

AGENDA — March 26, 2002 Business Taxes Committee Meeting

Continuation of 2/5/02 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

<p>Action 1 — Consent Items 1807 (d)(1). Agenda, page 2</p>	<p>Adopt Regulation 1807 subdivision (d)(1) as agreed upon by interested parties and staff.</p>
<p>Action 2 — The Hearing by Board Members. 1807 (c)(5) Agenda, pages 3-5</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff's recommendation to continue the current procedures whereby a Hearing by the Board Members is at their discretion, which must be approved by majority vote of the Board Members on a consent calendar, <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2) Mr. Andal's proposal (Alternative 1) that the granting of an appeal to the Board be made automatic upon request of the Inquiring Jurisdiction and their Consultants rather than discretionary based on a vote of the Board Members, <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 3) Mr. Klehs' proposal (Alternative 2) to: <ul style="list-style-type: none"> ■ After the decision by Board Management, schedule all cases on a nonappearance consent calendar for approval by the Board. ■ Allow the Inquiring Jurisdiction and their Consultants the opportunity to request the case be removed from the nonappearance consent calendar and placed on the hearing calendar for consideration by the Board. However, removal of the case from the nonappearance consent calendar for placement on the hearing calendar remains at the discretion of any one of the Board Members for which no majority vote is required.
<p>Action 3 — Authorization to Publish (whichever language is approved)</p>	<p>Recommend the publication of the proposed Regulation 1807 as adopted in the above actions.</p> <p>Operative Date: January 1, 2003 Implementation: 30 days following OAL approval</p>

AGENDA — March 26, 2002 Business Taxes Committee Meeting
Continuation of 2/5/02 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

Action Item	Staff and Industry's Proposed Regulatory Language
Action 1 — Consent Items	<p><u>Regulation 1807. Process for Reviewing Local Tax Reallocation Inquiries.</u></p> <p>Reference: <u>7209, 7223, Revenue and Taxation Code.</u></p> <p><u>(d) TIME LIMITATIONS.</u></p> <p><u>(1) An IJC¹ will be limited to one 30-day extension of the time limit established for each level of review through the <u>Board Management Local Tax Appeals Auditor</u> level.</u></p>

¹ Inquiring Jurisdiction and their Consultants (IJC).

AGENDA — March 26, 2002 Business Taxes Committee Meeting

Continuation of 2/5/02 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs
<p>Action 2 – Review by Board Members</p>	<p>(c) REVIEW PROCESS.</p> <p><u>(5) REVIEW BY BOARD MEMBERS.</u> If Board Management upholds a finding that no improper distribution has occurred, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason of disagreement with Board Management findings.</p> <p><u>(A) Petition for Hearing.</u> The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management’s decision. The request shall include the name of the Board Member in whose district was issued the seller’s permit of the taxpayer whose local tax allocation is at issue in the inquiry and the name of the Board Member of the jurisdiction that filed the inquiry. If a petition for hearing is not filed within the 90-day period, the Board Management’s decision becomes final at the expiration of that period.</p>	<p>(c) REVIEW PROCESS.</p> <p><u>(5) REVIEW BY BOARD MEMBERS.</u> If Board Management upholds a finding that no improper distribution has occurred, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason of disagreement with Board Management findings.</p> <p><u>(A) Petition for Hearing.</u> The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management’s decision. The request shall include the name of the Board Member in whose district was issued the seller’s permit of the taxpayer whose local tax allocation is at issue in the inquiry and the name of the Board Member of the jurisdiction that filed the inquiry. If a petition for hearing is not filed within the 90-day period, the Board Management’s decision becomes final at the expiration of that period.</p>	<p>(c) REVIEW PROCESS.</p> <p><u>(5) REVIEW BY BOARD MEMBERS.</u> After the decision by Board Management, all cases shall be forwarded to Board Proceedings Division for scheduling on a nonappearance consent calendar for consideration by the full Board. Cases will be scheduled after 90 days from the date of mailing of Board Management’s decision. However, the petitioning IJC may request their case be removed from the nonappearance consent calendar and scheduled on a hearing calendar as described in subdivision (c)(5)(A).</p> <p><u>(A) Options Letter.</u> An option letter will accompany Board Management’s notification to the petitioning IJC. The option letter will set forth the next step in the appeal process.</p>

AGENDA — March 26, 2002 Business Taxes Committee Meeting

Continuation of 2/5/02 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs
	<p><u>[(c) REVIEW PROCESS.</u> <u>(5) REVIEW BY BOARD MEMBERS</u> <u>...]</u></p> <p><u>(B) Consideration by Full Board.</u></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the date the case is first scheduled on the consent calendar, the matter will be considered closed.</u></p> <p><u>2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><u>[(c) REVIEW PROCESS.</u> <u>(5) REVIEW BY BOARD MEMBERS</u> <u>...]</u></p> <p><u>(B) Consideration by Full Board.</u></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the date the case is first scheduled on the consent calendar, the matter will be considered closed.</u></p> <p><u>(B) The Hearing. After receiving the petition for hearing, the Board Proceedings Division will automatically place the matter on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><u>[(c) REVIEW PROCESS.</u> <u>(5) REVIEW BY BOARD MEMBERS</u> <u>(A) Options Letter.</u> <u>...]</u></p> <p><u>1. If the petitioning IJC is not in agreement with Board Management's decision, the IJC will have 90 days from the date of mailing of Board Management's decision to file a request with the Board Proceedings Division to have their case removed from the nonappearance calendar and placed on a hearing calendar for consideration by the Board. Board Proceedings Division will forward the request to all Board Members for their review and consideration.</u></p> <p><u>2. If a Board Member grants the petitioning IJC their request for removal of the case from the consent calendar, the Board Proceedings Division will remove the case from the nonappearance consent calendar and schedule it on a hearing calendar for consideration by the Board. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>

AGENDA — March 26, 2002 Business Taxes Committee Meeting
Continuation of 2/5/02 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs
	<p><u>(C) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management’s review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B)(2) of this regulation, no newadditional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowedconsidered at the Board hearing.</u></p>	<p><u>(C) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management’s review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B) of this regulation, no newadditional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowedconsidered at the Board hearing.</u></p>	<p><u>3. All potentially affected IJCs will be notified of the scheduling of the case on the hearing calendar. For each case, an extension of time of no more than 30 days will be granted by Board Proceedings regardless of how many potentially affected IJCs request an extension.</u></p> <p><u>(B) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented by the petitioning IJC after Board Management’s review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(A)(2) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowed at the Board hearing.</u></p>

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

CONTINUATION OF 2/5/02 DISCUSSION OF PROPOSED REGULATION 1807, PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES

I. Issue

Should subdivisions (c)(5) and (d)(1) of proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, be adopted?

II. Staff Recommendation

Staff recommends the adoption of subdivisions (c)(5) and (d)(1) of proposed Regulation 1807, in order to promulgate in regulatory form the process for appealing local tax reallocation decisions, which was previously provided to cities and counties, as shown in Exhibit 2. Consideration of subdivisions (c)(5) and (d)(1) was postponed from the February 5, 2002 Business Taxes Committee Meeting. (See discussion on Issue Paper (IP) pages 2 through 4.)

III. Other Alternative(s) Considered

A. Alternative 1

Board Member Dean Andal proposes that in subdivision (c)(5)(B) the granting of an appeal to the Board be made automatic upon request of the Inquiring Jurisdiction and their Consultants, rather than discretionary based on a vote of the Board Members. (See IP pages 5-7, and Agenda action item 2.)

B. Alternative 2

Board Member Johan Klehs proposes that:

- After the decision by Board Management, all cases be scheduled on a nonappearance consent calendar for approval by the Board.
- The Inquiring Jurisdiction and their Consultants be allowed the opportunity to request the case be removed from the nonappearance consent calendar and placed on the hearing calendar. However, removal of a case from the nonappearance consent calendar for placement on the hearing calendar remains at the discretion of any one of the Board Members for which no majority vote is required. (See IP pages 7-9, and Agenda action item 2.)

Exhibit 1 is a comparison of staff's and Board Member Andal's and Board Member Klehs' proposals.

FORMAL ISSUE PAPERIssue Paper Number 02 - 006**IV. Background**

The Business Taxes Committee met on February 5, 2002, at which time discussion was held on whether proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, should be adopted. During this meeting all items with the exception of subdivisions (c)(5) *Review by Board Members*, and (d)(1) *Time Limitations*, were considered by the Committee. Consideration of these items was postponed until the March 26, 2002 Business Taxes Committee meeting. This issue paper will address only the postponed items.

During the Business Taxes Committee meeting the Committee requested additional clarification on how under the current process, an Inquiring Jurisdiction and their Consultants (IJC) can request a Board hearing and how cases are placed on the calendars for hearing. The process first established in 1996, and subsequently amended in 1998, provides that after the Board Management's decision, the Board Members may ultimately hear the case if approved by majority vote of the Members. However, no formalized procedure was published for IJCs to file a petition for hearing by the Board. The process as described in the 1998 *Notice to City, Town, and County Officials and Consultants* is:

An IJC may request any Board Member to bring its request to the Board's attention. If any of the Board Members wish to do so, they may request that the Board hear the matter. However, such request must be approved by a majority vote of the Board.

Therefore, under the current process, cases may be scheduled and considered twice: First, on the Administrative Calendar for approval by a majority vote of the Board to hear the case, and second, on a hearing calendar to actually decide the case.

Since the current process was first established by Board directive in 1996, there has only been one request for review by Board Members. However, the case was never placed on the Administrative Calendar for vote by the Members to hear the appeal, and therefore no local tax reallocation hearing was held.

V. Staff Recommendation**A. Description of the Staff Recommendation**

Staff recommends the adoption of proposed subdivisions 1807 (c)(5), *Review by Board Members* and 1807 (d)(1), *Time Limitations*, as illustrated in Exhibit 2.

Review by Board Members

The review process that was established in 1996 and amended in 1998 did not include provisions regarding how the review by the Board Members, if they wished to review the case, was to take place. Accordingly, staff incorporated into subdivision (c)(5) of the proposed regulation guidelines and specific timelines to be observed by IJCs and staff in regard to review by Board Members. Following is a brief explanation of staff's recommendation:

FORMAL ISSUE PAPERIssue Paper Number 02 - 0061. Petition for Hearing

When filing a petition for hearing, the IJC shall file the petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing by the Board is not filed within the 90-day period, the Board Management's decision becomes final.

2. Consent Calendar

Staff proposes that once the IJC files its petition for hearing, the Board Proceedings Division will place the petition for hearing on a Consent Calendar for consideration by the full Board. The petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not approved by a majority vote of the Board within 90 days of the date the case is first scheduled on the consent calendar, the Board Management's decision becomes final and the matter will be considered closed.

3. The Hearing

If, by majority vote, the Board Members decide to hear the appeal, the Board Proceedings Division will schedule it on the Hearing Calendar for consideration by the full Board. The hearing will be conducted under procedures provided by sections 5070 to 5087 of the Rules of Practice, including briefs, allocation of hearing, extensions of time etc.

Staff's recommendation is intended to follow the earlier directive from the Board regarding Hearings by the Board Members by not providing for automatic appeal to the Board for reallocation cases. In 1996, the Local Revenue Committee of the Board approved the current Process, rejecting suggestions by certain cities that there be an automatic appeal to the Board. At that time, the Board approved the Local Revenue Committee's recommendation that the Board would hear a local tax reallocation appeal only if a Member so requested and a majority of the Board voted to hear the appeal. That directive has a two step process. First, the IJC's must file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. Second, if a majority of the Board Members vote to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. Therefore, under staff's language, whether a case will be heard is left to the discretion of the Board Members. Staff believes that if hearings are granted automatically, there will be an increase in local tax allocation appeals to the Board Members, and such appeals may consume additional Board Members' time. Moreover, staff believes that by scheduling all cases on the nonappearance consent calendar for approval by the Board, rather than only the cases for which an IJC petitions to have a hearing, may also consume additional Board Members' time.

Extension of Time

During the February 5, 2002 Business Taxes Committee meeting, consideration of subdivision (d)(1) was postponed until March 26, 2002 to allow staff time to consider a suggestion by Mr. Al Koch (MBIA). MBIA asked that the language proposed by staff under subdivision (d)(1,) regarding the provision that limits the IJC to one 30-day extension for each level of review through the Local Tax Appeals Auditor level, be reconsidered. The current process allows 30-day extensions of time through all levels of review. Therefore, to maintain consistency with the current process, staff is amending its language to allow extensions of time up to the Board Management level.

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An extension of time at the Board hearing level is allowed under the Rules of Practice section 5076. The regulation clearly specifies under subdivision (c)(5) that the hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. MBIA has confirmed they are in agreement with staff's revised language for this subdivision. No alternative language was submitted for subdivision (d)(1). With this change, subdivision (d)(1), which had been removed from the February 5, 2002 consent agenda, is now being presented as a consent item.

B. Pros of the Staff Recommendation

It is consistent with the previous Board directive by not providing an automatic appeal to the Board for local tax reallocation cases.

It is consistent with the provisions of the current Process in regard to time extensions.

C. Cons of the Staff Recommendation

Regulatory change is recommended.

Does not include either of the proposed alternative processes for determining whether the Board Members will hear a local tax reallocation appeal.

D. Statutory or Regulatory Change

No statutory change is required. However, regulatory action is recommended.

E. Administrative Impact

Staff will notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions will be made to Publication 28, "Tax Information for City and County Officials," and to the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous - Reallocation Process*, when the regulation is approved by the Office of Administrative Law.

F. Fiscal Impact**1. Cost Impact**

The workload associated with publishing and distributing the TIB and revising Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, are considered routine and any corresponding cost would be within the Board's existing budget. It is anticipated that the estimated cost for the special notice to affected cities, counties and consultants will not exceed \$500.00.

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2. Revenue Impact

None. This is a continuation of the February 5, 2002 Business Taxes Committee discussion on Regulation 1807 subdivision (c)(5) and (d)(1). (See Exhibit 1 Issue Paper number 01-048, dated January 22, 2002.)

G. Taxpayer/Customer Impact

Current procedures in regard to the review by Board Members and to extensions of time will not change. IJC's understanding of the process will be enhanced once the procedures are published in regulatory form.

H. Critical Time Frames

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the Office of Administrative Law.

VI. Alternative 1

A. Description of the Alternative

Board Member Dean Andal proposes that in subdivision (c)(5)(B) the granting of an appeal to the Board be made automatic upon request of the IJC, rather than discretionary based on a vote of the Board Members.

Under Mr. Andal's proposal, if the IJC files the request for hearing within 90 days of the date of mailing of Board Management's decision, Board Proceedings Division, after receiving the petition for hearing, will automatically place the matter on the Hearing Calendar for consideration by the full Board.

Mr. Andal proposes that by eliminating the double hearing process established under the current Process, the Board Members will be able to decrease the number of difficult decisions they are required to make from two per case to one.

Moreover, the administrative costs associated with scheduling one meeting instead of two are reduced not only for the Board but also for the local jurisdictions. Further, by only having one meeting the time for this process of review is reduced by a minimum of 90 days. Hence, if it is determined that a misallocation occurred, a correction can be made more quickly.

B. Pros of the Alternative

Reduces the time for the review process by a minimum of 90 days.

Corrects misallocations more quickly.

Results in potential cost avoidance for the Board and for the local jurisdictions associated with the elimination of one level of scheduled meetings.

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C. Cons of the Alternative

Regulatory change is recommended.

If automatic review by the Board is made available, it may result in a significant increase in local tax allocation appeals to the Board Members, and such appeals may consume additional Board Member's time.

D. Statutory or Regulatory Change

No statutory change is required. However, regulatory action is recommended.

E. Administrative Impact

Staff will notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions will be made to Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous - Reallocation Process* when this regulation is approved by the Office of Administrative Law.

F. Fiscal Impact

1. Cost Impact

The workload associated with publishing and distributing the TIB and revising Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, are considered routine and any corresponding cost would be within the Board's existing budget. It is anticipated that the estimated cost for the special notice to affected cities, counties and consultants will not exceed \$500.00. Further, there may be a potential decrease in workload for the Board Proceedings Division resulting from the elimination of the scheduling of an Administrative Hearing. However, this could be offset by a potential workload increase associated with additional Appeals Hearings if such hearings are granted automatically upon IJC's request.

2. Revenue Impact

None. This is a continuation of the February 5, 2002 Business Taxes Committee discussion on Regulation 1807 subdivision (c)(5) and (d)(1). (See Exhibit 1 Issue Paper number 01-048, dated January 22, 2002.)

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G. Taxpayer/Customer Impact

Current procedures in regard to extensions of time will not change. However, current procedures in regard to the review by Board Members will change. If the IJC files a request for hearing within 90 days of the date of mailing of Board Management's decision, Board Proceedings Division will automatically place the matter on the Hearing Calendar for consideration by the full Board. Once informed of the change in procedures regarding the review by Board Members, IJCs' understanding of the process will be enhanced when the procedures are published in regulatory form.

H. Critical Time Frames

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the Office of Administrative Law.

VII. Alternative 2

A. Description of the Alternative

Board Member Johan Klehs proposes that after the decision by Board Management, all cases shall be scheduled on a nonappearance consent calendar for review and consideration by the Board. Upon request of an IJC and approval of a Board Member, cases will be removed from the nonappearance consent calendar and placed on a hearing calendar for consideration by the full Board. Thus, cases will be heard only once, scheduled either on the nonappearance consent calendar or on a hearing calendar.

This procedure provides Board Members notification of Board Management's decisions, along with the opportunity to decide to hear the case.

Board Member Johan Klehs proposes that by eliminating the double hearing process established under the current Process, the Board Members will be able to decrease the number of difficult decisions they are required to make from two per case to one.

Moreover, the administrative costs associated with only having one meeting instead of two are reduced not only for the Board but also for the local jurisdictions. Further, by only having one meeting the time for this process of review is further reduced. Hence, if it is determined that a misallocation occurred, a correction can be made more quickly.

B. Pros of the Alternative

Reduces the time for the review process.

Corrects misallocations more quickly.

Results in potential cost avoidance for the Board and for the local jurisdictions associated with the elimination of one meeting.

Preserves Board Members' option on hearing cases.

Provides notification of the cases on the hearing calendar to all potentially affected jurisdictions.

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C. Cons of the Alternative

Regulatory change is recommended.

If all cases reviewed by the Board Management are placed on the nonappearance consent calendar, it may consume additional Board Member's time.

D. Statutory or Regulatory Change

No statutory change is required. However, regulatory action is recommended.

E. Administrative Impact

Staff will notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions will be made to Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous - Reallocation Process* when this regulation is approved by the Office of Administrative Law.

F. Fiscal Impact

1. Cost Impact

The workload associated with publishing and distributing the TIB and revising Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, are considered routine and any corresponding cost would be within the Board's existing budget. It is anticipated that the estimated cost for the special notice to affected cities, counties and consultants will not exceed \$500.00. Further, there may be a potential increase in workload for the Board Proceedings Division associated with the scheduling of all cases on the nonappearance consent calendar, and if requested by a Board Member, removing the case from the consent calendar for placement on the hearing calendar. However, this could be offset by a potential workload decrease at the Board Members' level associated with having only one hearing rather than two.

2. Revenue Impact

None. This is a continuation of the February 5, 2002 Business Taxes Committee discussion on Regulation 1807 subdivision (c)(5) and (d)(1). Alternative 2 has no revenue effect. (See Exhibit 1 Issue Paper number 01-048, Issue paper dated January 22, 2002.)

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G. Taxpayer/Customer Impact

Current procedures in regard to extensions of time will not change. However, current procedures in regard to the review by Board Members will change. IJC's will now have their cases considered by the full Board either on a nonappearance consent calendar or on a hearing calendar upon request by the IJCs and Board Member approval. Once informed of the changes, IJCs' understanding of the process will be enhanced when the procedures are published in regulatory form.

H. Critical Time Frames

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the Office of Administrative Law.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of: March 5, 2002

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**Continuation of 2/5/01 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries
Comparison of Staff's and Interested Parties' Proposed Language
Current as of March 5, 2002**

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs	Summary Comments
<p>ACTION 2 – Review by Board Members (continued)</p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...]</p> <p><u>(B) Consideration by Full Board.</u></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the date the case is first scheduled on the consent calendar date, the matter will be considered closed.</u></p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...]</p> <p><u>(B) Consideration by Full Board.</u></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the date the case is first scheduled on the consent calendar date, the matter will be considered closed.</u></p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. <u>(A) Option Letter.</u> ...]</p> <p><u>1. If the petitioning IJC is not in agreement with Board Management's decision, the IJC will have 90 days from the date of mailing of Board Management's decision to file a request with the Board Proceedings Division to have their case removed from the nonappearance calendar and placed on a hearing calendar for consideration by the Board. The request must state the specific factual and/or legal basis for disagreement with Board Management findings. Board Proceedings Division will forward the request to all Board Members for their review and consideration.</u></p>	<p>Staff deleted the middle sentence in subdivision (c)(5)(A) since it is an administrative procedure, which is not appropriate to include in the regulation.</p> <p>Staff added the following words to their proposed language: "date the case is", "scheduled on the consent" and deleted the word "date." These changes clarify the language and are non substantive.</p>

**Continuation of 2/5/01 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries
Comparison of Staff's and Interested Parties' Proposed Language
Current as of March 5, 2002**

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs	Summary Comments
<p>ACTION 2 – Review by Board Members (continued)</p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. (B) Consideration by Full Board. ...] 2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...] <u>(B) The Hearing. After receiving the petition for hearing,</u> the Board Proceedings Division will <u>automatically</u> place the matter on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. <u>(A) Option Letter.</u> ...] <u>2. If a Board Member grants the petitioning IJC their request for removal of the case from the consent calendar, the Board Proceedings Division will remove the case from the nonappearance consent calendar and schedule it on a hearing calendar for consideration by the Board.</u> This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. 3. All potentially affected IJCs will be notified of the scheduling of the case on the hearing calendar. For each case, an extension of time of no more than 30 days will be granted by Board Proceedings regardless of how many potentially affected IJCs request an extension.</p>	

**Continuation of 2/5/01 Discussion of Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries
Comparison of Staff's and Interested Parties' Proposed Language
Current as of March 5, 2002**

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by Mr. Johan Klehs	Summary Comments
<p>ACTION 2 – Review by Board Members (continued)</p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...] <u>(C) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B)(2) of this regulation, no new additional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowed considered at the Board hearing.</u></p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...] <u>(C) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B) of this regulation, no new additional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowed considered at the Board hearing.</u></p>	<p>[(c) REVIEW PROCESS. (5) REVIEW BY BOARD MEMBERS. ...] <u>(B) Presentation of New Evidence.</u> <u>If new arguments or evidence not previously presented at the prior levels of review are presented by the petitioning IJC after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(A)(2) of this regulation, no new additional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be allowed considered at the Board hearing.</u></p>	<p>The only differences in this subdivision are references to different subdivisions.</p> <p>Further, staff replaced the word "additional" with the word "new" and the word "considered" with the word "allowed." This changes clarify the language and are non substantive.</p>

Regulation 1807. Process for Reviewing Local Tax Reallocation Inquiries.

Reference: Sections 7209, 7223, Revenue and Taxation Code.

(a) DEFINITIONS.

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

(1) INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC). “Inquiring Jurisdictions and their Consultants (IJC)” means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.

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

(A) Taxpayer name, including owner name and d.b.a. (doing business as) designation.

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

(C) Complete business address of the taxpayer.

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

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

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

(G) The tax reporting periods involved.

(3) DATE OF KNOWLEDGE. “Date of knowledge” shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2)

of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry, indicating what the IJC has done to obtain the minimum factual data required by subdivision (a)(2) of this regulation, the Board can use the date this inquiry is received as the date of knowledge.

(4) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

(b) INQUIRIES.

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

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

(c) REVIEW PROCESS.

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

(2) REVIEW BY REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. A conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals

Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

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

(5) REVIEW BY BOARD MEMBERS. If Board Management upholds a finding that no improper distribution has occurred, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason of disagreement with Board Management findings.

(A) Petition for Hearing. The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. ~~The request shall include the name of the Board Member in whose district was issued the seller's permit of the taxpayer whose local tax allocation is at issue in the inquiry and the name of the Board Member of the jurisdiction that filed the inquiry.~~ If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

(B) Consideration by Full Board.

1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the date the case is first scheduled on the consent calendar date, the matter will be considered closed.

2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.

(C) Presentation of New Evidence. If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B)(2) of this regulation, no new ~~additional~~ evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be ~~allowed~~ considered at the Board hearing.

(d) TIME LIMITATIONS.

(1) An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management Local Tax Appeals Auditor level.

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

(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.

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

(1) If at any time during this review process the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing Jurisdiction" includes a gaining jurisdiction where the original decision was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.

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

(f) LIMITATION PERIOD FOR REDISTRIBUTIONS.

Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.

(g) APPLICATION TO SECTION 6066.3 INQUIRIES.

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

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

(h) 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 existing inquiries and appeals procedures. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.

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