p>(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy</p>

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<p>Regulation 1807 continued</p>	<p>of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.</p> <p>(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.</p> <p>(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel’s response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.</p> <p>(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.</p> <p>(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1)</p>
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<p>Regulation 1807 continued</p>	<p>within 60 days of the date of mailing of the SD&R.</p> <p>(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.</p> <p>(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).</p> <p>(d) REVIEW BY BOARD.</p> <p>(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction’s disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.</p> <p>(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.</p> <p>(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.</p> <p>(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified jurisdictions have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified jurisdiction, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.</p> <p>(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board’s final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.</p> <p>(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.</p>
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Regulation 1807 continued	<p>(f) APPLICATION TO SECTION 6066.3 INQUIRIES.</p> <p>The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.</p>
Regulation 1828	<p>Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX</p> <p>(a) DEFINITIONS.</p> <p>(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.</p> <p>(2) DISTRICT. “District” means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.</p> <p>(3) PETITION. “Petition” means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:</p> <ul style="list-style-type: none"> (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. <p>“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</p>

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<p>Regulation 1828 continued</p>	<p>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.</p> <p>(4) PETITIONER. “Petitioner” is a district that has filed a valid petition.</p> <p>(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, “date of knowledge” is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.</p> <p>(6) SUBSTANTIALLY AFFECTED DISTRICT. “Substantially affected district” is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.</p> <p>(7) NOTIFIED DISTRICT. “Notified district” is a district that has been notified as a substantially affected district.</p> <p>(b) REVIEW BY ALLOCATION GROUP.</p> <p>(1) The Allocation Group will promptly acknowledge a submission intended as a petition.</p> <p>(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.</p> <p>(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.</p> <p>(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).</p> <p>(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under</p>
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<p>Regulation 1828 continued</p>	<p>subdivision (b)(6).</p> <p>(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.</p> <p>(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.</p> <p>(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 a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.</p> <p>(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 (to the extent known by the requesting district), and must be <i>received</i> by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.</p> <p>(c) REVIEW BY APPEALS DIVISION.</p> <p>(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s supplemental decision, or within a period of extension authorized by subdivision (b)(9). 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.</p> <p>(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals</p>
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<p>Regulation 1828 continued</p>	<p>conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.</p> <p>(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.</p> <p>(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> <p>(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.</p> <p>(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.</p> <p>(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.</p>
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Proposed Revisions to Regulations 1807 and 1828

Action Item	Staff and Industry’s Proposed Regulatory Language for Regulations 1807 and 1828
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<p>Regulation 1828 continued</p>	<p>(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel’s response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.</p> <p>(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.</p> <p>(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.</p> <p>(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.</p> <p>(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).</p> <p>(d) REVIEW BY BOARD.</p> <p>(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district’s disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.</p> <p>(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax</p>
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AGENDA — January 31, 2008 Business Taxes Committee Meeting
Proposed Revisions to Regulations 1807 and 1828

Action Item	Staff and Industry’s Proposed Regulatory Language for Regulations 1807 and 1828
<p>Regulation 1828 continued</p>	<p>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.</p> <p>(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.</p> <p>(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified districts have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified district, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.</p> <p>(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board’s final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.</p> <p>(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.</p> <p>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.</p>

Action Item	A Regulatory Language Proposed by Staff	B Alternative Language Proposed by Staff	C Regulatory Language Proposed by MuniServices	D Alternative Language Proposed by MuniServices on January 16, 2008
<p>Action 2 – Transition Rule - Regulation 1807</p>	<p>None. Staff believes the subdivision is unnecessary and does not recommend adding subdivision 1807(g).</p>	<p>If it is determined that transition rule language is needed, staff proposes the following alternative language: <u>(g) TRANSITION RULE.</u> <u>The provisions of this regulation apply to reallocation inquiries filed after January 1, 2003. Inquiries that had been filed prior to this date continue to be subject to the procedures in effect prior to January 1, 2003, but a jurisdiction filing such an inquiry may elect in writing to proceed under the provisions of this regulation as to that inquiry if it has not been decided. 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 for an inquiry filed prior to January 1, 2003, that election is also irrevocable, and the provisions of this regulation become applicable as of the date the election is received by the Board.</u></p>	<p>MuniServices recommendation – retain current Regulation 1807(g): <u>(g) TRANSITION RULE.</u> <u>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 1966, amended October 1998) incorporated herein by reference in its entirety. However, for inquiries filed prior to January 1, 2003, the petitioner 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.</u></p>	<p>MuniServices Alternative Regulation 1807(g): <u>(g) EFFECTIVE DATE AND TRANSITION RULES.</u> <u>(1) The effective date of these amendments to Regulation 1807 is thirty days after they have been approved by the Office of Administrative Law and been forwarded to the Office of the Secretary of State, and they shall not have any retroactive effect.</u> <u>(2) Any inquiries awaiting Member hearings after Board Management denials under subdivision (c)(4) of Regulation 1807, as adopted August 1, 2002, may, under the transition rule of subdivision (h) of that Regulation, be the subject of an appeal for a Board Member hearing that is initiated prior to the effective date specified in (g)(1).</u></p>

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by MuniServices
<p>Action 3 – Transition Rule - Regulation 1828</p>	<p>Staff believes the subdivision is unnecessary and does not recommend adding subdivision 1828 (f).</p>	<p><u>(f) TRANSITION RULE.</u></p> <p><u>The provisions of this regulation apply to redistribution inquiries filed after July 1, 2004. Inquiries that had been filed prior to this date continue to be subject to the procedures in effect prior to July 1, 2004, but a district filing such an inquiry may elect in writing to proceed under the provisions of this regulation as to that inquiry if it has not been decided. Failure to make such a written election prior to appealing to the next step of review under the prior procedures constitutes the district’s election not to proceed under the provisions of this regulation, and that election cannot be revoked. If the district files a timely written election to proceed under the provisions of this regulation for an inquiry filed prior to July 1, 2004, that election is also irrevocable, and the provisions of this regulation become applicable as of the date the election is received by the Board.</u></p>

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

Proposed Revisions to Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, and 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. Alternative 1 - 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 process will resolve disputes. Staff has eliminated unnecessary review levels, updated terminology, and reorganized the regulations to prevent misinterpretation and improve readability. Many of the changes were made to address interested parties' suggestions and concerns. Staff's proposed revisions to Regulations 1807 and 1828 are attached as Exhibits 2 and 3, respectively.

III. Alternative 2 – MuniServices Recommendation

Interested parties do not dispute the need for revising Regulations 1807 and 1828 and have worked with staff to reach agreement on many issues. Mr. Albin Koch on behalf of MuniServices, LLC (MuniServices), Mr. Matt Hinderliter on behalf of HdL Services, and Mr. Robert Cendejas responded to the revisions proposed by staff in its second discussion paper. Mr. Cendejas and HdL Services explained that they share the concerns included in MuniServices' submission. Following these initial submissions, staff and interested parties continued discussing their concerns and exchanging versions of the proposed revisions and have been able to come to agreement on all items except one. While staff proposes that the revisions to Regulations 1807 and 1828 *not* include a transition rule, MuniServices believes that each regulation should include a transition rule for requests filed prior to January 1, 2003 (Regulation 1807) and July 1, 2004 (Regulation 1828). MuniServices' proposed revisions are attached as Exhibit 4 and 5. MuniServices has also proposed alternative language to the Regulation 1807 transition rule which is attached as Exhibit 7.

(As explained in the Discussion, staff believes that if the Board accepts the need for transition rules, the rules should be written better than in the current regulations. Staff has attached as Exhibit 6 alternative transition rule language for Regulation 1807 that it believes is preferable to the wording proposed by MuniServices. If the Board decides that a transition rule is necessary, staff believes the wording included in MuniServices' submission for Regulation 1828 would be satisfactory.)

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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. Based in part on these procedures, the Board adopted Regulation 1807 in August 2002 to formalize procedures for reviewing appeals for reallocation of local tax. The process for reviewing appeals of 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 five levels of review (also illustrated in Exhibit 8):

1. **Allocation Group** - The initial review and investigation of reallocation requests is performed by the Allocation Group of the Audit Determination and Refund Section (within the Sales and Use Tax Department).
2. **Refund Section Supervisor** - A decision of the Allocation Group may be appealed to the Supervisor of the Audit Determination and Refund Section (Refund Section Supervisor).
3. **Local Tax Appeals Auditor** - A decision of the Refund Section Supervisor may be appealed to the “Local Tax Appeals Auditor” (who was also within the Sales and Use Tax Department when these regulations were adopted but is now part of the Appeals Division).
4. **Board Management** - A decision of the Local Tax Appeals Auditor may be appealed to “Board Management.” (This level of review was originally introduced when there was no recourse to the Board after the Sales and Use Tax Department had completed its review, and it was felt that some additional review beyond that by the Sales and Use Tax Department was necessary.)
5. **Board Members** - A decision by Board Management may be appealed to the Board, with notification to any jurisdiction that could be “substantially affected” by the Board’s decision (i.e., a jurisdiction whose allocation would increase or decrease by five percent or more of its average quarterly allocation or by \$50,000).

Compliance Policy and Procedures Manual Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, contain additional information regarding the administration of local and district tax reallocations.

In 2005, the position of the Local Tax Appeals Auditor was moved from the Sales and Use Tax Department into 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 circumstances had changed such that certain levels of review in the current regulations are 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 be easier to understand and apply.

Staff met with interested parties on October 10, 2007, and November 27, 2007, to discuss the proposed revisions to Regulations 1807 and 1828. Submissions were received from MuniServices, HdL Services, and Mr. Cendejas following the second interested parties meeting. Based on comments from these

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submissions, staff proposed further revisions to the regulations, and there were several additional exchanges of versions and concerns between staff and MuniServices during which all parties were able to come to agreement on the regulations, with a single exception. As proposed, Regulations 1807 and 1828 would streamline the appeals process by eliminating two unneeded levels of review. The proposed revisions would also notify a jurisdiction of a decision that substantially affects it (as noted below) and allow that jurisdiction to also appeal to the next level within the same administrative proceeding. Thus, under the proposed regulations, there would be three levels of review (also illustrated in Exhibit 8):

1. **Allocation Group** - The initial review and investigation of reallocation requests would continue to be performed by the Allocation Group, with any jurisdiction substantially affected by its decision being notified.
2. **Appeals Division** - A decision of the Allocation Group could be appealed to the Appeals Division by the petitioning jurisdiction *and* by any jurisdiction notified as substantially affected (any other jurisdiction substantially affected by the decision of the Appeals Division would also be notified).
3. **Board Members** - A decision by the Appeals Division could be appealed to the Board, again by the petitioning jurisdiction and any jurisdiction notified as substantially affected.

The proposed revisions also restructure the request for extension process. Under the current provisions, the petitioning jurisdiction (at each level of review through the Board Management level of review) has 30 days to appeal to the next level and is allowed a 30-day extension. If the petitioning jurisdiction disagrees with the decision of Board Management, it has 90 days to file a petition for hearing by the Board. Under the proposed revisions, the petitioner or any notified jurisdiction has 30 days to appeal a decision or supplemental decision of the Allocation Group, and may request a 30-day extension for good cause. At the Appeals Division level, the petitioner or any notified jurisdiction may appeal a Decision and Recommendation (D&R) or Supplemental D&R (SD&R) issued by the Appeals Division within 60 days of the date of the mailing of the D&R or SD&R.

It is also proposed that subdivision (e) be added to Regulation 1828 to incorporate recent revisions to Revenue and Taxation Code section 7269. Assembly Bill 1748 (Stats. 2007, Ch. 342) added 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 (that 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.

The Business Taxes Committee is scheduled to discuss this issue at its meeting on January 31, 2008.

V. Discussion

Staff and interested parties have worked together throughout the interested party process to narrow the number of disputed items. For example, there has been general agreement that the regulations should be restructured to eliminate the Board Management level of review because it has become unnecessary and ineffective. During the interested parties process, staff and interested parties also agreed that review by the Refund Section Supervisor has also become unnecessary given the review, independent of the Sales and Use Tax Department, by the Appeals Division. (Staff agreed to add provisions to the regulation making clear that, even after referral of the petition to the Appeals Division, the petitioning and notified jurisdictions may continue to discuss their dispute with the Sales and Use Tax Department, similar to any other dispute referred to the Appeals Division.)

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It should be noted that staff also agreed to add in proposed subdivision (d)(4) a provision allowing parties to a Board hearing a postponement in the very narrow circumstances where the Appeals Division issues a SD&R after the parties have been notified of the hearing date. Of course, the Appeals Division tries to avoid having to issue an SD&R after a Board hearing has been set, but sometimes such an SD&R is required in order to present the correct information or analysis to the Board Members. When this happens, the parties may feel the need to address the SD&R in their briefs, but this might not be possible under the usual briefing rules. Proposed subdivision (d)(4) does provide that the usual briefing rules apply, by stating that briefs for Board hearings may be submitted in accordance with sections 5270 and 5271 of the Rules for Tax Appeals. However, to account for late SD&Rs in Board hearings on tax allocation appeals (which traditionally have been fully briefed by the parties), the proposed subdivision also provides that for these situations, the Chief of Board Proceedings will postpone the hearing if she deems it necessary to allow adequate time for briefing in light of the SD&R, *and* if she does not postpone the hearing, the hearing would nevertheless be postponed if any party so requests.

While it is expected that this will be a relatively rare circumstance (i.e., a late SD&R), staff understands that allowing a party to obtain a postponement can raise the issue of an undue delay if the briefing schedule authorized by sections 5270 and 5271 of the recently adopted Rules for Tax Appeals were applied to the rescheduled hearing date. Staff therefore also proposes to include wording requiring the Chief of the Board Proceedings Division to “determine an appropriate briefing schedule for the rescheduled hearing.” Thus, the postponement would not automatically result in the original briefing schedule to be reset from the beginning. Rather, Chief of the Board Proceedings Division would determine whatever schedule was needed, balancing fairness to all parties with a prompt rescheduling of the hearing.

After working out many items that were initially disputed, there is one issue remaining for resolution by the Board.

Transition rule. The “transition rule” in the current regulations provides that the guidelines in effect *prior* to the adoption of the regulations apply to appeals filed under Regulation 1807 prior to January 1, 2003, or under Regulation 1828 prior to July 1, 2004, unless the petitioning jurisdiction elects to have the rules in the regulations apply. Staff initially proposed rewording the current rule for clarity, without changing its meaning. However, after further consideration of the need for the transition rule, staff has concluded that retention of the transition rule creates an unnecessary complication. Staff therefore proposes that the regulations be amended *without* a transition rule.

However, if the Board concludes that a transition rule should be included in the regulations, staff proposes that the wording in the current Regulation 1807 not be used, and that the wording drafted by staff be used instead, attached as Exhibit 6. With regard to Regulation 1828, staff worked with MuniServices to develop the transition rule language included in their submission. While staff does not believe the transition rule is needed, staff believes the language included in MuniServices recommendation is satisfactory if the Board decides that such a rule is needed.

For Regulation 1807, MuniServices recommends essentially retaining the language in current subdivision (h). (The only difference between MuniServices’ proposals attached as Exhibits 4 and 5 and the staff’s recommended versions attached as Exhibits 2 and 3 is the addition of a transition rule as the last subdivision of each.) In response to staff’s initial proposal to revise the wording of the transition rule, MuniServices indicated its belief that staff had not explained the need for altering the wording of the transition rule. MuniServices also opposes staff’s proposal to simply delete the transition rule.

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MuniServices explains why they believe the transition rules should be maintained in their e-mail of January 14, 2008:

“The difference between the Regulation 1828 transition rule and subdivision (h) of Regulation 1807 is historical and significant. First, the incorporation of the prior "processes" for resolving Bradley-Burns allocation inquiries in 1807 was requested initially by MBIA, our predecessor, I believe, and became more specific at the direction of OAL, as I recall. The purposes were to: 1.) recognize the prior "processes" as valid administrative remedies that had to be exhausted to obtain a correction based on an inquiry, unless an election to proceed under the new regulation was made; and, 2.) recognize in the transition rule that the old procedures applied until appeal to a new level of review was initiated and the election to proceed under 1807 had been made. Thus if it was never made, the old rules would continue to apply. In 2002 and 2003, there were approximately 920-930 cases, including the 10 "warehouse" cases (and at least 4 more that had not been scheduled for a Member hearing by the beginning of 2003), which had not yet been set for Board Member hearing, and subdivision (h) was specifically worded to protect the validity of those cases and their right to proceed under either the new regulation or the old processes as they might elect at the time of initiating a Board Member hearing.

Therefore, MuniServices continues to oppose both Staff's revised transition rule set out below in proposed subdivision (g) of new 1807, which changes the specific intent and meaning of the current provision which the involved jurisdictions have been reasonably relying on, as well as the Staff's alternative proposal to eliminate any transition rule at all as "unnecessary". ”

In addition to their recommendation that the transition rule language currently in Regulation 1807 be retained, MuniServices also proposes alternative transition rule language, attached as Exhibit 7.

There remain a number of cases that MuniServices filed on behalf of its client jurisdictions prior to January 1, 2003, which are still under review by the Allocation Group and which are covered by the current transition rule. In discussions between staff and MuniServices about these pending cases, staff inquired as to how the petitioning jurisdictions could be prejudiced by proceeding under the proposed amendments to the regulations rather than under the old guidelines. Staff noted that, under the proposed amendments, any such jurisdiction could demand that the Allocation Group issue a decision (and move the appeal to the next level) or could allow the Allocation Group to continue its investigation. Staff noted further that the proposed amendments preserve the petitioning jurisdictions' right to an appeals conference and Board hearing (under the old guidelines, a petitioning jurisdiction did not have an automatic right to a Board hearing). MuniServices did not respond with any specific negative implications, but stated it had not had time to fully consider the implications of staff's proposal to delete the transition rule because that proposal arose late in the interested parties process (staff first proposed deleting the transition rule after the second interested parties meeting). However, staff understands that the cases the Allocation Group continues to investigate are *not* the primary concern of MuniServices in connection with this proposal.

As staff understands, the concern of MuniServices relates primarily to matters that staff has considered closed. MuniServices believes that these cases are not closed and that they remain open. By letter dated May 14, 2007 (copied to each Board Member), the Chief of the Tax Policy Division advised MuniServices that ten specific appeals that had been filed prior to January 1, 2003, were closed. Seven

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of the appeals had been denied by Board Management in July 2000, one in July 2001, one in September 2001, and the last one was denied in May 2004. The letter explains that, after the appeals were denied by Board Management, MuniServices took no further action to file a petition for hearing or otherwise request a Board hearing in response to any of the denial letters in those matters, and in finding that the appeals are now closed, noted that it was never intended that an unsuccessful claim would remain open indefinitely under the old guidelines. MuniServices has advised staff that there are also other appeals not listed in the May 14, 2007 letter that staff has regarded as closed under similar circumstances. MuniServices believes that these cases also remain open. (MuniServices has not identified these other appeals to staff, and staff is not aware of any appeal of this type other than those listed in the May 14, 2007 letter.) MuniServices contends that it is unfair to remove the transition rule when it is that rule on which it bases its argument that these cases are still open.

Staff understands MuniServices' interpretation of the former guidelines to be that it can continue to submit requests to individual Board Members asking the Board Member to submit any such appeals to the full Board for decision. MuniServices presumably believes it can continue submitting such requests until a Board Member does as requested and the Board actually hears and decides the case. In effect, under MuniServices' interpretation of the old guidelines, an appeal ultimately denied by Board Management can never be regarded as closed unless and until the appeal is heard by the Board. Staff does not believe that the guidelines (which were *not* adopted as regulations) can be reasonably interpreted to mean that a losing party could appeal to the individual Board Members without *any* time limitation. Rather, staff believes that the appeals for which petitioning jurisdictions or their representatives did not take any action for years after Board Management denial have long been closed.

Staff believes that retaining the transition rule to preserve MuniServices' argument is unwarranted and unnecessary. If the subject appeals are closed now, *with* the transition rule in effect, as staff believes to be the case, then it is obvious that removal of the transition rule will not result in the appeals being closed. As staff understands its arguments, MuniServices recognizes that the only arguable basis for its contention that these appeals remain open is the fact that the prior guidelines did not include a specific time frame for requesting a Board hearing. MuniServices apparently further believes that removing the transition rule would mean that the old guidelines cannot be relied on for any purpose, including to argue that the subject appeals remain open. Thus, staff's understanding is that MuniServices wishes to retain the transition rule so that it can continue pursuing its argument that the disputed appeals actually remain open based on its interpretation of the old guidelines.

Staff believes that retaining the transition rule (even with the revised wording that staff proposes be used if the Board decides to retain the rule) simply prolongs the argument about the subject appeals with the additional detriment of the retention of obsolete procedures. Except for its concern for the cases it asserts remain open, MuniServices has not identified any true benefit to be gained by a jurisdiction with a pre-2003 petition by proceeding under the prior guidelines. Retaining the transition rule means that, for appeals filed prior to January 1, 2003, unless a petitioning jurisdiction affirmatively and timely elects otherwise, we will continue having to apply the obsolete guidelines, with all their problems *and* with the additional but unnecessary levels of review. Furthermore, the one benefit that MuniServices might perceive for continuing to apply the prior guidelines to the pre-2003 appeals that the Allocation Group continues to investigate is that, under its apparent interpretation of the guidelines, it could continue its contention that a decision to deny the appeal by Board Management can never be final because there is no limitation on how long after Board Management's decision the petitioning jurisdiction can seek a Board hearing. Staff believes that the transition rule should *not* be continued.

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VI. Alternative 1 - Staff Recommendation**A. Description of Alternative 1**

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 process will resolve disputes. Staff has eliminated unnecessary review levels, updated terminology, and reorganized the regulations to prevent misinterpretation and improve readability.

With regard to the unresolved issue as whether a transition rule is required, staff believes that such a rule is entirely unnecessary, and the only purpose for retaining the rule is to perpetuate the continuing argument by MuniServices that cases staff believes were closed long ago remain open. Retaining the rule make it highly likely that individual Board Members will receive requests for Board hearings in such cases at some unknown time in the future.

B. Pros of Alternative 1

- Provides well organized, clear guidelines for filing petitions for reallocations and redistributions.
- Eliminates the Board Management and Refund Section Supervisor levels of review which had become unnecessary and ineffective. Elimination of these levels should result in the faster resolutions of petitions.
- Provides notification of substantially affected jurisdictions at an earlier level than current procedures.
- Eliminates the unnecessary and obsolete transition rule.

C. Cons of Alternative 1

- MuniServices believes that deletion of the transition rule is unfair because the rule is the basis of MuniServices' contention that certain cases are still open.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require the amendment of Regulations 1807 and 1828.

E. Operational Impact of Alternative 1

Staff would notify taxpayers of the amendments to Regulations 1807 and 1828 through an article in the Tax Information Bulletin (TIB). Compliance Policy and Procedures Manual Chapter 9, *Miscellaneous*, and Publication 28, *Tax Information for City and County Officials*, will also need revision.

FORMAL ISSUE PAPER

Issue Paper Number 07-011

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the regulation and TIB and revising the manual and pamphlet is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Revisions will provide notification of substantially affected jurisdictions at an earlier level than current procedures.

H. Critical Time Frames of Alternative 1

Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Alternative 2 – MuniServices Recommendation**A. Description of Alternative 2**

MuniServices also recommends providing a more comprehensive process for review of petitions for local tax reallocation, notification of substantially affected jurisdictions at an earlier level so that a single process will resolve disputes, and elimination of unnecessary review levels.

With regard to the unresolved issue as whether a transition rule is required, MuniServices believes that, rather than deleting the transition rule or using the revised language alternatively proposed by staff, the transition rule language currently in Regulation 1807 should be retained. As an alternative, MuniServices has also proposed new transition rule language attached as Exhibit 7.

(If the Board decides that the transition rule should be retained, staff recommends the use of its revised language because it provides a more clear statement of the rule without making, in staff's opinion, any substantive changes to the current rule.)

B. Pros of Alternative 2

- Provides well organized, clear guidelines for filing petitions for reallocations and redistributions.
- Eliminates the Board Management and Refund Section Supervisor levels of review which had become unnecessary and ineffective. Elimination of these levels should result in the faster resolutions of petitions.
- Provides notification of substantially affected jurisdictions at an earlier level than current procedures.
- Retention of transition rule language essentially as currently written preserves, under MuniServices' interpretation of the old guidelines, the ability MuniServices' ability to contend that certain cases remain open, and its ability to make similar arguments with respect to other pending matters.

FORMAL ISSUE PAPER

Issue Paper Number 07-011

C. Cons of Alternative 2

- Staff believes that retention of the transition rule retains obsolete procedures and makes likely the continuation of arguments that staff believes are invalid.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, MuniServices' recommendation requires the amendment of Regulations 1807 and 1828.

E. Operational Impact of Alternative 2

Staff would notify taxpayers of the amendments to Regulations 1807 and 1828 through an article in the Tax Information Bulletin (TIB). Compliance Policy and Procedures Manual Chapter 9, *Miscellaneous*, and Publication 28, *Tax Information for City and County Officials*, will also need revision.

F. Administrative Impact of Alternative 2

1. Cost Impact

The workload associated with publishing the regulation and TIB and revising the manual and pamphlet is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

Revisions will provide notification of substantially affected jurisdictions at an earlier level than current procedures.

H. Critical Time Frames of Alternative 2

Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

Preparer/Reviewer Information

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

Current as of: January 15, 2008

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



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

Alternative 1 – 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 process will resolve disputes. Staff has eliminated unnecessary review levels, updated terminology, and reorganized the regulations to prevent misinterpretation and improve readability. Many of the changes were made to address interested parties' suggestions and concerns.

Alternative 2 – MuniServices Recommendation

Mr. Albin Koch on behalf of MuniServices, LLC (MuniServices), Mr. Matt Hinderliter on behalf of HdL Services (HdL), and Mr. Robert Cendejas have responded to the revisions proposed by staff in its second discussion paper and subsequent regulation drafts. Mr. Cendejas and HdL explain that they share the concerns included in MuniServices' submission.

Interested parties do not dispute the need for revising Regulations 1807 and 1828 and have worked with staff to reach agreement on many issues. MuniServices also recommends providing a more comprehensive process for review of petitions for local tax reallocation, notification of substantially affected jurisdictions at an earlier level so that a single process will resolve disputes, and elimination of unnecessary review levels. However, as explained in the Discussion section, interested parties disagree with staff's recommendation regarding the need for transition rules.

Background, Methodology, and Assumptions

Revenue Estimate

Alternative 1 – Staff Recommendation

There is nothing in staff recommendation that would impact local tax revenue. Staff recommendation is only a procedural change in the way local tax reallocation inquiries are processed and the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Alternative 2 – MuniServices Recommendation

There is nothing in MuniServices recommendation that would impact local tax revenue. As with staff recommendation, MuniServices recommendations are procedural changes in the way local tax reallocation inquiries are processed and the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – MuniServices recommendation does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of January 14, 2008.

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

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

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

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

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

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

(C) Complete business address of the taxpayer.

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

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

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

(G) The tax reporting periods involved.

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

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

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

(6) **SUBSTANTIALLY AFFECTED JURISDICTION.** “Substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

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

(b) REVIEW BY ALLOCATION GROUP.

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

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

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

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

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

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

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

(c) REVIEW BY APPEALS DIVISION.

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

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

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

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

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

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

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

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days

to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

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

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

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

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

(d) REVIEW BY BOARD.

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

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s)

whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified jurisdictions have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified jurisdiction, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.

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

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

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

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

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

(a) DEFINITIONS.

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

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

(3) **PETITION.** “Petition” means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

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

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

(C) Complete business address of the taxpayer.

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

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district’s use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

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

(G) The tax reporting periods involved.

“Petition” also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. 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 valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on

additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) **SUBSTANTIALLY AFFECTED DISTRICT.** “Substantially affected district” is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

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

(b) REVIEW BY ALLOCATION GROUP.

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

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

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

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

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

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s decision, or within a period of extension authorized by subdivision (b)(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 a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified 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 (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

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

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will 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 mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

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

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department.

The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

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

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

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

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax

Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

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

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

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

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

(d) REVIEW BY BOARD.

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

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

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified districts have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified district, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.

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

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.

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

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Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

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

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

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

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

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

(C) Complete business address of the taxpayer.

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

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

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

(G) The tax reporting periods involved.

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

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

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

(6) **SUBSTANTIALLY AFFECTED JURISDICTION**. “Substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

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

(b) REVIEW BY ALLOCATION GROUP.

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

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

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

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

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

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

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(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 a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

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

(c) REVIEW BY APPEALS DIVISION.

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

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

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of

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the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

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

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

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

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

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

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

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

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

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

(d) REVIEW BY BOARD.

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

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

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified jurisdictions have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified jurisdiction, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.

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

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

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

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

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(g) TRANSITION RULE.

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 1966, amended October 1998) incorporated herein by reference in its entirety. However, for inquiries filed prior to January 1, 2003, the petitioner 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.

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

(a) DEFINITIONS.

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

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

(3) **PETITION.** “Petition” means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

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

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

(C) Complete business address of the taxpayer.

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

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district’s use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

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

(G) The tax reporting periods involved.

“Petition” also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. 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 valid petition. Where

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an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) **SUBSTANTIALLY AFFECTED DISTRICT.** “Substantially affected district” is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

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

(b) REVIEW BY ALLOCATION GROUP.

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

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

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

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

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

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s decision, or within a period of extension authorized by subdivision (b)(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

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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 a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified 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 (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

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

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will 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 mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

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

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

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

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

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

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable

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facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

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

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

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

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

(d) REVIEW BY BOARD.

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

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

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271. If an SD&R is issued after the petitioner and other notified districts have been notified of the scheduled hearing date, the Chief of the Board Proceedings Division will establish a revised briefing schedule or postpone the hearing to allow adequate time for briefing in light of the SD&R. If, after issuance of such an SD&R, the Chief of the Board Proceedings Division does not postpone the hearing, the hearing will nevertheless be postponed if the petitioner, a notified district, or the Sales and Use Tax Department requests a postponement within 10 days of the notice of the revised briefing schedule. When a hearing is postponed under this subdivision, the Chief of the Board Proceedings Division will determine an appropriate briefing schedule for the rescheduled hearing and will notify the parties accordingly.

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

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.

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

(f) TRANSITION RULE.

The provisions of this regulation apply to redistribution inquiries filed after July 1, 2004. Inquiries that had been filed prior to this date continue to be subject to the procedures in effect prior to July 1, 2004, but a district filing such an inquiry may elect in writing to proceed under the provisions of this regulation as to that inquiry if it has not been decided. Failure to make such a written election prior to appealing to the next step of review under the prior procedures

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constitutes the district's election not to proceed under the provisions of this regulation, and that election cannot be revoked. If the district files a timely written election to proceed under the provisions of this regulation for an inquiry filed prior to July 1, 2004, 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.
(proposed subdivisions (a) through (f) are the same as in Exhibit 2)

(g) TRANSITION RULE.

The provisions of this regulation apply to reallocation inquiries filed after January 1, 2003. Inquiries that had been filed prior to this date continue to be subject to the procedures in effect prior to January 1, 2003, but a jurisdiction filing such an inquiry may elect in writing to proceed under the provisions of this regulation as to that inquiry if it has not been decided. 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 for an inquiry filed prior to January 1, 2003, 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.

(proposed subdivisions (a) through (f) are the same as in Exhibit 4)

(g) EFFECTIVE DATE AND TRANSITION RULES.

(1) The effective date of these amendments to Regulation 1807 is thirty days after they have been approved by the Office of Administrative Law and been forwarded to the Office of the Secretary of State, and they shall not have any retroactive effect.

(2) Any inquiries awaiting Member hearings after Board Management denials under subdivision (c)(4) of Regulation 1807, as adopted August 1, 2002, may, under the transition rule of subdivision (h) of that Regulation, be the subject of an appeal for a Board Member hearing that is initiated prior to the effective date specified in (g)(1).

CURRENT PROCESS

1. Review by Allocation Group

The initial review and investigation of reallocation requests is performed by the Allocation Group of the Audit Determination and Refund Section (within the Sales and Use Tax Department).

2. Review by Refund Section Supervisor

A decision of the Allocation Group may be appealed to the Supervisor of the Audit Determination and Refund Section (Refund Section Supervisor).

3. Review by Local Tax Appeals Auditor

A decision of the Refund Section Supervisor may be appealed to the “Local Tax Appeals Auditor” (who was also within the Sales and Use Tax Department when these regulations were adopted but is now part of the Appeals Division).

4. Review by Board Management

A decision of the Local Tax Appeals Auditor may be appealed to “Board Management.” (This level of review was originally introduced when there was no recourse to the Board after the Sales and Use Tax Department had completed its review, and it was felt that some additional review beyond that by the Sales and Use Tax Department was necessary.)

5. Review by Board Members

A decision by Board Management may be appealed to the Board, with notification to any jurisdiction that could be “substantially affected” by the Board’s decision (i.e., a jurisdiction whose allocation would increase or decrease by five percent or more of its average quarterly allocation or by \$50,000).

PROPOSED PROCESS

1. Review by Allocation Group

The initial review and investigation of reallocation requests would continue to be performed by the Allocation Group, with any jurisdiction substantially affected by its decision being notified.

2. Review by Appeals Division

A decision of the Allocation Group could be appealed to the Appeals Division by the petitioning jurisdiction *and* by any jurisdiction notified as substantially affected (any other jurisdiction substantially affected by the decision of the Appeals Division would also be notified).

3. Review by Board Members

A decision by the Appeals Division could be appealed to the Board, again by the petitioning jurisdiction and any jurisdiction notified as substantially affected.