



State Board of Equalization

# Board Meeting Reference

2006

Photo by Jenny Steinmetz, TSD

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# Foreword

## The Board of Equalization

In 1879, the Board of Equalization was established under the California Constitution to regulate county assessment practices, equalize county assessment ratios, and assess properties of intercounty railroads. In subsequent constitutional and statutory amendments, the Board was directed to administer tax, fee, and appellate programs to support state and local government.

Today, the Board collects taxes and fees that provide more than 35 percent of the annual revenue for programs supporting transportation, education, health care, public safety, parks, social services, housing, environmental protection, and natural resource management.

The Board is responsible for administering the state's sales and use, fuel, alcohol, tobacco, and other taxes, and for collecting fees that fund specific state programs. More than one million businesses are registered with the agency.

The Board sets the market value of California's public utilities and railroads and of private railroad car companies that operate in California. The Board also plays a significant role in California local property tax assessment and administration.

Members of the Board meet monthly in Sacramento and periodically in the Los Angeles area to hear and decide appeals from taxpayers, adopt regulations, perform ministerial functions, and set policy for the direction of its staff. The Board appoints an Executive Director to implement its policies and manage the activities of Board staff.

## Purpose of This Reference

This *Board Meeting Reference* is intended to be a working guide and useful tool for Board Members and management staff who participate in Board meetings. It covers Board meeting-related processes, procedures, and practices. It is based on the controlling Constitutional provisions, statutes, and regulations. The Board Proceedings Division will periodically revise the reference to keep it current. All suggestions and revision requests should be directed to the Board Proceedings Division.

Ramon J. Hirsig  
Executive Director

# Board Organization

## Board

The five Members of the Board, who serve concurrent four-year terms, constitute the nation's only elected tax commission. Four Members are elected directly from constitutionally defined districts within the state. The State Controller, who is elected at large, serves as the Board's fifth Member.<sup>1</sup>

## Chair

Generally, at its first meeting of the calendar year, the Board elects a Chair and Vice Chair for the year.<sup>2</sup> A majority vote of a quorum is required to elect the Chair or Vice Chair.

The Chair approves Board meeting agendas. The Chair's boardroom responsibilities include convening and adjourning Board meetings, calling agenda items, and conducting hearings and the subsequent Board vote.

The Chair serves as a member of the Franchise Tax Board along with the State Controller and the state Director of Finance. The Chair may designate his or her Deputy to serve at meetings of the Franchise Tax Board.<sup>3</sup> In contrast with the Board of Equalization's constitutional origins, the Franchise Tax Board was established by statute.<sup>4</sup>

## Board Committees<sup>5</sup>

The Chair may appoint Board advisory committees and committee chairs. The current Board Committees are

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

## Board Member Deputy Participation in Board Actions

Except for the Controller (see next page), a Board Member may not designate a Deputy to serve at Board meetings. However, Board Members may designate individuals from their personal staffs to represent them on advisory committees and task forces.

## **Deputy Controller's Participation in Board Actions**

The Controller may designate any Deputy to act on the Board to exercise the Board's statutory powers and duties.<sup>6</sup> The written designation is maintained in the Board Proceedings Division. The Deputy Controller may not act on behalf of the Controller in the exercise of the Board's constitutionally imposed powers and duties. Therefore, the Deputy Controller may not participate in state assessee and private railroad car tax valuations or reassessments, or claims for refund filed under the Insurance Tax Law, Motor Vehicle Fuel Tax Law, or Alcoholic Beverage Tax Law. The Deputy Controller may participate in the adoption and issuance of written findings and decisions on reassessments, petitions, or claims previously heard and decided by the State Controller.

## **Board Member Vacancy**

If a Member leaves office before his or her term expires, the Member's Chief Deputy is authorized to discharge the constitutional and statutory duties of the office until a successor assumes office.<sup>7</sup>

## **Powers Conferred on the Executive Director by Resolution Adopted by the Board<sup>8</sup>**

"RESOLVED, That Ramon J. Hirsig, as Secretary of this Board, is hereby designated to act as its chief executive officer on and after April 1, 2004, with the title 'Executive Director,'

"RESOLVED, That the Executive Director shall have full authority to exercise, perform, and discharge any and all duties, powers, and functions vested in or imposed upon the Board by any provision of law and otherwise, unless (1) the duty, power or function is one that can only be exercised, performed, or discharged by the Board in session expressly for that purpose, or (2) the Board expressly reserves the delegation of the duty, power, or function subject to the approval of the Board; and be it further

"RESOLVED, That all of the authority hereby delegated is to be exercised under the general direction of the Board and is in accordance with policies enunciated by the Board, and that such delegation shall not constitute the relinquishment of any power, jurisdiction, or responsibility of the Board; and be it further

"RESOLVED, That the authority hereby granted to the Executive Director shall include, but shall not be limited to, the following:

(a) Execution of any and all personnel documents as the appointing power. Prior to the execution of such documents the Executive Director shall: (1) obtain Board approval for all appointments of personnel at the Career Executive Assignment (CEA) level; (2) obtain approval of the Board Member in whose District in which appointments are located for all District personnel appointments; (3) notice at least monthly the Board of all other personnel appointments; and (4) obtain Board approval for all position upgrades which result in a change of classification at the CEA level and above before such requests are submitted to the Department of Personnel Administration;

(b) Execution of any and all budgetary and fiscal documents for and on behalf of the Board. Prior to the submission of the annual budget and all Budget Change Proposals, the Executive Director shall obtain the explicit approval of the Board before submission to the Department of Finance except that Board staff may develop, without prior Board approval, Budget Change Proposals resulting from newly enacted legislation within the ten-day Department of Finance deadline. If the Board majority does not act or the Board vote results in a tie, the Executive Director may submit the documents as proposed;

(c) Execution of any and all contracts for materials, services and supplies. Prior to the execution of such documents, the Executive Director shall obtain Board approval for any contract in which the amount of the contract exceeds \$1,000,000;

(d) Execution of any and all leases with respect to real and personal property. Prior to execution of such documents for any new office space, the Executive Director shall obtain approval of the Board Member in whose District such new office space is located and Board approval for all other new office space relating to the headquarters' operation;

(e) Execution of any and all releases of liens for which provision is made in those parts of the Revenue and Taxation Code wherein the Board is named as the administrative agency; this shall include the subrogation of such liens to other liens or encumbrances, as well as the determination for or on behalf of the Board of whether or not the taxes, interest, and penalties secured by liens on property as to which liens are to be released or subordinated are sufficiently secured by a lien or liens on other property, as well as the determinations for or on behalf of the Board that a release or subordination of any lien for which provision is made in the Revenue and Taxation Code will not endanger or jeopardize the collection of taxes, interest and penalties;

(f) Execution on behalf of the Board of any certificates for which provision is made by any part of the Revenue and Taxation Code with respect to the amount of taxes, interest, and penalties that are due thereunder; and be it further

“RESOLVED, that in the absence of the Executive Director, the authority vested in the Executive Director by this resolution, or any other resolution now in effect or adopted hereafter by the Board, shall be exercised by the Executive Director’s designee, or by the person named by the Board as Acting Executive Director.”

### **Designation of Acting Executive Director<sup>o</sup>**

When the Executive Director is absent or otherwise unavailable to perform the duties of the office, the Chief Counsel may perform any and all of those duties. When performing those acts, the Chief Counsel will be designated as Acting Executive Director.

In addition, the Executive Director may designate one or more other persons to be Acting Executive Director and may designate the order in which the designees are to serve. An Acting Executive Director may also designate another Acting Executive Director if necessary.

## Attorney General

### Relationship to the Board<sup>10</sup>

The Attorney General is the chief legal officer of the state and the legal advisor to the Board. The Attorney General advises and represents the Board on legal matters when requested to do so.

### Informal and Formal Opinions<sup>11</sup>

The Board may ask the Attorney General to provide an opinion regarding a Board matter. Informal opinions may be oral or in the form of an informal letter. Formal opinions are initiated by a written request from the Executive Director on behalf of the Board. The formal opinion is in the form of a letter directed to the Board and is published if it concerns a question of general importance.

### Consultations<sup>12</sup>

The Board's staff confers on a regular basis with representatives of the Attorney General's office concerning current litigation or other legal issues of current importance. At the request of the Board, a representative of the Attorney General appears before and consults with the Board. On occasion, at the request of the Board, the staff of the Board and the Attorney General consult with taxpayers concerning pending questions of importance.

### Litigation<sup>13</sup>

The Attorney General is required by law to represent the Board in all actions brought against it for the recovery of taxes. The Attorney General may also represent the Board in legal actions the Board files in the performance of its official duties. In such instances, the Chief Counsel requests that representation in writing.

## Clerk of the Board

The Chief of the Board Proceedings Division acts as the Clerk of the Board.

The Board and the Executive Director have delegated the following duties to the Chief of Board Proceedings:

- Review and adopt regulations and approve rulemaking calendars.<sup>14</sup>
- Sign Notices of Public Hearing, Interested Party letters, fiscal impact statements to the Department of Finance, and Orders to Adopt Regulations.<sup>15</sup>
- Prepare Board meeting open session minutes for Board approval.<sup>16</sup>
- Prepare Board meeting closed session minutes for the Executive Director's approval.<sup>17</sup>
- Manage Business Taxes Board-level cases, setting Board hearing and decision dates, assigning deadlines for necessary staff work in the Legal Appeals Division, Sales and Use Tax Department, or Property and Special Taxes Department, and creating a priority protocol for Board cases.<sup>18</sup>
- Manage the Appeals Conference planning function.<sup>19</sup>

- Submit franchise and income tax appeals for Board decision on the written record and close appeal files upon withdrawal or resolution of appeals or failure to supplement appeals upon request.<sup>20</sup>
- Specify deadlines in compliance with Board orders for posthearing submissions from taxpayers, other state agencies, and Board staff; monitor those deadlines; grant extensions of time upon approval of the Board Chair; submit on the record those cases in which a party fails to file submissions by the specified deadline and specify the earliest possible date for Board consideration of those recommended decisions.<sup>21</sup>
- Report contribution disclosures on the record of a Board meeting if a hearing is held, or into the written record of a Board meeting if no hearing is held.<sup>22</sup> (This delegation specifies the term “board staff” in Contribution Regulation 7009(d).)
- Postpone board hearings.<sup>23</sup> (This delegation specifies the authority described in Regulation 5076(c).)

Additional duties of the Chief of Board Proceedings are specified in the *Rules of Practice*.<sup>24</sup>

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## Notes

- <sup>1</sup> California Constitution, article XIII, section 17.
- <sup>2</sup> State Board of Equalization Administrative Manual, section 0102.
- <sup>3</sup> Government Code section 7.6.
- <sup>4</sup> Government Code section 15700.
- <sup>5</sup> State Board of Equalization Administrative Manual, section 0102 and 0104.1.
- <sup>6</sup> Government Code section 7.9.
- <sup>7</sup> Government Code section 1775 and Attorney General Opinion 96-1106, December 31, 1996.
- <sup>8</sup> Government Code section 15604 and State Board of Equalization Administrative Manual, section 0108.
- <sup>9</sup> State Board of Equalization Administrative Manual, section 0106.
- <sup>10</sup> Government Code section 11040.
- <sup>11</sup> Government Code section 12519.
- <sup>12</sup> Government Code section 15610.
- <sup>13</sup> Government Code sections 11040 through 11043.
- <sup>14</sup> Delegated May 1, 2001.
- <sup>15</sup> Delegated February 2, 1998.
- <sup>16</sup> Delegated 1977.
- <sup>17</sup> Delegated 1992.
- <sup>18</sup> Delegated May 12, 1998.
- <sup>19</sup> Delegated July 1, 1998.
- <sup>20</sup> Delegated November 19, 1992.
- <sup>21</sup> Delegated April 2, 2001.
- <sup>22</sup> Delegated April 2, 2001.
- <sup>23</sup> Delegated April 2, 2001.
- <sup>24</sup> California Code of Regulations, title 18, section 5010 et seq.



# Committees

## Board Committee Meetings and Reports<sup>1</sup>

Board committees generally meet the first day of the Sacramento Board meeting. Deputy Directors or designated managers of the respective programs prepare the agendas. Each agenda or discussion item is supported by an issue paper, a legislative proposal, or a bill analysis, as appropriate. The Deputy Directors or managers prepare agendas in consultation with the committee chairs and distribute them in advance of the meetings to the Board Members, staff, and interested parties. Committees may discuss and recommend only those items included on their agendas. The Deputy Directors or managers draft the committee minutes for approval by the Executive Director and the committee chairs, and then for Board approval at the administrative session of that meeting, if possible. Only Board-approved recommendations are implemented. Board-approved committee minutes are distributed to Board Members and staff. The Deputy Directors or managers draft and maintain committee agenda procedures in consultation with the committee chairs.

- The *Business Taxes Committee* provides a forum for interested members of the public to express their views and present proposals regarding the provisions and policies related to Board-administered tax and fee laws.
- The *Customer Service and Administrative Efficiency Committee* addresses issues that affect customer service to taxpayers and fee payers, as well as administrative operations throughout the Board.
- The *Legislative Committee* recommends Board positions on bills before the Legislature and the Governor.
- The *Property Tax Committee* promotes uniformity and consistency in property tax assessment and administration by providing guidance to county assessors and their staffs and other property tax practitioners through the *Assessors' Handbook*, property tax rules, and other written guidelines.

## Board-Sponsored Legislation

Once the Legislative recess begins in the fall, Board Members and Board staff may submit proposals for Board-sponsored legislation to the Board's legislative counsel. The counsel and the managers of each of the departments review each proposal. All Board Member proposals and the viable staff proposals generally appear on the Legislative Committee agendas for the November and December meetings.

The agenda includes a brief one or two-sentence fiscal impact statement. If insufficient time is available to prepare an impact statement before staff send out the original agenda, the updated agenda distributed with the staff recommendations must show the fiscal impact. For legislation that would result in a significant administrative impact to the agency (a subjective decision), the agenda should also include a statement of the amount of that impact.

Board staff prepare papers for all Board Member-suggested proposals stating the pros and cons of each issue. These are intended to give an impartial perspective on one Member's proposal to the other Members. The legislative counsel attempts to secure legislative authors for proposals approved by the Legislative Committee.

### **Board Positions on Legislation**

At the Board's Legislative Committee meeting, the committee members recommend a formal Board position on each legislative proposal. The legislative counsel drafts the minutes of the Legislative Committee meeting for approval by the Executive Director and the committee chair before the Board administrative session.

The Board reviews the committee recommendations as part of its monthly Administrative Agenda and confirms, rejects, or revises them. Unless an item is deferred to the Board for discussion, Board approval of the minutes means that the Board adopts the committee's recommendation for a Board position on each legislative proposal listed in the minutes.

The Board takes one of three basic positions on legislation: support, oppose, or neutral. Variations of these positions may include *support concept; support, if amended; neutral, point out problems; and oppose, unless amended*. If a Member objects to the position recommended by the Legislative Committee on a bill or to the position taken by the full Board, the Member may submit for the record a written objection stating the Member's position. That objection will be included in the committee report.

The Board position is stated in letters of support, opposition, or neutrality. The Executive Director signs the letters and they are sent, as appropriate, to the author, Senate and Assembly committee chairs and members, and the Governor. The legislative counsel relays the Board's position in testimony at Senate and Assembly committee hearings.

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**Notes**

<sup>1</sup> Rules of Order.

# Board Meetings

## Powers of the Board and Procedural Constraints

The Board's powers are administrative. However, the Board is empowered to adopt rules and regulations,<sup>1</sup> generally regarded as a quasi-legislative function, and to hear and decide individual cases,<sup>2</sup> generally regarded as a quasi-judicial function.

There are two principal laws that constrain the manner in which the Board may adopt an interpretation of tax law. The first is the Bagley-Keene Open Meeting Act,<sup>3</sup> which in part provides that a state body may take an action only if the item is properly noticed on the agenda of a meeting open to the public. The second is the Administrative Procedure Act,<sup>4</sup> under which an interpretation of the Board must be adopted as a regulation if it is to have the force and effect of law.

## Quorum<sup>5</sup>

Any three Members constitute a quorum. The Board cannot act unless a quorum is present. If a Member is disqualified from participating under the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990 (Kopp Act),<sup>6</sup> the conflict of interest provisions of the Political Reform Act,<sup>7</sup> or by any other conflict of interest, that Member may not be counted to establish a quorum. If the Deputy State Controller is not authorized to participate because the matter before the Board is a constitutional function,<sup>8</sup> then the Deputy State Controller may not be counted to establish a quorum. Whenever a Member states that he or she is "not participating" on a particular matter, that Member is not counted to establish the quorum. However, if a Member is entitled to participate, but elects to abstain on the vote, the Member is still counted as part of the quorum.

## Voting

### Minimum Vote for Board Action<sup>9</sup>

A majority vote is required for Board action. But the majority is defined as a majority of a *quorum*—two votes—rather than a majority of the *Members*—three votes. For example, a motion could carry if all five Members were present and they voted as follows: two abstaining, two voting yes, and one voting no.

### Examples of situations in which two yes votes would carry a motion

Five Members present

- Two yes, two abstain, one no.
- Two yes, three abstain.

Four Members present

- Two yes, one abstain, one no.
- Two yes, two abstain.

Three Members present

- Two yes, one no.
- Two yes, one abstain.

### **Motions Fail on Tie Vote**

Since a majority vote is required for all decisions or actions of the Board, motions fail on a tie vote.

### **Not Participating and Abstaining**

A Member or the Deputy State Controller who is disqualified in a matter because of financial contributions or a financial interest is not entitled vote and should state that he or she will “not participate” in the vote. The Deputy State Controller should take the same action when a constitutional matter is being considered. The correct notation in the minutes or announcement at the Board meeting is that the Member or Deputy State Controller is “not participating.” If a Member is entitled to participate, but chooses not to, the Member’s reason for not participating need not be disclosed on the record. However, if a Member is legally disqualified from participating, the Member must disclose the reason for the disqualification on the record.<sup>10</sup> To “abstain” means that the Member or the Deputy State Controller is entitled to vote, but has chosen not to vote.

### **Contribution Disclosures<sup>11</sup>**

The Kopp Act disqualifies any Board Member, including the State Controller, from participating in an adjudicatory proceeding before the State Board of Equalization if any single party, participant, or agent of either has contributed at least \$250 to the Member in the preceding 12 months. However, if the Member returns to the contributor all contributions over \$249, the Member may participate in the proceeding. The law also requires a Board Member, party, participant, or agent to disclose any such contribution on the record. Board staff must inquire from all parties, participants, and agents whether any such contributions have been made to the Members. Board Proceedings then reports its findings to the Board.

### **Financial Conflict of Interest<sup>12</sup>**

A Board Member who has a financial conflict of interest must do the following:

- Publicly identify, in enough detail to be understood by the public, the financial interest that causes the conflict of interest or potential conflict of interest.
- Recuse himself or herself from discussing or voting on the matter or from attempting to use his or her position to influence the decision.
- Leave the room until after the discussion, vote, or any other disposition of the matter is concluded, unless the matter is on an agenda reserved for uncontested matters.

### **Roll Call Vote<sup>13</sup>**

A Member who is not present when the Chair calls the vote may not cast a vote unless the voting Members are tied. In this case, the Chair may leave the roll open until the conclusion of the Board meeting to allow the absent Member or Members to be present and vote. A Member's vote may not be added to the recorded vote after the roll call has ended.

It has been Board practice that a Member may ask the Chief of Board Proceedings to record in the minutes the way the Member would have voted if the Member had been present at the roll call. However, a Member's request to record his or her intentions is not a vote and will not be recorded as such.

A matter may be decided by unanimous consent,<sup>14</sup> except during a teleconferenced meeting. All votes taken during a teleconferenced meeting must be by roll call vote.<sup>15</sup>

### **Participation in a Decision by a Member Not at the Hearing**

When a matter has been taken under submission for a later vote, a Member who was not at the hearing may participate in the decision if the Member has made a reasonable effort to gain a substantial understanding of the record.<sup>16</sup> The Chief of Board Proceedings will provide the hearing record and transcript to any Member upon request.

### **Expunging the Record**

If the Board adopts a motion to expunge the record of a previous Board action, the motion, second, and vote to expunge are included in the meeting minutes. The vote or words expunged are omitted from the meeting minutes.

### **Rescinding the Vote**

If the Board adopts a motion to rescind the record of a previous Board action, the motion, second, and vote to rescind are included in the meeting minutes. The action that is being rescinded remains recorded and is marked with a footnote that indicates the location of the final action recorded on the matter.

### **Reopening a Vote**

A previously recorded vote may be reopened at the same meeting or a later meeting if all of the following apply:

- The decision is not final.
- A motion to reconsider is made by a Member who voted with the prevailing side.
- A majority of the Members vote affirmatively on the motion to reconsider.
- The matter has been properly noticed under the Bagley-Keene Open Meeting Act.

## Forms of Motion

The following are suggested standard forms of motion. These forms in no way limit a Member's right to present his or her own motion for consideration.

### Business Taxes

#### Petition for Redetermination

- Submitted for Decision  
*I move that the petition be submitted for decision.*
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)  
*I move that the petition be submitted for decision and grant the petitioner 30 days to file supporting documents, the department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents and the department's response and provide its recommendation to the Board.*
- Granting the Petition  
*I move that the petition be granted and the tax (or fee) be redetermined accordingly.*
- Granting the Petition in Part  
*I move that the petition be granted with respect to (item or items) and denied with respect to (remaining item or items) and that the tax (or fee) be redetermined accordingly.*
- Deleting a Penalty  
*I move that the (type of penalty) be deleted.*
- Reducing Fraud Penalty to Negligence Penalty  
*I move that the fraud penalty be reduced to a negligence penalty.*
- Denying the Petition  
*I move that the petition be denied and redetermined as recommended by the Appeals Division.*
- Memorandum Opinion  
*I move that a draft Memorandum Opinion be prepared by the Appeals Division and brought back to the Board for adoption.*
- California Victim Compensation and Government Claims Board (formerly the Board Of Control)  
*I move that the petition be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.*

## Claim for Refund

- Submitted for Decision  
*I move that the claim for refund be submitted for decision.*
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)  
*I move that the claim for refund be submitted for decision and grant the claimant 30 days to file supporting documents, the department 30 days to respond, and the Appeals Division 30 days thereafter to review the claimant's supporting documents and the department's response and provide its recommendation to the Board.*
- Granting the Claim for Refund  
*I move that the claim for refund be granted.*
- Granting the Claim for Refund for a Stated Amount  
*I move that the claim be granted in the amount of \$\_\_\_\_\_ and denied in the amount of \$\_\_\_\_\_.*
- Granting the Claim for Refund for an Indefinite Amount  
*I move that the claim be granted in the amount of \$\_\_\_\_\_ and denied as to any amount in excess of \$\_\_\_\_\_.*
- Denying the Claim for Refund  
*I move that the claim for refund be denied.*
- California Victim Compensation and Government Claims Board (formerly the Board Of Control)  
*I move that the claim be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.*

## Corporation Franchise and Personal Income Taxes

- Submitted for Decision  
*I move that the appeal be submitted for decision.*
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)  
*I move that the petition be submitted for decision and grant the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents and the Franchise Tax Board's response and provide its recommendation to the Board.*
- Granting the Appeal  
*I move to grant the appeal and reverse the action of the Franchise Tax Board.*
- Granting the Appeal in Part  
*I move that the appeal be granted with respect to (describe item or items) and that the remainder of the appeal be denied.*
- Deleting a Penalty  
*I move to delete the (type of penalty), otherwise sustain the action of the Franchise Tax Board.*
- Denying the Appeal  
*I move to deny the appeal and sustain the action of the Franchise Tax Board.*
- Frivolous Appeal Penalty  
*I move to sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of (\$ amount).*
- Formal Opinion  
*I move that the matter be taken under submission and direct the Appeals Division to draft a proposed formal opinion in favor of (successful party), because (reason or reasons).*
- California Victim Compensation and Government Claims Board (formerly the Board Of Control)  
*I move that the appeal be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.*

## Property Taxes

- Submitted for Decision  
*I move that the petition (claim or application) be submitted for decision.*
- Granting the Petition (Claim or Application)  
*I move that the petition (claim or application) be granted.*
- Abating the Penalty  
*I move that the penalty be abated.*
- Denying the Petition (Claim or Application)  
*I move that the petition (claim or application) be denied.*

## Rulemaking

- Authorization for Public Hearing  
*I move that we authorize publication of this proposed regulation for a public hearing.*
- Adoption of the Regulation  
*I move that the regulation be adopted.*
- Taking a Regulation Under Submission at the End of the Public Hearing  
*I move that the regulation be submitted for decision.*
- Refer the Revised Language to the 15-Day File  
*I move to approve the revised language to the regulation as recommended and refer the regulation to the 15-day file.*
- Approval of Changes to the Published Version  
*I move that the changes to the published version be approved.*
- Adoption of an Emergency Regulation and Authorization to Publish  
*I move that the emergency regulation be adopted and authorize its publication for public hearing.*

## Board Meetings

The Board holds regular meetings in Sacramento each month and quarterly meetings in the Los Angeles area as needed. Historically, the Board has also held one meeting a year in San Diego.<sup>17</sup>

## Open Meeting Law

The Bagley-Keene Open Meeting Act<sup>18</sup> provides that all meetings of the Board are open and public and that all persons shall be allowed to attend.

## Public Agenda Notice<sup>19</sup>

Notice of any Board meeting or Board committee meeting must be given and made available on the Internet at least ten calendar days before the meeting. Any person who requests notice in writing must be sent a copy. The notice must include

- The name, address, and telephone number of a person who can provide further information before the meeting.
- The address of the Internet site where notices are made available.
- A specific agenda for the meeting that contains a brief description of the items of business to be transacted or discussed in either open or closed session. A description of an item to be transacted or discussed in closed session must include a citation of the specific statutory authority under which a closed session is being held.

Items cannot be added to the agenda after the notice is issued.

Typically, the Board Proceedings Division posts the Public Agenda Notice on the Board's website, *www.boe.ca.gov*, on a Friday, at least ten calendar days before the scheduled Board meeting. The division also e-mails the announcement of the posting to an e-mail list and mails a printed copy of the notice to interested parties who have requested the notice in writing.

## Availability of Board Meeting Materials<sup>20</sup>

Agendas for public meetings and all other material distributed to the Board Members for discussion or consideration at a public meeting are public records subject to disclosure unless a recognized exemption applies. Examples of exemptions would be the attorney-client privilege or taxpayer confidentiality. Public Board meeting materials are made available to the public on the Internet as attachments to the Public Agenda Notice. The materials are also available in printed form on the day of the meeting.

With regard to the Board, the Bagley-Keene Open Meeting Act specifically provides that before taking final action on any item that does not involve a named taxpayer or feepayer, writings pertaining to the item that are public records and have been distributed by staff or individual Board Members to the Board Members prior to or during the meeting must be: (1) made available for public inspection at the meeting, (2) distributed to all persons who request or have requested copies of these writings, and (3) made available on the Internet.

## Closed Sessions<sup>21</sup>

The Board may hold closed sessions for the following reasons:

- To consider the appointment, employment, or dismissal of a Board employee or to hear complaints or charges brought against Board employees.
- To consider matters pertaining to the appointment or removal of the Executive Director.
- To confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session would prejudice the Board's position in the litigation.
- To hear confidential taxpayer appeals at the request of a party or to hear confidential taxpayer data when disclosing that data is prohibited by law.

The Board's Chief Counsel prepares and submits to the Board a memorandum stating the specific reasons and legal authority for the closed session. Prior to holding any closed session, the Board shall convene and disclose in an open meeting the general nature of all items to be discussed in closed session.

### **Teleconference Meetings**

The Board may hold a meeting by teleconference as provided in the Bagley-Keene Open Meeting Act.<sup>22</sup> The Board Proceedings Division coordinates the meeting in conjunction with the Business Services Section.

### **Planning Board Meetings**

#### ***Board Proceedings Division***

The Board Proceedings Division manages the workload of the Board meetings. The division forecasts, manages, and reports on Board hearing workload, plans and circulates Board meeting agendas and agenda materials, manages the contribution disclosure program, prepares Board meeting minutes and transcripts, and supervises the Board meeting support staff. The division manages the Board's franchise and income tax, homeowner and renter property tax assistance, and property tax appeals programs and the workload of the business taxes appeals program. The division administers the *Rules of Practice* and manages the administrative aspects of the Board's rulemaking program.

#### ***Board Workload Plan***

In September of each year, the Chief of Board Proceedings prepares a Board workload plan for the following calendar year and submits it to the Board for adoption. The Chief then plans each meeting based upon the adopted plan, beginning 90 days before the meeting date. The chief may cancel a Board meeting day for lack of workload, but generally other meeting date or location changes are made by majority vote of the Board in session. The adopted meeting calendar is published on the Board's website.

Board Proceedings staff send planning memos to the various departments to notify them when Board meeting materials are due to the Executive Director for approval to be placed on the meeting agenda.

#### ***Board Meeting Agendas***

The Board Proceedings Division determines the number of oral hearings to be heard by the Members and sets the order of the agenda. Approximately 30 days before the meeting date, the agenda is submitted to the Chair for approval. The Chair approves all Board meeting agendas. (See Appendix for the Public Agenda Notice Template.)

Any Member may place an item on the Board meeting agenda, subject to the Chair's approval or a majority vote of the Board in session. If the Chair denies a Member's request to place an item on the agenda, the Member may bring up the denied item during a Board meeting administrative session and request Board approval to place the item on a future agenda. When brought before the Board in this manner for future agenda placement, the item does not need to be on the Public Agenda Notice of the current meeting. For

information on scheduling items on Board meeting agendas or for information on Board actions on agenda items, contact the Board Proceedings Division.

### ***Oral Hearings***

An oral hearing before the Board allows taxpayers to present unresolved tax or fee issues to the Board for decision. The five major categories of oral hearings are

- Homeowner and Renter Property Tax Assistance
- Corporate Franchise and Personal Income Tax
- Sales and Use Tax
- Special Taxes
- Property Taxes

Contribution disclosure is required for oral hearings.

### ***Nonappearance Matters***

Tax matters placed on nonappearance calendars require Board Member action, but do not require the taxpayer to appear. There are two types of nonappearance calendars, adjudicatory and consent.

#### ***Adjudicatory Calendar***

A tax matter is placed on the "Tax Program Nonappearance Matters—Adjudicatory" calendar if any one of the following applies:

- The matter was previously scheduled on the Board's Public Agenda Notice as an oral hearing.
- The matter was previously removed from the consent calendar for a separate discussion and vote.
- The matter is one about which a Board Member or Board Member staff previously contacted board staff or a party.

Contribution disclosure is required for this calendar.

#### ***Consent Calendar***

A nonappearance tax matter is placed on the "Tax Program Nonappearance Matter—Consent" calendar if it does not meet the criteria described above.

Contribution disclosure is *not* required for this calendar.

### ***Administrative Matters***

Under the Board meeting agenda heading "Administrative Matters," the Executive Director and staff present reports on matters of interest or policy matters requiring Board approval. Matters of a routine nature, such as retirement resolutions, adoption of Board meeting minutes, or rate setting, may be grouped on a consent agenda, but a Member may remove any of these matters for separate discussion.

Contribution disclosure is not required for Administrative Matters.

## Conduct of Board Hearings

### *Formality*

Board hearings are brief, to the point, and informal. The taxpayer is not required to use legal or technical language. If facts are disputed, a taxpayer may bring witnesses to testify or use documents or other exhibits to help explain the taxpayer's position. Taxpayers may be represented by any person they choose, including but not limited to an attorney, accountant, bookkeeper, employee, or business associate.<sup>23</sup>

### *Board Meeting Sign-In*

Taxpayers, representatives, and witnesses scheduled for oral hearings are asked to complete and sign an appearance sheet. However, completing and signing an appearance sheet is voluntary.<sup>24</sup> Anyone who signs an appearance sheet to speak on an adjudicative matter will be asked to complete a contribution disclosure form.<sup>25</sup> Copies of the appearance sheet and contribution disclosure forms are given to the Members, the staff attorney presenting the case to the Board, the court reporters, and the Chief of Board Proceedings Division.

### *Exhibits*

Parties to the hearing may provide exhibits for distribution to the Board members and staff before the hearing. Legal staff will review exhibits and if any part of an exhibit contains the elements of a brief, that part of the exhibit will not be accepted and will be returned to the submitting party.<sup>26</sup>

Parties are encouraged to provide nine sets of copies of exhibits to the Board Proceedings Division for distribution to the Board Members and staff at least one week before the Board meeting.

### *Time Allocation for Oral Hearings*

Before the oral hearing, Board Proceedings staff informs the taxpayer in writing how much time will be allowed for their hearing. At the Board meeting, the Chief of Board Proceedings announces the time allocations and informs the Board Chair when each period has elapsed.<sup>27</sup> Thirty-five minutes are allowed for each hearing: 10 minutes for the taxpayer, 10 minutes for the department (Board of Equalization department, Franchise Tax Board, and other state agencies), 5 minutes for the taxpayer rebuttal, and 10 minutes for Members' questions.

Taxpayers may ask for more time before the hearing. The Chief of Board Proceedings may grant these requests with the approval of the Chair. Generally, no more than an additional 10 minutes per party is granted to present complex cases. Board Proceedings staff will inform the parties in writing when a request for additional time has been granted.<sup>28</sup>

### *Order of Presentation*

Generally, the party requesting the Board hearing is the taxpayer. Following the introduction by the Board's representative, the taxpayer or the taxpayer's representative will present the arguments and testimony that support the taxpayer's position. Next, a representative for the department will respond to the taxpayer's arguments and set forth the department's position. Taxpayers will then be allowed to reply.

If the department requested the Board hearing, the presentation order is reversed.

### ***Examination of Witnesses***

The Board may place all witnesses under oath.<sup>29</sup> At the discretion of the Chair, the Chief of Board Proceedings swears in witnesses by administering this oath: “Do you swear to tell the truth in these proceedings?” After the witness is sworn, the Chief asks the witness to state his or her name for the record.<sup>30</sup> The Chair may allow additional time to the taxpayer for witness testimony.

### ***Decisions***

At the close of a Board hearing, the Members will either make an immediate decision or take the matter under submission. In either case, the taxpayer will receive written notification of the Members’ decision by mail.

### ***Public Comment***

Opportunity is provided for the public to address the Board on any agenda item, including any item on the administrative agenda. *Exception:* If an opportunity for public comment was provided on the same item at a Board committee meeting and the item has not been substantially changed since the committee heard the item, the Board is not required to hear additional public comment.<sup>31</sup>

Board Proceedings staff will request anyone planning to speak before the Board to sign in. Signing or completing a public comment appearance sheet is voluntary. A speaker who declines to fill out the appearance sheet will not be precluded from speaking to the Members.<sup>32</sup> Copies of the public comment appearance sheets are provided to the Chair, the court reporters, and the Chief of the Board Proceedings Division.

### ***Use of Interpreters***<sup>33</sup>

Persons participating in Board meetings who do not speak English or who have hearing impairments may contact the Board Proceedings Division before the Board meeting date to arrange for an interpreter.

Before the interpreter translates any sworn testimony given in a language other than English, the interpreter must take an oath that he or she will accurately and fully translate the questions from English to the other language and the taxpayers’ or feepayers’ answers from the other language to English.

To assist in making the record, the Chair should ask the taxpayer or feepayer to respond to questions in his or her own language and not in English.

### ***Access to Board Meeting Sites***<sup>34</sup>

Board meeting sites are accessible to people with disabilities. Those who need special assistance may contact the Board Proceedings Division. People who need hearing assistance devices may request them from the sergeants-at-arms at Board meetings.

## ***Minutes, Transcripts, and Audio***

### **Board Minutes**

Minutes are the summary record of each meeting. Draft copies are published on the Internet by the Board Proceedings Division and distributed to Board Members, the Executive Director, and various staff for review. After review and Board approval, the minutes are published on the Internet. Each year's complete set of approved minutes is bound into volumes. The bound volumes of Board minutes are the permanent record of Board actions required by the Government Code.<sup>35</sup> They are available for review in the Board Proceedings Division and the State Archives.

### **Closed Session Minutes**

Closed session minutes are a record of topics discussed and decisions made at a closed session. The minute book is not a public record and is kept confidential.<sup>36</sup> The minute book is available to Members, the Executive Director, and the Chief Counsel. The Chief of Board Proceedings writes these minutes and the Executive Director approves them.

### **Incorporated Data and Public Disclosure**

Selected supporting documents, known as incorporated data, are incorporated into the minutes by reference. Examples of incorporated data are public hearing materials, administrative matter materials, and reports and memos from Board staff provided to the Board Members for discussion or consideration at a public meeting. Incorporated data is noted in parentheses in the text of the minutes and designated by exhibit numbers. Copies of incorporated data are available from the Board Proceedings Division.

The minutes of the Board meetings, and any exhibits submitted into evidence and incorporated by reference into the minutes, are public documents subject to disclosure. Some related documents are not subject to disclosure.

- **Business Taxes.** Board hearing summaries, Appeals Division Decision and Recommendations, and briefs are *not* subject to disclosure since they contain confidential taxpayer or feepayer information, which is normally not submitted into evidence. However, at the request of the parties, any materials marked as exhibits during the oral hearing may be entered into the record.<sup>37</sup>
- **Franchise Taxes:** All briefs and exhibits submitted for the Personal Income Tax, Bank and Corporation Tax, or the Senior Citizens Property Tax Assistance and Postponement Law are subject to public disclosure before the Board's decision and incorporated into the minutes.
- **Property Taxes:** For state assessee and private railroad car company reassessment hearings, the petitioner must submit supporting evidence when the petition is filed. The petition and other documents submitted to the Board Members are incorporated by reference into the minutes as exhibits and are subject to public disclosure only after the Board has heard and decided the petition. For hearings on Applications for Review, Equalization and Adjustment of Taxable Property Owned by Local Governments, and Petitions for Claims for Welfare Exemption, supporting evidence may be submitted either before or at the hearing. Petitions or applications and other documents submitted to the Board Members are also incorporated by

reference into the minutes as exhibits and are subject to public disclosure before the Board's decision.

### **Audio**

Meetings are broadcast throughout the Board's Headquarters building. Public access is available through an independent contractor for a monthly fee. Board Members and staff may request compact disc recordings of the meeting by memo, e-mail, or fax from the Board Proceedings Division.

### **Transcripts<sup>38</sup>**

Transcripts of hearings, the Administrative session, and Chief Counsel Matters are prepared only upon request. Transcripts are public records and subject to public disclosure.

Board Member and staff requests may be directed to the Board Proceedings Division by memo, e-mail, or fax. Other interested persons may also request transcripts for a current cost of \$2.55 for each double-spaced typewritten page. The request may be made by a letter, e-mail or fax to the Board Proceedings Division.

Completed transcripts and untranscribed shorthand notes are retained up to 12 years after the hearing date.<sup>39</sup>

### **Board Meeting Staff**

#### ***Clerk of the Board***

The Chief of Board Proceedings acts as the clerk of the Board. The Chief's responsibilities are to plan, organize, conduct the Board meeting in accordance with the provisions of the Open Meeting Act, the Kopp Act, the Political Reform Act, and the *Rules of Practice* and *Rules of Order*.

#### ***Appeals Division Attorney, Legal Department***

The Appeals Division attorney introduces the parties and summarizes the issues involved in the appeal. As needed, the Appeals Division attorney provides advice to the Chair and other Board Members on the application of the law to the facts in the case and related procedural issues.

#### ***The Department Representative***

The Board's departments are represented at oral Board hearings by an attorney from the Tax and Fee Programs Division of the Legal Department or a hearing representative from the Sales and Use Tax Department or the Property and Special Taxes Department. If the hearing is for corporation franchise or personal income tax, an attorney from the Franchise Tax Board will be assigned to represent the case before the Board. The role of the attorney or hearing representative is to state why the amounts at issue were properly assessed by the affected department, setting forth the relevant facts and applying the applicable law. The Deputy Director of the department (or designee) and the Assistant Chief Counsel of the Legal Department (or designee) are also present at the hearing to represent the department. The Deputy Director and the Assistant Chief Counsel will comment and answer questions as necessary.

In cases involving taxes or fees jointly administered by the Board and another state agency, an attorney or representative, or both, from that agency may be present and elect to make a presentation to support the agency's position.

### ***Hearing Reporter***

A certified court reporter reports all matters heard by the Board in open session. Electronic recording systems, installed at the Sacramento and Culver City hearing locations, provide an audiotape backup to the reporters.

### ***Vote Recorder***

A Board Proceedings staff member acts as the meeting vote recorder during open session to record the Board's actions and requests during the Board meeting.

### ***Sergeant-at-Arms***

The sergeant-at-arms is a Board employee serving a rotational career development assignment in addition to regularly assigned duties. The sergeant-at-arms serves for one to two years. Employees are selected for Sacramento, Culver City, and San Diego Board meetings.

The sergeant-at-arms performs miscellaneous duties such as making copies of documents, delivering messages to or from Members, setting up appropriate signs, logging the security officers in and out, and operating the Boardroom audiovisual system. During hearings, the sergeant-at-arms maintains order in the Boardroom.

The Internal Security and Audit Division is responsible for arranging for the California Highway Patrol to provide security at Board meetings.

### ***Taxpayers' Rights Advocate***

A member of the Taxpayers' Rights Advocate office is available before the Board meeting for any questions taxpayers may have regarding Board procedures or their rights as taxpayers.

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## Notes

- <sup>1</sup> Government Code section 15606, subdivision (a), Revenue and Taxation Code section 7051 and other statutes in the tax and fee programs administered by the Board.
- <sup>2</sup> California Code of Regulations, title 18, section 5010 et seq.
- <sup>3</sup> Government Code section 11120 et seq.
- <sup>4</sup> Government Code section 11340 et seq.
- <sup>5</sup> California Code of Regulations, title 18, section 5072.
- <sup>6</sup> Government Code section 15626.
- <sup>7</sup> Government Code section 87100 et seq.
- <sup>8</sup> Government Code section 7.9.
- <sup>9</sup> California Code of Regulations, title 18, section 5081.
- <sup>10</sup> Government Code sections 15626 and 87105.
- <sup>11</sup> Government Code section 15626.
- <sup>12</sup> Government Code section 87105.
- <sup>13</sup> California Code of Regulations, title 18, section 5081.
- <sup>14</sup> California Code of Regulations, title 18, section 5081.
- <sup>15</sup> Government Code section 11123, subdivision (b)(1)(D).
- <sup>16</sup> *Morgan v. U.S.* (1936) 298 U.S. 468 [80 L.Ed. 1288]; *Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242; *Allied Compensation Insurance Co. v. Industrial Accident Commission* (1957) 57 Cal.2d 115.
- <sup>17</sup> Government Code section 15609.
- <sup>18</sup> Government Code section 11120 et seq.
- <sup>19</sup> Government Code section 11125.
- <sup>20</sup> Government Code section 11125.1.
- <sup>21</sup> Government Code sections 11126 and 11126.3.
- <sup>22</sup> Government Code section 11123.
- <sup>23</sup> California Code of Regulations, title 18, section 5073.
- <sup>24</sup> Government Code section 11124.
- <sup>25</sup> Government Code section 15626.
- <sup>26</sup> California Code of Regulations, title 18, section 5070, subdivision (d).
- <sup>27</sup> California Code of Regulations, title 18, section 5077.
- <sup>28</sup> Minutes of May 24, 2005 Customer Service and Administrative Efficiency Meeting.
- <sup>29</sup> Government Code section 15617.
- <sup>30</sup> Authority delegated to the Chief of Board Proceedings on April 19, 2001.
- <sup>31</sup> Government Code section 11125.7.
- <sup>32</sup> Government Code section 11124.
- <sup>33</sup> Dymally-Alatorre Bilingual Services Act, Government Code section 7290 et seq.
- <sup>34</sup> The Americans with Disabilities Act of 1990.
- <sup>35</sup> Government Code sections 15605 and 15606.
- <sup>36</sup> Government Code section 11126.1.
- <sup>37</sup> California Code of Regulations, title 18, section 5079.
- <sup>38</sup> California Code of Regulations, title 18, section 5083.
- <sup>39</sup> Retention criteria set by Chief Counsel.



# Business Taxes

## Business Tax Programs<sup>1</sup> Administered by the Board

The Sales and Use Tax Department administers the following tax programs:

- Sales and Use Tax
- Bradley-Burns Uniform Local Sales and Use Tax
- District Transactions and Use Tax

The Property and Special Taxes Department administers the following tax and fee programs:

- Aircraft Jet Fuel Tax
- Alcoholic Beverage Tax
- California Tire Fee
- Childhood Lead Poisoning Prevention Fee
- Cigarette and Tobacco Products Tax
- Cigarette and Tobacco Products Licensing Program
- Diesel Fuel Tax
- Electronic Waste Recycling Fee
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Hazardous Substances Tax
- Insurance Tax
- Integrated Waste Management Fee
- Interstate User Tax (IFTA)
- Marine Invasive Species Fee (also known as the Ballast Water Management Fee)
- Motor Vehicle Fuel Tax
- Natural Gas Surcharge
- Occupational Lead Poisoning Prevention Fee
- Oil Spill Response, Prevention, and Administration Fees
- Underground Storage Tank Maintenance Fee
- Use Fuel Tax
- Water Rights Fee

## Petition and Appeals Process<sup>2</sup>

### Petitions for Redetermination

In general, any person to whom a *Notice of Determination* is issued or any directly interested person may petition for redetermination within 30 days after the notice is served. If a petition for redetermination is not filed within the 30-day period, the determination becomes final.<sup>3</sup> Petitions for redetermination must be filed in writing and state the specific reasons for the petition.<sup>4</sup> When the petition for redetermination is received, Board staff send an acknowledgment of receipt letter to the petitioner. A person may make a written request for an oral hearing at the time the petition is filed or after the appeals conference. The request must be made within 30 days of receipt of the Appeals Division's decision.

### Petitions for Reconsideration of *Notice of Successor Liability*

Any person issued a *Notice of Successor Liability* may petition for reconsideration in the same manner as a petition for redetermination.<sup>5</sup>

### Petitions for Recovery of Seized Property

When Board of Equalization staff seize cigarettes, tobacco products, or cigarette or tobacco vending machines and contents,<sup>6</sup> any person who owns or claims any interest in the property may petition for release or recovery of the property within 20 days of notice of the seizure on the ground that the property was erroneously or illegally seized.<sup>7</sup> The petition must be filed with the Board Proceedings Division. The petitioner and the Department are invited to file position memorandums, then the Legal Department's Appeals Division prepares a summary of the case for Board hearing. The Board hears and decides petitions on seized property. A *Notice of Decision* is mailed to the petitioner within five days of the Board's decision.<sup>8</sup>

### Petitions for Redetermination of a Jeopardy Determination

If the Board believes that delay will jeopardize collecting amounts due from a taxpayer or fee payer, the Board can make a "jeopardy determination." The jeopardy determination establishes the amount due and requires immediate payment.<sup>9</sup>

A person against whom a jeopardy determination is made may file a petition for redetermination. To be considered timely, the petition for redetermination must be filed within ten days after the *Notice of Jeopardy Determination* is served. The petitioner must also post security as prescribed by the Board within that ten-day period.<sup>10</sup> If a petition is not filed within the ten-day period, the amount of the determination becomes final.<sup>11</sup> Petitions for redetermination must be in writing and state the specific reasons for the petition.

A person against whom a jeopardy determination is made may also apply for an administrative hearing within 30 days after receiving the *Notice of Jeopardy Determination*, in order to do one of the following:

- Establish that the determination is excessive.
- Establish that the sale of seized property should be delayed until the administrative hearing to avoid irreparable harm to the taxpayer or feepayer.
- Request the release of all or part of the property.
- Request a stay of collection activities.

But if the taxpayer or feepayer shows good cause, the Board may allow that person to file an application for administrative hearing after the 30-day limit and grant the applicant an administrative hearing.<sup>12</sup>

The administrative hearing is conducted as an appeals conference. If the petitioner does not agree with the Appeals Division decision, the petitioner may file a request for an oral hearing before the Board. The petition must be filed in writing within 30 days after the mailing date of the decision notice. The request will be processed using the same guidelines provided for in petitions for redetermination.

### **Petition for Local Tax Reallocation**

The Board contracts with every California city, county, city and county, and redevelopment agency to administer the Bradley-Burns Uniform Local Sales and Use ("Local") Tax Law.<sup>13</sup> The local taxes collected, less Board administrative costs, are distributed at least twice a quarter.<sup>14</sup>

Occasionally, and for a variety of reasons, the local tax is distributed to the wrong jurisdiction and there is a need to redistribute funds. Redistributions also arise when cities, counties, and special districts hire contractors to examine the Board's sales and use tax records to determine whether local taxes are properly allocated and those contractors identify misallocations.

The Board has established procedures for receiving, acknowledging, and processing inquiries from local jurisdictions and their consultants regarding local tax allocations. Specifically, Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, is intended to implement, interpret, and make specific the related provisions of Revenue and Taxation Code sections 6066.3, 6066.4, and 7209 (sections 6066.3 and 6066.4 describe the collection of seller's permit information by cities and counties; section 7209 describes specific limitations on local tax redistributions).

The tax reallocation inquiry process involves five levels of review: the Allocation Group supervisor, the Refund Section supervisor, the Local Tax Appeals auditor, Board management, and ultimately the Board Members, who make a final decision at the hearing on the proper allocation. The Board's decision exhausts all parties' administrative remedies on the matter.

## Claims for Refund

Taxpayers and feepayers do not have a statutory right to a hearing on a claim for refund. However, it is the policy of the Board to grant a hearing upon request if the claimant has not had a hearing on a petition for redetermination or if the claim is based on different grounds than the petition for redetermination.

Each claim for refund must be in writing and state the specific grounds upon which it is founded.<sup>15</sup> When a claim is filed, the Board staff acknowledges it in writing. If additional documentation is needed, staff notifies the claimant, describes the information, and provides a deadline for submitting it.

## Deferring an Appeal

Either party may request a deferral of the appeal process for sufficient cause or if both parties agree. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party. Generally, deferrals are granted in the following instances:

- The parties are negotiating for the purposes of reaching a settlement agreement.
- A case with similar issues that will affect the outcome of a decision in the appeal is pending before state court, federal court, the Board, or the Internal Revenue Service.
- The taxpayer files for bankruptcy.

## Settlement, Sales and Use Taxes<sup>16</sup>

A person with an active sales or use tax matter in dispute may request a settlement of the disputed amounts at any time up to 45 days before the scheduled Board hearing date.<sup>17</sup>

If the taxpayer requests a settlement, the normal petition and appeals processes will continue. But the petition or claim will be presented to the Board for hearing or decision only if a settlement is not reached. If a settlement is reached, the taxpayer is required to waive all further appeal rights related to the settled liability, including future claims for refund.

The Board's Settlement Division staff evaluate all qualifying proposals. When staff and the taxpayer negotiate a settlement, the case is presented to executive management, and for large cases, to the Attorney General for comment and the Board Members for approval. The settlement is final when the Executive Director or his or her designee signs the settlement agreement.

Members of the Board are prohibited from participating in the settlement process except in the final approval phase.<sup>18</sup> As a result, sales and use tax cases are excluded from settlement consideration if they have been heard before the Board or had any direct Member involvement.

Once a settlement matter has been scheduled by the Board Proceedings Division, staff can respond to an inquiry regarding that matter. If a Member has a question that he or she would like to resolve before the closed session, the inquiry should be directed to the Chief Counsel. The matter will remain on the closed session agenda as scheduled. Questions may also be raised during the closed session discussion.

The Board's postponement of a decision on a settlement is not a disapproval of the recommendation, and the item will automatically be rescheduled for further consideration within 45 days. If the matter cannot be rescheduled within 45 days, staff will advise the Board that unless the Board disapproves the recommendation, it will be considered approved.<sup>19</sup>

### **Offers in Compromise**

The Board provides an Offers in Compromise program for taxpayers and fee payers who do not have and will not have in the foreseeable future, the income, assets, or means to pay their tax liability in full. Taxpayers and fee payers qualify if they

- Have a final tax or fee liability on a closed account,
- Are no longer associated with the business that incurred the liability or a similar business,
- Do not dispute the amount of tax or fee owed, and
- Cannot pay the full amount owed in a reasonable amount of time.

The offer has to be in the state's best interest. Generally, an offer will be accepted when the amount offered is more than the Board can expect to collect within a reasonable period of time, typically from five to seven years. Offers in Compromise appear on the Administrative Calendar for Board approval.

### **Bankruptcy**

While a taxpayer's or fee payer's petition for redetermination is pending, that person may file a petition for relief under the Bankruptcy Code. When the Board receives notice of a bankruptcy filing, it is the Board's policy to notify the filing party of the Board's intention to proceed with the administrative tax appeal process because the tax appeal falls within an exception to the automatic stay provisions of the Bankruptcy Code.<sup>20</sup> In asset bankruptcy cases, the Board may file a proof of claim in the bankruptcy case to preserve its right to receive a distribution from the bankruptcy estate in full or partial payment of that claim. If the Board files a proof of claim while an administrative tax appeal is pending, the taxpayer, fee payer, or bankruptcy trustee has a legal right to object to the claim. If any of those parties files an objection, the bankruptcy court determines whether the claim is valid.

### **Appeals Conference**

An appeals conference is held to review the legal and audit issues raised in the petition for redetermination or claim for refund and provide the taxpayer or fee payer, the department assessing the tax or fee, and the Board with a proposed recommendation for resolving the issues presented in the appeal. The Board Proceedings Division schedules, postpones, and reschedules appeals conferences. The appeals conference is held by an attorney or an auditor ("appeals conference holder") from the Appeals Division. Conferences are scheduled as quickly as workload permits.<sup>21</sup> The case may be expedited if the taxpayer or fee payer is willing to come to Sacramento for a conference or willing to have a videoconference or telephone conference. Priority is given to certain cases, including cases where more than two years have elapsed since the petition or claim was filed.

## **Issuance of Decision and Recommendation**

Within 90 days after the appeals conference and the submission of any additional documents, the appeals conference holder will issue a written report called a *Decision and Recommendation* (D&R). The D&R outlines the issues, the relevant facts, the parties' contentions, and the appeals conference holder's application of the pertinent law to his or her findings of fact. Each D&R concludes with a recommendation for resolving the issues raised in the appeal.<sup>22</sup>

## **Options Letter**

When the D&R is issued, an options letter accompanying the D&R advises the parties of the next action they may take to continue the administrative appeals process and deadlines for action.

## **Additional Conferences**

Occasionally, it is necessary to conduct a second appeals conference. The supervising tax counsel in the Appeals Division decides whether a second conference is necessary.

## **Requests for Board Hearing**

If the taxpayer or the department disagrees with the D&R, either party may request an oral hearing before the Board.<sup>23</sup> When a case involves certain programs jointly administered by the Board and another state agency (such as the Department of Toxic Substances Control or Department of Insurance), the other state agency may also request an oral Board hearing.

## **Board Hearing**

The Board hearing is an oral presentation before the Board that allows taxpayers and fee payers to present their positions on unresolved issues remaining after their appeals conference. Taxpayers and fee payers may represent themselves at the oral hearing or designate any other person as their representative.<sup>24</sup>

## **Acknowledgment Letter**

After receiving a hearing request, the Board Proceedings Division will send the taxpayer or fee payer (or other party requesting a hearing) an acknowledgment letter. The letter will include the date and location of the oral hearing and contact information for a person in the Board Proceedings Division. Information on the conduct of the hearing, postponements, interest and penalties, and Taxpayers' Rights Advocate is included with the letter.

## **Notice of Hearing**

Approximately 60 days before the hearing date, Board Proceedings Division will mail the taxpayer or fee payer a Board hearing packet. The packet includes a notice of hearing and a response form,<sup>25</sup> along with detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and the Taxpayers' Rights Advocate. Directions to the hearing location are also provided.

Failure to respond to the notice will result in the hearing being removed from the oral hearing calendar and placed on the nonappearance matters. The Board will then make its decision based on the written record.<sup>26</sup>

### **Postponement of Board Hearing**

Before the hearing notice response deadline, the Chief of Board Proceedings may grant the taxpayer or feepayer one postponement if the parties agree and sufficient justification is provided. After the response deadline has passed, a postponement can only be granted if the parties agree and the requesting party demonstrates extreme hardship. In addition, the Board may, at its discretion, grant initial postponements and second postponements.<sup>27</sup>

### **Filing Briefs<sup>28</sup>**

Taxpayers and feePAYERS may file briefs supporting their position. All briefs must be filed with the Chief of Board Proceedings. An opening brief must be filed 45 days before the Board hearing. Reply briefs must be filed 30 days before the hearing. The Chief of Board Proceedings may grant a reasonable extension of time for filing briefs if the taxpayer or feepayer shows extreme hardship.

### **Staff Summary**

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer or feepayer a copy of the hearing summary prepared by the Appeals Division, which sets forth the remaining unresolved issues for the Board Members' decision.

### **Conduct of the Board**

Detailed information regarding the Board meeting is provided in the "Board Meetings" section of this reference. That section includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

### ***Nonappearance Matters***

#### **Matters for Action**

The Board meeting agendas include an agenda item for nonappearance matters for all tax programs entitled "Tax Program Nonappearance Matters." Cases brought before the Board by the Appeals Division appear on the agenda as "Legal Appeals Matters (Consent and Adjudicatory)." This item, commonly referred to as the "Final Action Calendar," typically includes a calendar including four kinds of matters:

1. Cases previously heard by the Board and taken under consideration, which are now presented to the Board for final action.
2. Hearing Request Waived. Cases in which a hearing was requested, then waived.
3. Hearing Notice Sent—No Response. Cases in which a hearing was requested but the taxpayer did not respond to the hearing notice.
4. Petitions for Rehearing. Petitions for rehearing on cases previously decided by the Board. The Board has sole discretion to grant a petition for rehearing. Typically, the Board only grants petitions for rehearing that involve new arguments or evidence.

The Board Proceedings Division prepares the Final Action Calendars and assembles materials for them.

### **Matters for Consideration**

At each Board meeting where business taxes matters are considered, matters for consideration without hearing may be presented to the Board for approval. Items included on this calendar are redeterminations (tax and penalty amounts), relief of penalties or interest of any type on nonfinal liabilities, denials of relief of penalties or interest, denial of claims for refund, and relief of nonfinal liabilities due to reasonable reliance on written advice from the Board<sup>29</sup> where the dollar amount of such relief exceeds \$50,000. The calendar may also include relief of nonfinal liabilities due to reasonable reliance on written advice from the Board<sup>30</sup> for any amounts of \$50,000 or less not approved through delegation to the department, relief of fraud penalties on nonfinal liabilities of any amount, and approvals for qualified distributor status under the Motor Vehicle Fuel Tax Law.

Consent and adjudicatory cases are presented to the Board as separate calendar items.

### **Credits, Cancellations, and Refund Matters**

At each Board meeting where business taxes matters are considered, matters involving credits, cancellations, and refunds may be presented to the Board Members for their consideration and approval without a hearing. Items included on this calendar are credits, cancellations, refunds, relief of penalties or interest of any type on final liabilities, and relief of final liabilities due to reasonable reliance on written advice from the Board<sup>31</sup> where the total dollar amount of the relief (including tax, interest, and penalty) exceeds \$50,000. The calendar may also include relief of final liabilities due to reasonable reliance on written advice from the Board<sup>32</sup> for any amounts of \$50,000 or less not approved through delegation to the department, and relief of fraud penalties on final liabilities of any amount. *Exception:* "See Vehicle, Vessel, and Aircraft Cancellations," on page 4-9.

Consent and adjudicatory cases are presented to the Board as separate agenda items on the Board hearing calendar.

### **Board Orders**

#### **Scope of Board's Authority**

The Board may grant or deny all or part of a petition for redetermination or claim for refund, but may increase a deficiency determination only if a claim for an increase is made at or before the hearing.

In granting all or part of a petition, the Board must make a finding that the amount canceled was wrongly determined or exceeded the amount legally due from the person against whom the determination was made.

In granting claims for refund, the Board must find that an amount of tax, interest, or penalty was overpaid and must also identify the person who made the payment or from whom the amount was collected.

The Board may not consider a petition for redetermination or claim for refund based on grounds that the Department of Toxic Substances Control has improperly or wrongly determined that a substance is a hazardous or extremely hazardous waste.<sup>33</sup>

### **Submitted for Decision**

At the conclusion of a hearing, the Board may take a claim or petition under consideration. This means that the Board will issue its decision later. The Board may also choose to direct the staff to consider additional evidence or information presented by the petitioner or claimant, examine records made available by the petitioner or claimant, and if necessary, perform a reaudit.

In addition, the Board may direct the petitioner, claimant or staff to prepare and submit evidence or points and authorities in support of their contentions, and may direct the Appeals Division to provide a recommendation to the Board. When this is done, a definite time limit is set for submissions.

### **Redeterminations**

The Board may order that the tax be redetermined without adjustment or that the measure of tax or penalty (amount on which the tax or penalty is based) be adjusted. If the measure of tax is to be adjusted, this normally will require computation of an amount of tax and interest. If a reaudit has already been performed, the tax may be redetermined consistent with staff recommendations.

### **Claims for Refund**

After a hearing, the Board may act on a claim for refund by denying the claim, granting all of the claim, or granting part of the claim. The official notice of Board action sent to the taxpayer advises the claimant of the Board's action on the claim.

### **Vehicle, Vessel, and Aircraft Cancellations**

Approvals of final and nonfinal liability cancellations of more than \$50,000 involving vehicles, vessels and aircraft have been delegated by the Members of the Board to the department. A public record of amounts of more than \$50,000 is available in Board Proceedings Division at least ten calendar days before the approval date.

### **Relief of Tax, Interest, and Penalty**

#### *Reasonable Reliance on Written Advice*

The Board has the statutory authority, under the Sales and Use Tax Law, to relieve a person of tax, penalty, and interest if the person failed to file a timely return or make a timely payment due to the person's reasonable reliance on written advice provided by the Board in response to that person's written request for advice.<sup>34</sup>

The Board must find that all of the following conditions are satisfied in order to grant the relief:

- The person requested in writing that the Board advise him or her whether a particular activity or transaction is subject to tax;
- The Board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax;
- The liability for taxes applied to a particular activity or transaction before the Board rescinded or modified the advice given or a change in statutory or constitutional law.

The advice is specific to the taxpayer—only the person making the written request is entitled to rely on the Board’s written advice for purposes of requesting relief. Similar provisions are found in other tax and fee laws administered by the Board.<sup>35</sup>

#### *Disasters*

The Board has statutory authority to relieve a person of interest due if the person’s failure to file a timely return or make a timely payment was due to a disaster and occurred despite the exercise of ordinary care and the absence of willful neglect.

The person seeking relief must file a statement with the Board made under penalty of perjury that states the facts on which the claim for relief is based.<sup>36</sup>

#### *Unreasonable Delay by Board or Department of Motor Vehicles Employee*

The Board may relieve a person of all or part of the interest due on a tax liability that arose on or after July 1, 1999, if the failure to pay tax was due in whole or in part to an unreasonable error or delay by a Board employee acting in his or her official capacity. The Board may also relieve interest where the failure to pay use tax on the purchase price of a vehicle or vessel was the direct result of an error by the Department of Motor Vehicles in calculating the tax. Interest will not be relieved if a significant aspect of the error or delay was caused by an act or omission of the taxpayer or feepayer.<sup>37</sup>

#### *Penalties*

Tax and fee laws provide the Board with discretionary authority to relieve various penalties, including the penalties imposed for failure to file and failure to pay on time.<sup>38</sup> Relief requests for penalties in excess of \$50,000 are presented to the Board as a part of the nonappearance calendar, under matters titled “Relief of Penalty” or “Credits, Cancellations and Refunds” depending on whether the penalty relates to a final or non-final liability. However, all penalties are included in cases presented for hearing before the Board. Examples of motions to relieve or deny these penalties are included under “Forms of Motion” in section 3, on page 3-4.

### **Submitted for Decision**

At the conclusion of the hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the conclusion of the hearing day, the Board may decide the matter and the Appeals Division will notify the parties of the Board’s decision by letter. If the Board does not decide the matter at the end of the hearing day, the Appeals Division will prepare a proposed opinion or decision for the Board’s consideration on a nonappearance calendar at a later Board Meeting.

### **Petition for Rehearing**

#### *General*

Rehearings are not essential to due process of law in administrative proceedings. The various business taxes laws administered by the Board make no provision for rehearings of Board action. However, the business tax laws set a time at which the Board’s action becomes final and also provides for cancellation of erroneous or illegal assessments and for granting refunds of tax erroneously or illegally paid. Therefore, the Board has authority to rehear its action on petitions for redetermination and claims for refund provided the petition is filed before the

Board's action is made final by statute. The Board, at its discretion, may grant a rehearing on a petition for redetermination or claim for refund.<sup>39</sup>

#### *Time Limitations*

The Board's decision on a petition for redetermination becomes final 30 days after the Board mails its official notice of Board action to the taxpayer or feepayer (*Notice of Redetermination*) unless a petition for rehearing is filed within that period. If the taxpayer or feepayer files a timely petition for rehearing, the matter will be presented to the Board for consideration. A new *Notice of Redetermination* will be issued upon the Board's denial of the petition for rehearing or if the Board grants a rehearing, when the Board renders its decision on the rehearing. The new *Notice of Redetermination* will become final 30 days after it is mailed.

The Board's action on a claim for refund becomes final 90 days after the notice is mailed. If before that time the claimant files an action in court for recovery of the tax, jurisdiction over the entire subject matter moves to the superior court in which the action is filed and the Board no longer has jurisdiction.

#### **Rescission of Board Action**

The Board may, on its own motion, rescind any decision made on a petition for redetermination and again decide the issue, provided the rescission takes place before the notice to the taxpayer or feepayer becomes final: 30 days after the mailing of the *Notice of Determination* or *Official Notice of Board Action*. The motion to rescind a prior Board decision must be made by a Member who voted with the majority.

#### **Rate Setting**

The Board approves the following tax and fee rates within the time required by statute: hazardous substances tax fees (including activity fees, environmental fees, facility fees, generator fees, disposal fees, permit-by-rule fees, and conditional authorization fees); precollection rate of sales tax on motor vehicle fuel (gasoline); aircraft jet fuel and diesel fuel; tobacco products tax; diesel fuel tax rate for interstate users; emergency telephone users surcharge; and the occupational lead poisoning prevention fee.

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## Notes

- <sup>1</sup> A “Tax Program” is defined as any revenue collecting or advisory activity the BOE is obligated to perform by provision of law or by contract.
- <sup>2</sup> References to statutes in the text throughout this section primarily refer to the Sales and Use Tax Law. Most of the other tax and fee programs have similar provisions.
- <sup>3</sup> Revenue and Taxation Code section 6561.
- <sup>4</sup> California Code of Regulations, title 18, section 5021.
- <sup>5</sup> Revenue and Taxation Code section 6814.
- <sup>6</sup> Revenue and Taxation Code section 30436.
- <sup>7</sup> Revenue and Taxation Code section 30438.
- <sup>8</sup> Revenue and Taxation Code section 30439.
- <sup>9</sup> Revenue and Taxation Code section 6536.
- <sup>10</sup> Revenue and Taxation Code section 6538.
- <sup>11</sup> Revenue and Taxation Code section 6537.
- <sup>12</sup> Revenue and Taxation Code section 6538.5.
- <sup>13</sup> Revenue and Taxation Code section 7202.
- <sup>14</sup> Revenue and Taxation Code section 7204.3.
- <sup>15</sup> Revenue and Taxation Code section 6904.
- <sup>16</sup> Revenue and Taxation Code section 7093.5.
- <sup>17</sup> Policy per memorandum dated May 21, 2001.
- <sup>18</sup> Revenue and Taxation Code section 7093.5, subdivision (d).
- <sup>19</sup> Revenue and Taxation Code section 7093.5, subdivision (e).
- <sup>20</sup> 11 U.S.C. section 362(b)(9).
- <sup>21</sup> California Code of Regulations, title 18, section 5023, subdivision (a).
- <sup>22</sup> California Code of Regulations, title 18, section 5023, subdivision (e).
- <sup>23</sup> California Code of Regulations, title 18, section 5023, subdivision (f).
- <sup>24</sup> California Code of Regulations, title 18, section 5073.
- <sup>25</sup> California Code of Regulations, title 18, section 5076, subdivision (a).
- <sup>26</sup> California Code of Regulations, title 18, section 5076, subdivision (e).
- <sup>27</sup> California Code of Regulations, title 18, section 5076, subdivision (c).
- <sup>28</sup> California Code of Regulations, title 18, section 5075.
- <sup>29</sup> Revenue and Taxation Code section 6596.
- <sup>30</sup> Revenue and Taxation Code section 6596.
- <sup>31</sup> Revenue and Taxation Code section 6596.
- <sup>32</sup> Revenue and Taxation Code section 6596.
- <sup>33</sup> Revenue and Taxation Code sections 43301 and 43452.
- <sup>34</sup> Revenue and Taxation Code section 6596.
- <sup>35</sup> Revenue and Taxation Code sections 7657.1 (Motor Vehicle Fuel License Tax Law), 32257 (Alcoholic Beverage Tax Law), and 55045 (Fee Collection Procedures Law).
- <sup>36</sup> Revenue and Taxation Code section 6593.
- <sup>37</sup> Revenue and Taxation Code section 6593.5.
- <sup>38</sup> California Code of Regulations, title 18, section 1703.
- <sup>39</sup> California Code of Regulations, title 18, section 5082.

# Corporation Franchise and Personal Income Tax Appeals

## Scope of Board's Authority

The Board serves as an appellate body in final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California's income tax laws.

## FTB Actions that May Be Appealed to the Board

- Notice of Action on Taxpayer's Protest against a tax assessment
- Notice of Action for Relief from Joint Tax Liability
- Notice of Action on Cancellation, Credit, or Refund, or a denial letter, on a claim for a tax refund
- Deemed Disallowance of Claim for Refund
- Notice of Determination Not to Abate Interest
- Notice of Action on Jeopardy Determination

## Appeals Process

### Notice of Action for Tax Assessment<sup>1</sup>

A person or corporation to whom the Franchise Tax Board issues a *Notice of Action* for tax assessment has 30 days from the date the notice is issued to file an appeal with the Board of Equalization. Appeals filed after the 30-day deadline will be denied. If the appeal is denied due to late filing, Board Proceedings staff will inform the taxpayer of the right to pay the assessment in full and then file a claim for refund with the Franchise Tax Board. If the Franchise Tax Board denies the claim for refund, or if a response is not received from the Franchise Tax Board within six months, the taxpayer may file a timely appeal with the Board (see "Deemed Disallowance," on next page).

### Notice of Action for Relief from Joint Tax Liability<sup>2</sup>

Any person to whom the Franchise Tax Board issues a *Notice of Action for Relief from Joint Tax Liability* may file an appeal in the same manner described in "Notice of Action for Tax Assessment," above.

### Notice of Action on Cancellation, Credit, or Refund<sup>3</sup>

A person or corporation to whom the Franchise Tax Board issues a *Notice of Action on Cancellation, Credit, or Refund* has 90 days from the date the notice is issued to file an appeal with the Board. Appeals filed after the 90-day deadline will be denied. If the appeal is denied due to late filing, Board Proceedings staff will inform the taxpayer of the right to file a claim in superior court against the Franchise Tax Board. They will also advise the taxpayer to contact an attorney or the Franchise Tax Board for more information.

#### **Letter Denying Claim for Refund<sup>4</sup>**

Any person or corporation to whom the Franchise Tax Board issues a letter denying their claim for refund may file an appeal in the same manner as described above in “Notice of Action on Cancellation, Credit or Refund.”

#### **Deemed Disallowance of Claim for Refund<sup>5</sup>**

Any person or corporation that has filed a written request for refund with the Franchise Tax Board may file an appeal with the Board if the Franchise Tax Board has not responded to the request within six months.

#### **Notice of Determination Not to Abate Interest for Unpaid Interest<sup>6</sup>**

Any person to whom the Franchise Tax Board issues a *Notice of Determination Not to Abate Interest for Unpaid Interest* may file an appeal in the same manner as described above in “Notice of Action for Tax Assessment.”

#### **Notice of Determination Not to Abate Interest for Paid Interest<sup>7</sup>**

Any person to whom the Franchise Tax Board issues a *Notice of Determination Not to Abate Interest for Paid Interest*, may file an appeal in the same manner as described above in “Notice of Action Cancellation, Credit, or Refund.”

#### **Notice of Action on Jeopardy Determination<sup>8</sup>**

Any person or corporation to whom the Franchise Tax Board issues a *Notice of Action for Jeopardy Determination* may file an appeal with the Board within 60 days of the date the notice was issued. Late appeals will be denied.

## General Briefing Process <sup>9</sup>

The briefing process for a Franchise Tax Board appeal generally proceeds as shown below.

<i>Action or Step</i>	<i>Brief Due</i>
<i>Opening brief:</i> If original appeal letter is not complete, taxpayer is asked to file a complete opening brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Reply brief:</i> If original appeal letter is complete, Franchise Tax Board is asked to file a reply brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Taxpayer's supplemental brief:</i> After receiving FTB reply brief, Board Proceedings Division notifies both parties that the taxpayer may file a supplemental brief in response.	Within 30 days of the notification letter.
<i>Briefing process normally ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after date of the notification letter in the previous step.
<b><i>Steps allowed at the discretion of the Board Proceedings Division</i></b>	
<i>FTB supplemental brief request:</i> If the taxpayer files a supplemental brief, Board Proceedings staff will notify both parties and advise the FTB it has 20 days in which to request permission to file a supplemental brief.	Within 20 days of the notification letter.
<i>FTB supplemental brief:</i> If Board Proceedings staff grants the FTB request, FTB may file a supplemental brief.	Within 30 days of the granting of the request. If the request is denied, the briefing process ends.
<i>Taxpayer's additional brief:</i> If FTB files a supplemental brief, the Board Proceedings Division notifies both parties that the taxpayer may file an additional response brief.	Within 30 days of the notification letter.
<i>Briefing process ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after the date of the notification letter in the previous step.

## *Innocent Spouse Briefing Process* <sup>10</sup>

When the Board Proceedings staff acknowledges receipt of the appeal, the appealing spouse will be asked to complete their appeal by filing a complete opening brief and returning it to the Board within 90 days of the letter unless the original appeal letter provided sufficient information. If the Board Proceedings staff determine that the appealing spouse provided sufficient information in the appeal letter, the responding spouse (the spouse who did not file the appeal) will be sent written notice of the appeal and given 90 days in which to file an appeal. The responding spouse will also be provided with a copy of the appeal letter and any supporting documentation, except for confidential taxpayer information, social security,

address and telephone number. If the responding spouse does not file an appeal, that party will waive all rights to participate in the appeal proceeding before the Board.

After Board Proceedings staff receive the responding spouse's appeal brief or 90 days has passed, the staff will send a letter to all parties acknowledging the responding spouse's brief or the time expiration. At this point, the Franchise Tax Board will be directed to file a reply brief within 90 days, addressing the briefs filed by one or both spouses.

Once Board Proceeding staff receive and acknowledge the Franchise Tax Board's reply brief, the spouses participating in the Innocent Spouse appeal will be given 30 days to respond to the Franchise Tax Board's reply brief. The appeal will then follow the same guidelines as outlined in the general appeals process described in the previous section starting with the taxpayers' supplemental brief.

### ***Extensions of Time***

At any time during the briefing process, either party may file a request for extension to file a brief. The request must be in writing and clearly state the reason for the request. The request must be filed before the briefing deadline. The Chief of Board Proceedings may grant the extension request if a party shows extreme hardship or if both parties agree in writing. Generally, the Chief of Board Proceedings grants only one extension during the briefing process.

### ***Deferring an Appeal***

Either party may request a deferral of the appeal process for sufficient cause or if both parties agree. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party. Generally, deferrals are granted in the following instances:

- The parties are negotiating for the purposes of reaching a settlement agreement.
- A case with similar issues that will affect the outcome of a decision in the appeal is pending before state court, federal court, the Board, or the Internal Revenue Service.
- The taxpayer files for bankruptcy.

### ***Settlement***

At any time during the appeals process, the taxpayer may file a written request for settlement with the Franchise Tax Board. Once the Franchise Tax Board accepts the appeal into its settlement program it will notify Board Proceedings staff in writing. Board Proceedings staff then will notify all parties, in writing, that appeal proceedings in the matter are being deferred pending the outcome of settlement negotiations.

### ***Bankruptcy***

If the taxpayer files for bankruptcy at any time during the appeals process, the taxpayer must notify Board Proceedings staff immediately. The taxpayer should write a letter stating that the taxpayer has filed for bankruptcy and provide supporting documents. When Board Proceedings receives sufficient information, division staff will send a letter to both parties indicating that the appeal proceedings are deferred until the bankruptcy is resolved.

## **Board Hearing**

The Board hearing is an oral presentation before the Board that allows the taxpayer to present his position on unresolved tax issues. The taxpayer may represent himself or herself at the oral hearing or choose an attorney, an accountant, or any other person over the age of 18 as a representative.

### ***Acknowledgment Letter***

After receiving the taxpayer's hearing request, the Board Proceedings Division will send the taxpayer an acknowledgment letter. The letter will include the date and location of the oral hearing and provide the taxpayer with contact information for a person in the Board Proceedings Division. The taxpayer will also be provided information on the conduct of the hearing, postponements, interest and penalties, and the Taxpayers' Rights Advocate.

### ***Notice of Hearing***

Approximately 60 days before the hearing date, Board Proceedings will mail the taxpayer a Board hearing packet. The packet includes a notice of hearing, a hearing notice response form,<sup>11</sup> and detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and Taxpayers' Rights Advocate. Directions to the hearing location are also provided in the hearing packet.

If the taxpayer does not respond to the notice, the hearing will be removed from the oral hearing calendar and placed on the nonappearance matters calendar. The Board will then make its decision based on the written record.<sup>12</sup>

### ***Postponement of Board Hearing***

Before the hearing notice response deadline, the Chief of Board Proceedings may grant the taxpayer one postponement if the parties agree and sufficient justification is provided. After the response deadline has passed, a postponement can only be granted if the parties agree and the requesting party demonstrates extreme hardship. In addition, the Board may, at its discretion, grant postponements and second postponements.<sup>13</sup>

### ***Additional Briefs or Evidence***<sup>14</sup>

For appeals going to oral hearing, if the Board or Board staff determine that insufficient briefing or evidence has been provided, either the Board or staff may request additional briefing or evidence from the parties. The taxpayers' briefs must be filed with the Chief of Board Proceedings no later than 45 days before the hearing. Franchise Tax Board briefs must be filed with the Chief of Board Proceedings no later than 30 days before the hearing. Upon showing of extreme hardship the Chief of Board Proceedings may grant a reasonable extension of time for the filing of briefs.

### ***Staff Summary***

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer a copy of the hearing summary prepared by the Appeals Division, which states the unresolved tax issues for the Board Members' decision.

## **Conduct of the Board**

More detailed information regarding the Board meeting is provided in the “Board Meetings” section of this reference. It includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

## **Submitted for Decision**

At the conclusion of the hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the conclusion of the hearing day, the Board may decide the matter and the Appeals Division will notify the parties of the Board’s decision by letter. If the Board does not decide the matter at the end of the hearing day, the Appeals Division will prepare a proposed opinion or decision for the Board’s consideration on a nonappearance calendar at a later Board meeting.

## **Nonappearance Matters**

### *Matters for Action*

The Board Meeting agendas include an agenda item for nonappearance matters for all tax programs entitled “Tax Program Non-Appearance Matter.” Cases brought before the Board by the Appeals Division appear on the agenda as “Legal Appeals Matters (Consent and Adjudicatory).” This item, commonly referred to as the “Final Action Calendar,” typically includes four kinds of matters: Opinions, Decisions, Petitions for Rehearing, and Opinions on Petition for Rehearing.

The Board Proceedings Division is responsible for preparing the Final Action Calendars and assembling materials for them.

## **Formal Opinions**

Formal opinions are precedent Board decisions that a taxpayer or legal staff may refer to in presenting legal arguments before the Board.

The Appeals Division staff generally write formal opinions for Board approval at the Board’s direction when an appeal

- Involves an interpretation of a new or existing law.
- Applies an existing rule to a set of facts significantly different from those found in previously published formal opinions.
- Modifies an existing rule or interpretation.
- Resolves or reconciles an area of confusion or apparent conflict.
- Involves an issue of continuing or special public interest.

Once the formal opinion is drafted, the matter will be placed on a nonappearance adjudicatory calendar for consideration.

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board’s Opinion. An Opinion will become final 30 days after the Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.<sup>15</sup>

## **Decisions**

Decisions are recommendations that the Appeals Division staff prepare and present to the Board Members for adoption based upon written filings in the appeal file. They reflect the Board's action in routine and repetitive matters. Decisions are not considered precedent and should not be referenced in legal arguments presented before the Board.<sup>16</sup>

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board's Decision. A Decision will become final 30 days after Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.<sup>17</sup>

## **Petitions for Rehearing**

The taxpayer, the Franchise Tax Board, or both may file a petition for rehearing if they disagree with the Board's decision. The petition for rehearing must be filed within 30 days of the date of the Board's decision.<sup>18</sup>

The Board Proceedings staff will acknowledge the petition for rehearing and provide the opposing party 30 days in which to respond to the argument presented in the petition.

Upon receipt of the response to the petition for rehearing or after 30 days have passed, the Board Proceedings staff will inform all parties that the briefing has concluded and the Appeals Division staff will be given 30 days in which to prepare a recommendation for Board approval based upon the written filings. Once the recommendation is complete, the matter is placed on a nonappearance calendar for Board approval.

Immediately following the Board's decision, Board Proceedings Division staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision on the petition for rehearing. If the Board denies the petition for rehearing, the Board's original action becomes final on the denial date.

However, if the Board grants the petition for rehearing, the taxpayer and the Franchise Tax Board will be given a new hearing date in which to return before the Board and present arguments based upon the information in the petition. At the conclusion of oral arguments, the Board will make its decision on the petition. Board Proceedings staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision, which will become final 30 days after the rehearing date<sup>19</sup>.

Once an action on an appeal from the Franchise Tax Board is final, the Board has no authority to rescind it.

## **Dismissal of Appeals**

At any time during the appeals process, the taxpayer may file a written request with Board Proceedings staff indicating the taxpayer's desire to withdraw the appeal. Upon receipt of the request for dismissal, the Chief of Board Proceedings will dismiss the appeal.

An appeal may also be dismissed if both the taxpayer and the Franchise Tax Board reach a resolution in the pending appeal. The taxpayer and Franchise Tax Board must sign a written stipulation indicating the matter has been resolved to each party's satisfaction. Upon receipt of the written stipulation, the Chief of Board Proceedings will dismiss the appeal consistent with the terms of the resolution.

Once a taxpayer withdraws an appeal, the Board may not have jurisdiction on appeal matters for the tax years and issues that were a part of the dismissed appeal.

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## Notes

- <sup>1</sup> Revenue and Taxation Code sections 19045 and 19046.
- <sup>2</sup> Revenue and Taxation Code sections 19045 and 19046.
- <sup>3</sup> Revenue and Taxation Code sections 19324 and 19332.
- <sup>4</sup> Revenue and Taxation Code sections 19324 and 19332.
- <sup>5</sup> Revenue and Taxation Code sections 19331 and 19332.
- <sup>6</sup> Revenue and Taxation Code section 19104, subdivision (b).
- <sup>7</sup> Revenue and Taxation Code section 19104, subdivision (b).
- <sup>8</sup> Revenue and Taxation Code sections 19084 and 19085.
- <sup>9</sup> California Code of Regulations, title 18, sections 5075 and 5075.1.
- <sup>10</sup> California Code of Regulations, title 18, sections 5075 and 5075.1
- <sup>11</sup> California Code of Regulations, title 18, sections 5076, subdivision (a), and 5076.1.
- <sup>12</sup> California Code of Regulations, title 18, section 5076, subdivision (e).
- <sup>13</sup> California Code of Regulations, title 18, section 5076, subdivision (c).
- <sup>14</sup> California Code of Regulations, title 18, section 5075.1, subdivision (e).
- <sup>15</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>16</sup> *Appeal of Charles W. Fowlks*, 88-SBE-023-A, Oct. 31, 1989.
- <sup>17</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>18</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>19</sup> Revenue and Taxation Code sections 19048 and 19346.



# Homeowner and Renter Assistance

## Scope of Board’s Authority

The Board serves as an appellate body in final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California’s income tax laws. The Homeowner and Renter Assistance Program is one of the programs administered by the Franchise Tax Board.

## Action from Which Appeals May Be Taken

Denial of Homeowner and Renter Property Tax Assistance

## Appeals Process

### Time Limits for Filing an Appeal<sup>1</sup>

A person to whom the Franchise Tax Board issues a *Denial of Homeowner and Renter Property Tax Assistance* has 90 days from the date the denial is issued to file an appeal with the Board. Late appeals will be denied.

### General Briefing Process<sup>2</sup>

The briefing process generally proceeds as shown below.

<i>Action or Step</i>	<i>Brief Due</i>
<i>Opening brief:</i> If original appeal letter is not complete, taxpayer is asked to file a complete opening brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Reply brief:</i> If original appeal letter is complete, Franchise Tax Board is asked to file a reply brief.	Within 60 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Taxpayer’s supplemental brief:</i> After receiving FTB reply brief, Board Proceedings Division notifies both parties that the taxpayer may file a supplemental brief in response.	Within 30 days of the notification letter.
<i>Briefing process normally ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after date of the notification letter in the previous step.

<i>Steps allowed at the discretion of the Board Proceedings Division</i>	
<i>FTB supplemental brief request:</i> If the taxpayer files a supplemental brief, Board Proceedings staff will notify both parties and advise the FTB it has 20 days in which to request permission to file a supplemental brief.	Within 20 days of the notification letter.
<i>FTB supplemental brief:</i> If Board Proceedings staff grants the FTB request, FTB may file a supplemental brief.	Within 30 days of the granting of the request. If the request is denied, the briefing process ends.
<i>Taxpayer's additional brief:</i> If FTB files a supplemental brief, the Board Proceedings Division notifies both parties that the taxpayer may file an additional response brief.	Within 30 days of the notification letter.
<i>Briefing process ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after the date of the notification letter in the previous step.

### **Extensions of Time**

At any time during the briefing process, either party may file a request for extension of time to file a brief. The request must be in writing and clearly state the reason for the request. The request must be filed before the briefing deadline. The Chief of Board Proceedings may grant the extension request if a party shows extreme hardship or if both parties agree in writing. Generally, the Chief of Board Proceedings grants only one extension during the briefing process.

### **Postponement of Board Hearing**

A taxpayer may file a request for postponement with the Chief of Board Proceedings, provided there is sufficient justification and the request for a postponement is made by the specified response deadline. After the specified response deadline, the Chief of Board Proceedings may grant a postponement request upon agreement of the parties and the showing of extreme hardship.<sup>3</sup>

### **Deferring an Appeal**

Either party may request a deferral of the appeal process for sufficient cause or upon agreement of both parties. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party.

### **Settlement**

At any time during the appeals process, the taxpayer may file a written request for settlement with the Franchise Tax Board. Once the Franchise Tax Board accepts the appeal into its settlement program, it will notify Board Proceedings staff in writing. Board Proceedings staff will then notify all parties, in writing, that appeal proceedings in the matter is in deferral status pending the outcome of settlement negotiations.

## **Board Hearing**

The Board hearing is an oral presentation before the Board that gives the taxpayer the opportunity to present his or her position on unresolved tax issues. The taxpayer may represent himself or herself at the oral hearing or choose a representative. That person can be an attorney, an accountant, or anyone else over the age of 18.

### **Acknowledgment Letter**

After receiving the taxpayer's hearing request, the Board Proceedings Division will send the taxpayer an acknowledgment letter. The letter will include the date of the oral hearing, state the location where the hearing will be held, and provide the taxpayer with a contact person in the Board Proceedings Division. The taxpayer will also be provided information on the conduct of the hearing, postponements, interest and penalties, and the Taxpayers' Rights Advocate.

### **Notice of Hearing**

Approximately 60 days prior to the hearing date, Board Proceedings will mail a Board hearing packet to the taxpayer. The packet includes a notice of hearing, a response to the hearing notice,<sup>4</sup> and detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and the Taxpayers' Rights Advocate. Directions to the hearing location are also provided in the hearing packet.

Failure to respond to the notice will result in the hearing being removed from the oral hearing calendar and placed on the nonappearance matters calendar. The Board will then make its decision based on the written record.<sup>5</sup>

### **Postponement of Board Hearing**

A taxpayer may file request for postponement with the Chief of Board Proceedings, provided there is sufficient justification and the request for a postponement is made by the specified response deadline. After the specified response deadline, the Chief of Board Proceedings may grant a postponement request upon agreement of the parties and the showing of extreme hardship.<sup>6</sup>

### **Additional Briefs or Evidence<sup>7</sup>**

For appeals going to oral hearing, if the Board or Board staff determine that insufficient briefing or evidence has been provided, either may request additional briefing or evidence from the parties. The taxpayers' briefs must be filed with the Chief of Board Proceedings no later than 45 days before the hearing. Franchise Tax Board briefs must be filed with the Chief of Board Proceedings no later than 30 days before the hearing. Upon showing of extreme hardship the Chief of Board Proceedings may grant a reasonable extension of time for the filing of briefs.

### **Staff Summary**

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer a copy of the hearing summary prepared by the Appeals Division, which states the unresolved tax issues for the Board Members' decision.

## Conduct of Board Hearing

More detailed information regarding the Board meeting is provided in the “Board Meetings” section of this reference. It includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

## Submitted for Decision

At the conclusion of the hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the conclusion of the hearing day, the Board may decide the matter and the Appeals Division will notify the parties of the Board’s decision by letter. If the Board does not decide the matter at the end of the hearing day, the Appeals Division will prepare a proposed opinion or decision for the Board’s consideration on a nonappearance calendar at a later Board meeting.

## Nonappearance Matters

### *Matters for Action*

The Board Meeting agendas include an agenda item for nonappearance matters for all tax programs entitled “Tax Program Non-Appearance Matter.” Cases brought before the Board by the Appeals Division appear on the agenda as “Legal Appeals Matters (Consent and Adjudicatory).” This item, commonly referred to as the “Final Action Calendar,” typically includes four kinds of matters: Opinions, Decisions, Petitions for Rehearing, and Opinions on Petition for Rehearing.

The Board Proceedings Division is responsible for preparing the Final Action Calendars and assembling materials for them.

### Formal Opinions

Formal opinions are precedent Board decisions that a taxpayer or legal staff may refer to in presenting legal arguments before the Board.

The Appeals Division staff generally write a formal opinion for Board Approval at the Board’s direction when an appeal

- Involves an interpretation of a new or existing law.
- Applies an existing rule to a set of facts significantly different from those found in previously published Opinions.
- Modifies an existing rule or interpretation.
- Resolves or reconciles an area of confusion or apparent conflict.
- Involves an issue of continuing or special public interest.

Once the Opinion is drafted, the matter will be placed on a nonappearance adjudicatory calendar for consideration.

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board’s Opinion. An Opinion will become final 30 days after the Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.<sup>8</sup>

## Decisions

Decisions are recommendations that the Appeals Division staff prepare and present to the Board Members for adoption based upon written filings in the appeal file. They reflect the Board's action in routine and repetitive matters. Decisions are not considered precedent and should not be referenced in legal arguments presented before the Board<sup>9</sup>.

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board's Decision. A Decision will become final 30 days after Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.<sup>10</sup>

## Petitions for Rehearing

The taxpayer, the Franchise Tax Board, or both may file a petition for rehearing if they disagree with the Board's decision. The Petition for Rehearing must be filed within 30 days of the date of the Board's decision.<sup>11</sup>

The Board Proceedings staff will acknowledge the petition for rehearing and provide the opposing party 30 days in which to respond to the argument presented in the petition.

Upon receipt of the response to the petition for rehearing or after 30 days have passed, the Board Proceedings staff will inform all parties that the briefing has concluded and the Appeals Division staff will be given 30 days in which to prepare a recommendation for Board approval based upon the written filings. Once the recommendation is complete, the matter is placed on a nonappearance calendar for Board approval.

Immediately following the Board's decision, Board Proceedings Division staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision on the petition for rehearing. If the Board denies the petition for rehearing, the Board's original action becomes final on the denial date.

However, if the Board grants the petition for rehearing, the taxpayer and the Franchise Tax Board will be given a new hearing date in which to return before the Board and present arguments based upon the information in the petition. At the conclusion of oral arguments, the Board will make its decision on the petition. Board Proceedings staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision, which will become final 30 days after the rehearing date.<sup>12</sup>

Once an action on an appeal from the Franchise Tax Board is final, the Board has no authority to rescind it.

## Dismissal of Appeals

At any time during the appeals process, the taxpayer may file a written request with Board Proceedings staff indicating the taxpayer's desire to withdraw the appeal. Upon receipt of the request for dismissal, the Chief of Board Proceedings will dismiss the appeal.

An appeal may also be dismissed if both the taxpayer and the Franchise Tax Board reach a resolution in the pending appeal. The taxpayer and the Franchise Tax Board must sign a written stipulation indicating the matter has been resolved to each party's satisfaction. Upon receipt of the written stipulation, the Chief of Board Proceedings will dismiss the appeal consistent with the terms of the resolution.

Once a taxpayer withdraws an appeal, the Board may not have jurisdiction on appeal matters for the tax years and issues that were a part of the dismissed appeal.

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**Notes**

- <sup>1</sup> California Code of Regulations, title 18, sections 19324 and 20642.
- <sup>2</sup> California Code of Regulations, title 18, sections 5075 and 5075.1.
- <sup>3</sup> California Code of Regulations, title 18, section 5076, subdivision (c).
- <sup>4</sup> California Code of Regulations, title 18, section 5076, subdivision (a) and 5076.1.
- <sup>5</sup> California Code of Regulations, title 18, section 5076, subdivision (e).
- <sup>6</sup> California Code of Regulations, title 18, section 5076, subdivision (c).
- <sup>7</sup> California Code of Regulations, title 18, section 5075.1, subdivision (e).
- <sup>8</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>9</sup> *Appeal of Charles W. Fowlks*, 88-SBE-023-A, Oct. 31, 1989.
- <sup>10</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>11</sup> Revenue and Taxation Code sections 19048 and 19346.
- <sup>12</sup> Revenue and Taxation Code sections 19048 and 19346.



# Property Taxes

## State Assessee<sup>1</sup> Valuation Procedures

### Annual Valuation Calendar

Each year the Board Proceedings Division, after consulting with the Property and Special Taxes Department, prepares a calendar for the valuation of the property owned by state assesseees. The calendar sets forth deadlines and other important dates affecting state-assessed properties. After the Board adopts the calendar, the Board Proceedings Division mails copies to state assesseees, county assessors, county supervisors, and Board staff. The Valuation Division publishes the calendar on the Property Taxes section of the Board website.

### Value Setting

The Valuation Division annually develops fair market value indicators, along with recommended unitary values as of the January 1 lien date, for property owned by state assesseees. It then submits the values to the Board. State assesseees may present information related to their values at the February and April/May Board meetings. The Board considers the staff recommendations and the information provided by state assesseees and sets unitary values by May 31.<sup>2</sup> Once the values of state-assessed unitary properties have been set by the Board, state assesseees are notified of their respective Board-determined values and of their appeal rights.

The Valuation Division annually allocates the Board-adopted unitary value for each state assessee's properties among the counties where the property is located. By June 15, state assesseees are notified of the proposed allocated assessed values of their unitary properties and of their appeal rights if they disagree with the allocation.<sup>3</sup>

Staff submits the recommended allocated unitary assessed values and recommendations for all state-assessed nonunitary property to the Board for adoption of the state-assessed property roll. The Board adopts and transmits the allocated unitary values and nonunitary property values to the county auditors by July 31.<sup>4</sup> Once the allocated unitary values and the values of nonunitary state-assessed properties have been adopted by the Board,<sup>5</sup> state assesseees are notified of their respective nonunitary values and of their appeal rights.

## Appeals Process

### *Petition for Reassessment or Penalty Abatement*

State assesses must file petitions for reassessment or penalty abatement with the Board at its Sacramento Headquarters. The deadlines and extension information are as follows:

- For *unitary* property reassessment or penalty abatement, the petition deadline is July 20 of the year of value notice. The Board may extend this deadline to August 4.<sup>6</sup>
- For *nonunitary* property reassessment or penalty abatement, the petition deadline is September 20 of the year of the value notice. The Board may extend this deadline to October 5.<sup>7</sup>

A petition for reassessment must be in writing and state the name of the property owner/petitioner, the petitioner's opinion of the property's value, and the precise elements of the Board's valuation that is being contested. The petitioner's appraisal reports, financial studies, and other materials relevant to value must be provided with the petition. If supporting documents are not submitted, the petition is considered incomplete.<sup>8</sup>

A petition for penalty abatement must state facts establishing that the petitioner had a reasonable cause for failing to file a timely property statement and showing that the delay occurred despite the petitioner's exercise of ordinary care and absence of willful neglect.

The petition may serve as a claim for refund of tax to be paid on the assessment that is the subject of the petition if it includes a statement to that effect.

Unless the petitioner requests an oral hearing in the petition for reassessment or penalty abatement, the matter will be submitted for decision without an oral hearing on the basis of the written petition. The hearings are held in Sacramento unless the Board directs otherwise.<sup>9</sup>

When the Valuation Division and petitioner do not agree regarding how to resolve all issues presented in a petition, the Legal Department's Appeals Division will review the petition before the hearing. For these petitions, the Legal Department's Tax and Fee Programs Division will submit the Valuation Division's brief to the Board Proceedings Division for distribution to the petitioner and the Appeals Division 30 days before the scheduled Board meeting date. The brief sets forth the Valuation Division's recommendation regarding the resolution of the issues presented in the petition and the supporting facts and legal analysis. If an oral Board hearing is scheduled, the Appeals Division will review the Valuation Division brief and the petitioner's reply brief, if any, and then issue a hearing summary. If the oral Board hearing has been waived and there are unresolved issues, the Appeals Division will review the Valuation Division brief and the petitioner's reply brief, if any, then issue a summary and recommendation for consideration and adoption on the Legal Appeals Matters Nonappearance Calendar.

The Appeals Division will not review petitions when the petitioners have waived an oral Board hearing and the petitioner and the Valuation Division agree regarding the resolution of all issues. For these petitions, the Legal Department's Tax and Fee Programs Division will draft the Valuation Division's *Recommendation on Property Tax Petition* and staff will place it on the Property Tax Matters Nonappearance Calendar for consideration and adoption by the Board.

### ***Petition for Correction of Allocated Assessment***

The Board must mail a notice showing the allocated assessed values of unitary properties to state assessees no later than June 15 each year. The notice includes a time and place for filing a petition for correction of the allocated assessment. Assesseees must file petitions with the Board at its Sacramento Headquarters no later than July 20 of the year of the notice.<sup>10</sup> The petition must be in writing and state the petitioner's name and the specific grounds for the claim of correction or adjustment. It may not raise as an issue the value of the total unitary property.<sup>11</sup> Board staff must mail written notice of the time and place set for the hearing to the assessee at least ten working days before the hearing date.<sup>12</sup>

### **Conduct of Board Hearing—State Assesseees**

The procedures for the conduct of a Board hearing on State Assesseees Valuation is provided in the "Board Meetings" section of this reference. The section includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

### ***Decision***

Upon conclusion of a hearing, the Board may decide the matter then or later in the same meeting, take the matter under submission for decision at another meeting, or take the matter under submission and allow the petitioner and the staff time to submit further information. However, since the Board must render its decision on a property tax petition no later than December 31 in the year of the value notice, decisions cannot be made after the December Board meeting. A written notice of decision is mailed to the petitioner. If the petitioner requests written findings and decision in the petition or at any time before the hearing begins, those will also be mailed to the petitioner.<sup>13</sup> The decision of the Board is final and the Board will not reconsider or rehear a petition.<sup>14</sup>

### **Audits and Escaped Assessments**

#### ***Audits***

The Valuation Division audits the records of state assesseees to determine whether the assesseees have accurately reported data regarding their properties on their property statements. Staff then prepares an audit report. At any time after an audit begins, an assessee may disagree with a particular conclusion reached by the Board staff. To resolve the dispute, the assessee may either state its objections in writing or request a meeting with the auditor and the auditor's supervisor. When the audit report is completed, a 30-day notice letter is mailed so that the assessee may provide any additional data that might alter the audit findings. After review of the additional information, the audit findings are presented to the Board for consideration. If the Board adopts an escaped or excessive assessment, a notice will be sent to the assessee along with details and an explanation of the assessee's appeal rights.

#### ***Appeals Process and Board Hearings***

State assesseees must be given at least 50 days from the mailing date of the value notice to file a petition for reassessment or penalty abatement for escaped assessments made outside the regular assessment period.<sup>15</sup>

The appeals process and the procedures for the conduct of the Board hearing for escaped assessments are the same as those for regular assessments, except that the December 31 deadline for the Board decision does not apply.

## **Private Railroad Cars<sup>16</sup> Valuation Procedures**

### **Annual Valuation Calendar**

Each year, after consulting with the Property and Special Taxes Department, the Board Proceedings Division prepares a calendar for the assessment of private railroad cars. The calendar shows deadlines and other important dates affecting the assessment, levy, and collection of the private railroad car tax. After the Board adopts the calendar, copies are mailed to private railroad car owners and Board staff.

### **Value Setting**

On or before August 1, the Valuation Division prepares a recommendation establishing the value of private railroad cars as of the January 1 lien date<sup>17</sup> and submits that recommendation to the Board for its annual adoption of the private railroad car roll. Once the Board has set the values of private railroad cars, all private railroad car companies are notified of their respective values and appeal rights.

### **Appeals Process**

#### ***Petition for Reassessment and/or Penalty Abatement***

Private railroad car companies must file petitions for reassessment or penalty abatement no later than September 20. If the company makes a written request by September 20, the Board may extend the filing deadline to October 5.<sup>18</sup> For an assessment made outside the regular assessment period, the petition for reassessment must be filed by the 50<sup>th</sup> day following the date of the notice of the assessment.<sup>19</sup> If the petition for reassessment is not filed on time, the assessment becomes final.

A petition for reassessment must be in writing and state the petitioner's name, the petitioner's opinion of the value of the property, and the precise elements of the Board's valuation that is being contested. A petition for penalty abatement must set forth facts establishing that the failure to file a property statement on time was due to reasonable cause and occurred despite the exercise of ordinary care and the absence of willful neglect.

Assesseees may request an oral hearing in the petition for reassessment or penalty abatement. Unless the Board directs otherwise, the hearings are held in Sacramento.<sup>20</sup> For assessments made within the regular period, the hearing must be held before January 31.<sup>21</sup> For assessments made outside the regular period, the hearing must be held within 90 days of the date on which the petition was filed.<sup>22</sup> The Board's decision is due within 45 days after the hearing.<sup>23</sup>

A petitioner may choose to have an appeal decided by the Board as a "written-only" petition. Or the petitioner may initially request an oral hearing and later waive the oral hearing before the publication of the Board's *Public Agenda Notice*. These petitions are scheduled for the Board's *Property Taxes Nonappearance Matters* calendar.

### ***Claims for Refund***

Assesseees who wish to claim a credit for refund must file a written claim no later than

- Four years from December 10 of the year in which the assessment is made, or
- Six months from the date of overpayment,

whichever occurs later.<sup>24</sup> The Board will not approve late claims.

Each claim must be in writing and state the specific grounds on which it is based.<sup>25</sup> The private railroad car company may request an oral hearing or a decision on the basis of the written petition. Claims are acknowledged by the Board Proceedings Division. If additional documentation is needed, the Board Proceedings Division notifies the claimant, describes the information needed, and provides a deadline for submitting it.

There is no statutory right to a hearing on a claim for refund. However, it is Board policy to grant those hearings when requested if the claimant has not had a hearing on a petition for reassessment or if the claim for refund is based on different grounds than the petition for reassessment. Unless the Board directs otherwise, the hearings are held in Sacramento.<sup>26</sup>

### **Conduct of Board Hearing**

The Board is required to hear the petition by January 31 for any petitions for reassessment made within the regular assessment period. Otherwise, the procedures for the conduct of Board hearings for petitions for reassessment of the private railroad car tax are the same as procedures for Board hearings<sup>27</sup> for petitions for reassessment of state-assessed property, discussed on page 7-3.

### **Audits and Escaped Assessments**

#### ***Audits***

The Valuation Division may periodically audit the records of private railroad car companies to determine whether car costs have been accurately reported and to prepare an audit report. At any time after an audit begins, a private railroad car company may disagree with a particular conclusion reached by the auditor. In order to resolve the dispute, the company may either state its objections in writing or request a meeting with the auditor and the auditor's supervisor. When the audit report is prepared, a notice accompanying the report gives the private railroad car company 30 days in which to submit any additional data that might alter the audit findings. If after further review of all submitted evidence, the audit findings indicate that the property has been underassessed or overassessed, staff will present recommendations reflecting escaped assessments or excessive assessments to the Board. If the Board adopts an escaped assessment or assessment reduction, staff will send a notice to the company along with an explanation of the company's appeal rights.

#### ***Appeals Procedure***

The appeal and hearing procedure for disputing an escaped assessment are the same as those for assessments made during the regular assessment period. However, the January 31 deadline for the Board decision does not apply.

## Property of Local Government Located Outside its Boundaries<sup>28</sup>

### Assessment and Review

#### *Functions of the Board*

Land and improvements owned by a local government that are located outside its boundaries are assessed by the county in which the land and improvements are located, to the extent permitted by section 11 of article XIII of the California Constitution. These assessments are subject to review, equalization, and adjustment by the Board.<sup>29</sup>

#### *Process Before Board Hearing*

The county assessor of the county in which the property is located will assess the property. If the local government that owns the property disagrees with the county assessor's assessment, it may seek review of the assessment.

### Appeals Process

#### *Application for Assessment Review*

An application for assessment review must be in writing and authorized by the local government making the application. The application must

- Show facts to support the claim and include a separate statement of points and authorities,<sup>30</sup> and
- Be filed by the third Monday in July of the year in which the assessment is made, or within two weeks after the completion and delivery by the assessor of the local roll containing the assessment, whichever is later. But if the assessment was made outside the regular period for assessments, the application must be filed within 60 days from the date the county mails the tax bill to the assessee.<sup>31</sup>

The county assessor must file a written answer to the application and a statement of points and authorities.<sup>32</sup> However, failure to file an answer does not constitute a default or admission of any matters in the application.

#### *Prehearing Conference*

An attorney from the Appeals Division will conduct a prehearing conference for each application. The primary purpose of the conference is to clarify, develop, and narrow the issues. After the conference, the attorney will prepare a statement of the issues and summary of the resolved matters, which is placed in the record when the hearing begins.<sup>33</sup>

#### *Conduct of Board Hearing*

The procedures for the conduct of Board hearings for these appeals are the same as the procedures for Board hearings on a petition for reassessment of state-assessed property, discussed on page 7-3. Hearings are ordinarily conducted in Sacramento.<sup>34</sup>

## Action After Board Decision

After the Board decision, the Executive Director transmits to the applicant, the county assessor, the governing body of the taxing agency, and the county auditor a notice of the Board's action on the application. Upon receipt of the notice, the county auditor enters any resulting change in the assessment on the local roll.<sup>35</sup>

## Welfare and Veterans' Organization Exemption Claims<sup>36</sup>

### Administration of the Exemption

#### *Joint Administration*

The welfare exemption is for property owned by qualifying nonprofit, tax-exempt organizations and used exclusively for religious, hospital, charitable, or scientific purposes. These property tax exemptions are administered jointly by the Board and if applicable, a county assessor.<sup>37</sup> The Board determines whether an organization is eligible for the welfare or veterans' organization exemption, and the county assessor determines whether the organization's property is eligible for the exemption based on its use.

#### *Functions of Board Staff*

Nonprofit, tax-exempt organizations file claim forms with the Board for an Organizational Clearance Certificate for Welfare or Veterans' Organization Exemption and Supplemental Clearance Certificate for Managing General Partner (for low-income housing properties owned by limited partnerships with a nonprofit managing general partner). The exemption staff of the Board's Property and Special Taxes Department review the claim forms for completeness and determine whether the organization is eligible for the exemption.

If the organization is found eligible, the staff issues an organization clearance certificate or a supplemental clearance certificate, or both, if appropriate. The claimant then files a copy of the certificate with an exemption claim form with the assessor of the county in which the property is located to demonstrate that the organization qualifies for the exemption and its property may be granted the exemption if the assessor determines the property is used for a qualifying purpose.

If the exemption staff determine that an organization does not qualify for exemption, they will issue a "has not been met" finding sheet and a *Preliminary Notice*. The organization has 30 days from the date of the notice to submit supplementary material supporting the claim or to request a 30-day extension to provide additional information. Upon receipt of the supplemental material, the exemption staff will conduct a complete review of the claim and determine if the exemption requirements are met.

The staff will send a notice to the organization regarding whether the supplemental material provides a basis for amending the staff's original finding. If the staff's finding is that the organization remains ineligible for exemption, a second finding sheet with a *Final Notice* will be issued to notify the claimant that it has 60 days from the date of the notice to petition the Board for a hearing on the denied claim.

## The Appeals Process

### *Petitions for Board Hearing*

A petition for a Board hearing on a denied claim must be in writing and state all of the grounds upon which qualification is claimed.<sup>38</sup> The Board Proceedings Division sends a letter acknowledging receipt of the petition. The claimant may request an oral hearing or a decision based on the written petition.

When an organization requests an oral hearing, the Board Proceedings Division provides 60 days' notice of the date and time of the hearing. Unless the Board directs otherwise, the hearings are held in Sacramento.<sup>39</sup>

### *Conduct of the Board Hearing*

The procedures for the conduct of Board hearings for the staff denial of a welfare exemption are procedures for Board hearings on a petition for reassessment of state-assessed property, discussed on page 7-3. However, the Legal Department's Tax and Fee Programs Division will draft a brief for the Assessment Practices and Standard Division rather than the Valuation Division.<sup>40</sup>

## Timber Yield Tax<sup>41</sup> Harvest Values and Audits

### Adoption of Harvest Values

On or before June 30 and December 31 each year, Board staff, in consultation with the Timber Advisory Committee, recommends a schedule of immediate timber harvest values to the Board for adoption. The schedule lists preliminary immediate harvest values by timber species or subclassification. Following a public hearing, at which the Board considers any additional information provided by staff or the public, the Board will adopt immediate harvest values for the next six-month harvest period.

### Audits and Determinations

Each calendar quarter, timber owners file a Board return indicating the timber harvested during the preceding quarter.<sup>42</sup> Auditors in the Timber Tax Section of the County Property Tax Division periodically audit the returns and records of timber owners to determine whether the timber harvest has been accurately reported. A discussion with the auditor allows the timber owner to present additional information that may resolve a disputed item. After a thorough discussion with the auditor, the taxpayer will be mailed a copy of the preliminary audit report. After reviewing the report, the taxpayer is given another opportunity to discuss the audit findings.

If the auditors find that the taxpayer did not report or pay the full amount of tax due, the Board will determine the amount of the deficiency and send the taxpayer a *Notice of Determination*.<sup>43</sup> Taxpayers may appeal the deficiency determination to the Board.

## Conduct of Board Hearing

The procedures for the conduct of a Board hearing for Timber yield tax matters are the same as procedures for Board hearings on a petition of state-assessed property, discussed on page 7-3. However, the Legal Department's Tax and Fee Programs Division will draft a brief for the County Property Tax Division rather than the Valuation Division.<sup>44</sup>

## Assessment Practices Survey Sample Items<sup>45</sup> —The Sampling Process

### Functions of the Board

The Board must conduct surveys of each county every five years to determine whether the county assessor is employing adequate tax assessment procedures and practices and performing other required duties.<sup>46</sup> Surveys of certain counties include a sampling of assessments from the local assessment rolls. The sampling will determine whether the county's assessment levels conform with state law. The Property and Special Taxes Department's Assessment Practices Survey Section performs the surveys and sampling.

### Process Before Board Hearing

In conducting the survey, the Assessment Practices Survey Section may audit certain appraisal data related to property included in the survey. The section staff must conduct all research considered essential to show the nature and volume of the assessing work accomplished by the assessor for all classes of property.<sup>47</sup>

For surveys that include a sampling of assessments, the Assessment Practices Survey Section appraises the representative sample items, expands the result of each appraisal, and compares the expanded total to the total local assessment roll to determine the average assessment level of the county. The county will lose the right to receive an allocation of funds to cover its administrative costs for the supplemental assessment roll if

- The average level of assessment in the county is less than 95 percent of the assessment level required by statute, or
- The sum of the absolute values of the differences from the statutorily required assessment level is greater than 7.5 percent of the total amount of the required value.<sup>48</sup>

The assessor has the right to appeal to the Board when the assessor and Board staff do not agree on the results of the Board appraisal.<sup>49</sup>

### Appeals Process

The first level of appeal involves field discussions between the county assessor and the County Property Tax Division staff. The county assessor may then appeal to the Chief of the County Property Tax Division.

The next level of appeal is to the Deputy Director of the Property and Special Taxes Department. If the county assessor does not accept the Deputy Director's finding, the county assessor may request a Board hearing by submitting a petition to the Executive Director. The Executive Director receives the petition for Board hearing and schedules the request for Board consideration.

### **Conduct of Board Hearing**

The Board follows the same procedures generally applicable to other property tax hearings.

### **Annual Meeting With Assessors**

The Board Members or their authorized representatives must meet with the county assessors at least once each year to discuss issues related to the administration of property assessment and taxation laws and to promote uniformity of property tax procedures throughout the state.<sup>50</sup> The county assessors are summoned to the meeting in a *Letter To Assessors* signed by the Executive Director.

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## Notes

- <sup>1</sup> California Constitution, article XIII, section 19; Revenue and Taxation Code section 721 et seq.
- <sup>2</sup> Revenue and Taxation Code section 731.
- <sup>3</sup> Revenue and Taxation Code section 746.
- <sup>4</sup> Revenue and Taxation Code section 756.
- <sup>5</sup> Revenue and Taxation Code section 732.
- <sup>6</sup> Revenue and Taxation Code section 733.
- <sup>7</sup> Revenue and Taxation Code section 733.
- <sup>8</sup> California Code of Regulations, title 18, section 5041, subdivision (c).
- <sup>9</sup> California Code of Regulations, title 18, section 5076, subdivision (f).
- <sup>10</sup> Revenue and Taxation Code section 746.
- <sup>11</sup> Revenue and Taxation Code section 747.
- <sup>12</sup> Revenue and Taxation Code section 748.
- <sup>13</sup> Revenue and Taxation Code section 744.
- <sup>14</sup> California Code of Regulation, title 18, section 5082.2.
- <sup>15</sup> Revenue and Taxation Code section 758.
- <sup>16</sup> Revenue and Taxation Code section 11201 and following.
- <sup>17</sup> Based on the car-day method of assessment in Revenue and Taxation Code section 11293.
- <sup>18</sup> Revenue and Taxation Code section 11338.
- <sup>19</sup> Revenue and Taxation Code section 11339.
- <sup>20</sup> California Code of Regulations, title 18, section 5076, subdivision (f).
- <sup>21</sup> Revenue and Taxation Code section 11338.
- <sup>22</sup> Revenue and Taxation Code section 11339.
- <sup>23</sup> Revenue and Taxation Code section 11341.
- <sup>24</sup> Revenue and Taxation Code section 11553.
- <sup>25</sup> California Code of Regulations, title 18, section 5022.
- <sup>26</sup> California Code of Regulations, title 18, section 5076, subdivision (f).
- <sup>27</sup> California Code of Regulations, title 18, section 5077 through 5085.
- <sup>28</sup> Revenue and Taxation Code sections 1840 and 1841.
- <sup>29</sup> California Constitution article XIII, section 11.
- <sup>30</sup> California Code of Regulations, title 18, section 5051.
- <sup>31</sup> California Code of Regulations, title 18, section 5052.
- <sup>32</sup> California Code of Regulations, title 18, section 5053.
- <sup>33</sup> California Code of Regulations, title 18, section 5054.
- <sup>34</sup> California Code of Regulations, title 18, section 5056, subdivision (f).
- <sup>35</sup> Revenue and Taxation Code section 1841.
- <sup>36</sup> Revenue and Taxation Code section 214 et seq.
- <sup>37</sup> Revenue and Taxation Code sections 254.5 and 254.6.
- <sup>38</sup> California Code of Regulations, title 18, section 5063.
- <sup>39</sup> California Code of Regulations, title 18, section 5076, subdivision (f).
- <sup>40</sup> California Code of Regulations, title 18, section 5070 thorough 5087.
- <sup>41</sup> Revenue and Taxation Code section 38101 et seq.
- <sup>42</sup> Revenue and Taxation Code section 38402.
- <sup>43</sup> Revenue and Taxation Code sections 38411-38425.
- <sup>44</sup> California Code of Regulation, title 18, section 5071.
- <sup>45</sup> Government Code section 15640 et seq.
- <sup>46</sup> Government Code sections 15640 and 15643.
- <sup>47</sup> Government Code sections 15641 and 15642.
- <sup>48</sup> Revenue and Taxation Code section 75.60
- <sup>49</sup> Government Code section 15640, subdivision (f).
- <sup>50</sup> Government Code section 15607.

# Taxpayers' Bill of Rights

The state Taxpayers' Bill of Rights statutes<sup>1</sup> seek to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the assessment and collection of taxes, to promote improved voluntary compliance by improving efforts to inform the public of the proper application of the laws referenced in the Bill of Rights statutes, and to encourage uniform statewide practices.

Those statutes created the Taxpayers' Rights Advocate office to facilitate the resolution of taxpayer complaints and problems. Under the statutes, the Board is also required to do all of the following:

- Convene annual hearings to hear public comment on administration of the Board's tax and fee programs, tax law, and Board policy and procedures.
- Implement an education and information program directed at taxpayers, Board staff, assessors and their staffs, local boards of equalization, and assessment appeals boards.
- Identify and eliminate areas of frequent taxpayer noncompliance.
- Issue brief and simple publications explaining taxation procedures, remedies, and taxpayers' rights and obligations.
- Evaluate employee performance regarding contact with taxpayers.
- Exercise statutory authority for certain stays and refunds.

## Annual Board Hearings

The Board holds annual Taxpayers' Bill of Rights hearings for business taxes and fees and property taxes in Sacramento and Culver City.

At the business taxes hearings, industry representatives and individual taxpayers may present proposals for changes to the business tax laws, programs, policies, or procedures administered by the Board.

The property tax hearings solicit comments and suggestions from assessors, other local agency representatives, and taxpayers on proposed changes to the property tax law, programs, policies, or procedures; address the Advocate's annual report; and identify ways to correct any problems identified in that report.

## Arrangement and Coordination of Hearings

The Chiefs of the Board Proceedings Division and Taxpayers' Rights and Equal Employment Opportunity Division share responsibility for coordinating each year's hearings.

Publicity for all hearings is the responsibility of the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division, the Customer and Taxpayer Services Division, and the Board Proceedings Division.

## **Conduct of the Meeting**

The Chair convenes the hearings. Typically, the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division makes introductory remarks and explains the format and purpose of the meeting. Presentations from taxpayers and other interested parties follow.

Hearing participants may comment directly to the Board Members and their staff during the hearings, or they may forward their comments in writing to the Taxpayers' Rights and Equal Employment Opportunity Division for the Members' and staff's consideration.

Issues raised in the hearings that involve specific cases before the Board as part of the normal appeal process should be deferred to the specific case's appeal hearing.

Priority for presentations is given to those placed on the agenda through advance notification to the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division or the Chief of the Board Proceedings Division. The order of presentations follows the agenda.

Individuals who did not give advance notification and wish to make presentations are requested to sign an appearance sheet maintained by the Board Proceedings staff. The order of presentation for these individuals follows the order of the appearance sheet.

The Chief of Board Proceedings Division calls each speaker in the order of the agenda and appearance sheets. For the record, the chief asks each presenter to state his or her name at the beginning of the presentation.

Since the hearings are conducted informally, Members may direct questions or comments to the presenter or staff during the presentation. The Board generally will not take any formal action, but may request staff to report back on issues that have been brought forward by the hearing participants.

The Chair adjourns the hearings after the presentations are complete.

## **Board Response**

After the hearing, the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division coordinates responses to the participants and identifies issues that require Board staff action.

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**Note**

<sup>1</sup> Revenue and Taxation Code section 7800 et seq. (sales and use tax, and similar provisions in other tax and fee programs) and Revenue and Taxation Code section 5900 et. seq. (property tax).

# Contribution Disclosures

## General

A Member of the Board of Equalization, including the State Controller, is disqualified from participating in an adjudicatory proceeding before the Board if any single party, participant, or agent of either has contributed at least \$250 to the Member in the preceding 12 months.<sup>1</sup> However, if the Member returns to the contributor all contributions over \$249, the Member may participate in the proceeding. The law also requires that a Board Member, party, participant, or agent of a party or participant disclose any such contribution on the record. Board staff must inquire and report to the Board any contributions.

## Hearing Calendar (Adjudicatory)

On the day of a Board hearing, taxpayers, representatives and witnesses on Board hearing calendars are asked to update previously filed contribution disclosure forms. The Contribution Disclosures Analyst secures any unfiled contribution disclosures before the hearing. Disclosure information is reported to the Board on the record of the hearing by the Chief of the Board Proceedings Division.

## Nonappearance Calendar (Consent)

When items are first scheduled for Board action on one of the nonappearance (consent) calendar listed below, they are not adjudicatory matters under Government Code section 15626 and are not subject to the disclosure requirement.

- Franchise and income tax nonappearance matters (proposed opinions and proposed decisions submitted on memorandums)
- Homeowner and Renter Assistance nonappearance matters (proposed opinions and proposed decisions submitted on memorandums)
- Sales and use tax and special taxes matters for consideration
- Property taxes matters for consideration

## Nonappearance Calendar (Adjudicatory)

Adjudicatory matters on the nonappearance calendar and subject to the disclosure requirement include

- All matters that have been previously scheduled for Board hearing and that have previously appeared on the calendar as adjudicatory items.
- All matters that have been removed from a consent calendar for separate discussion and vote.
- All matters about which a Member has previously contacted the staff or a party.

## Nonappearance Matters Calendar

Nonappearance matters that are not subject to the contribution disclosure statute include

- Property tax Board roll corrections
- Board roll changes, findings and decisions (if the decision is final and cannot be changed)
- Escaped assessments
- Offers-in-compromise

## Legally Required Participation

When a Board Member's participation is legally required for the action or decision to be made, the Board may bring back as many disqualified Members as necessary to establish a quorum. The preferred means of selecting which disqualified Member should participate is by lot. Other means of random selection or other impartial and equitable means of selection may also be used.<sup>2</sup>

## Campaign Statements

Each Board Member, including the State Controller, is required to send to the Chief of Board Proceedings a copy of the Member's campaign statements at the time each of those statements is filed. Filing dates are set by statute.

## Definition of Terms

### Party

Any person who is the subject of an adjudicatory proceeding pending before the Board.

### Participant

Any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the Board and who has a financial interest in the decision. A person actively supports or opposes a particular decision if he or she personally lobbies the Members or employees of the Board, testifies in person before the Board, or otherwise acts to influence the Members.

### Agent

Any person who represents a party to or a participant in an adjudicatory proceeding pending before the Board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

### Close Corporation

For purposes of Government Code section 15626, "close corporation" means a corporation in which any natural person, or any natural person who together with his or her spouse, owns or controls at least 50 percent of the corporation voting stock.<sup>3</sup>

## **Contribution**

Contribution has the same meaning as in Government Code section 82015 and California Code of Regulations, title 2, section 18215. Generally, a “contribution” means a payment, a forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. For the full definition of contribution, see the text of Government Code section 82015 and California Code of Regulations, title 2, section 18215, provided in this reference beginning on page 9-4.

## **Contribution Disclosure Reports**

### **Hearings and Nonappearance Matters**

Contribution disclosure reports are furnished to the Members one week before the Board meeting.

### **Alphabetical Listing**

An alphabetical listing of all parties, participants, and agents for adjudicatory and consent matters is furnished to the Members one week before the Board meeting.

### **Listing of Contribution Disclosure Memorandums Sent to Board Members**

This semi-monthly report reflects disqualifying contributions for pending Board hearings that have been disclosed to Board Proceedings Division by parties, participants, and agents. It is furnished to the Members on the 1st and 15th of each month.

### **Notification of Contributions Made**

Members are notified by memorandum when a contribution disclosure statement discloses a contribution made to any Member of the Board or the State Controller.

## **Reference**

### **Legal Opinion Memos**

Contribution Disclosure Opinions are maintained in a reference binder in the Legal Department and in the Board Proceedings Division. These opinions are prepared by the Legal staff in response to inquiries by Board Members and staff with respect to the statute.

### **Regulations**

In accordance with Government Code section 15626, the Board adopted Contribution Disclosure Regulations, found in California Code of Regulations, title 18, sections 7001-7011, effective August 20, 1994. The full text of those regulations is found in this reference beginning on page 9-8.

## *Contribution Definitions*

### **Government Code section 82015.**

(a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b)(1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

- (iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.
- (v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.
- (vi) Preparing campaign budgets.
- (vii) Preparing campaign finance disclosure statements.
- (viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

#### **California Code of Regulations, Title 2, section 18215.**

(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of the following or any agent thereof:

(A) A candidate;

(B) A controlled committee;

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

(D) An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation.

(b) The term "contribution" includes:

(1) Any payment made to a person or organization other than a candidate or committee, when, at the time of making the payment, the donor knows or has reason to know that the payment, or

funds with which the payment will be commingled, will be used to make contributions or expenditures. If the donor knows or has reason to know that only part of the payment will be used to make contributions or expenditures, the payment shall be apportioned on a reasonable basis in order to determine the amount of the contribution.

There shall be a presumption that the donor does not have reason to know that all or part of the payment will be used to make expenditures or contributions, unless the person or organization has made expenditures or contributions of at least one thousand dollars (\$1,000) in the aggregate during the calendar year in which the payment occurs, or any of the immediately preceding four calendar years.

(2) A candidate's own money or property used on behalf of his or her candidacy.

(3) Any goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public.

(c) Notwithstanding any other provision of this section, the term "contribution" does not include:

(1) An expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy.

(2) Volunteer personal services or payments made by a person for his own travel expenses, if such payments are made voluntarily without any understanding or agreement that he or she will be repaid.

(3) A payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office, if the total cost of the meeting or fundraising event is \$500 or less, exclusive of the fair rental value of the premises.

(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

(i) Does not contain express advocacy;

(ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and

(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.

(5) A payment made by a candidate or committee for another candidate to attend the paying candidate's or committee's fundraiser.

(6) A payment made by a candidate for a communication publicizing his or her endorsement by another candidate, provided that the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.

(7) A payment made by a ballot measure committee for a communication in which the ballot measure supported or opposed by the committee is endorsed or opposed by a candidate, and the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.

(8) A payment by:

(i) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles, and commentary of general interest for the cost of publishing a news story, commentary or editorial; or

(ii) A federally regulated broadcast outlet for the cost of broadcasting a news story, commentary, or editorial.

(9) A payment by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to the costs regularly incurred in publication and distribution. Any additional costs incurred are contributions, including, but not limited to, expanded circulation; substantial alterations in size, style, or format; or a change in publication schedule, such as a special edition.

(10) A payment for a debate or other forum sponsored by a nonpartisan organization in which at least two candidates appearing on the ballot for the same elective office were invited to participate.

(11) A payment for a debate or other forum in which the proponent of a ballot measure and at least one opponent, or their respective representatives, were invited to participate in equal numbers.

(12) A payment for a debate or other forum sponsored by a political party or affiliated committee in which a majority of the candidates for that party's nomination were invited to participate.

(13) A payment made by a bona fide service, social, business, trade, union or professional organization or group for reasonable overhead expenses associated with the organization's regularly scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks, if the organization pays no additional costs in connection with the speaker's attendance.

(14) A payment received by, directed by, or made at the behest of a candidate for personal purposes. [NOTE: Such payments may constitute gifts, income, or honoraria, and as such may be limited or prohibited, under other provisions of the Act. See also California Code of Regulations, Title 2, section 18941.1 regarding payments for food.]

(15) A payment made by a candidate for a communication in support of or opposition to a ballot measure, if the communication features the endorsing candidate or clearly identifies him or her as the sponsor of the communication. [NOTE: this exception does not include a monetary contribution from a candidate or his or her controlled committee to a ballot measure committee.]

(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov. Code 82047) except a candidate or other individual (see Gov. Code 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.

(d) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

California Code of Regulations

*Title 18. Public Revenues*

*Division 2.2 State Board of Equalization–Contribution Disclosure*

**Regulations 7001-7011. Contribution Disclosure.**

**Reference:** Section 15626, Government Code.

**7001. Contributions to Members of the State Board of Equalization.**

(a) Terms used in Government Code Section 15626 are defined in Sections 7002 through 7011.

7002. Members of the Board of Equalization.

(a) The provisions of Government Code Section 15626 are applicable to the Members of the State Board of Equalization and the State Controller.

(b) For the purposes of Section 15626, if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of this section.

**7003. Adjudicatory Proceedings Pending Before the Board Under Government Code Section 15626.**

(a) For purposes of Government Code Section 15626, an “adjudicatory proceeding pending before the board” means any matter pertaining to an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer that has been scheduled and appears as an item on a meeting notice of the board, as required by Government Code Section 11125, as a contested matter for administrative hearing before the board.

(b) A non-appearance agenda item is not considered an adjudicatory proceeding unless the matter has previously appeared on the calendar as a contested matter, or has been removed from the non-appearance agenda for separate discussion and vote, or the agenda item is one about which the member has previously contacted the board staff or a party. A matter which has previously been submitted on the record without an appearance by the taxpayer or taxpayer’s representative and without Board discussion of the matter is a non-appearance matter.

(1) The term “removed from the non-appearance agenda for separate discussion and vote” are those agenda items which have been removed from the non-appearance calendar and which have been the subject of a discussion or vote by the Board. It does not include items about which a Board Member raises a procedural question, or a question concerning whether the requirements of Government Code Section 15626 have been met.

(2) The term “contacted the board staff or a party” does not include procedural inquiries by a Board Member or a party, including, but not limited to, inquiries concerning:

(A) when a case will be scheduled for Board consideration or decision;

(B) the status of a particular case;

(C) whether the requirements of Government Code Section 15626 have been met.

(3) The term “contacted the board staff or a party” means and includes any substantive inquiries from a Board Member and/or his or her staff to the board staff. Substantive inquiries include inquiries which are not procedural inquiries and which request information or discussion of legal issues, staff positions, staff or taxpayer theories or other substantive issues concerning a matter on a non-appearance agenda.

(c) Assessments pursuant to Section 19 of Article XIII of the California Constitution are not considered adjudicatory proceedings under Government Code Section 15626.

(d) Rate setting functions fixed or set by the board, including, but not limited to, rates set pursuant to Revenue and Taxation Code Sections 12202.1, 30123, 38115, and 41031, and Health and Safety Code Sections 25205.3, 25205.4, 25205.5, 25205.7, 25205.9, 25174.2 and 25343 are not considered adjudicatory proceedings under Government Code Section 15626.

- (e) Administrative hearings for consideration and adoption of rules and regulations are not considered adjudicatory proceedings under Government Code Section 15626.
- (f) A petition for rehearing is not an adjudicatory item unless removed for separate discussion and vote or the agenda item is one about which the member has contacted board staff or a party.

**7004. Party Under Government Code Section 15626.**

(a) For purposes of Government Code Section 15626, “party” means any person who is the subject of an adjudicatory proceeding before the board. It does not include a state agency as that term is defined in Chapter 2 (commencing with Section 82000) of Title 9 of the Government Code.

(b) When a close corporation is a “party” to an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirements of Government Code Section 15626. For purposes of Section 15626, “close corporation” means a corporation in which any natural person, or any natural person who together with his or her spouse, owns or controls at least 50 percent of the voting stock of a corporation.

**7005. Agents Under Government Code Section 15626.**

(a) For purposes of Government Code Section 15626, a person is the “agent” of a party to, or a participant in, an adjudicatory proceeding pending before the board only if he or she represents that person in connection with the proceeding. If an individual acting as an agent is also acting as an employee or member of a law, accounting, consulting or other firm, or a similar entity or corporation, both the entity or corporation and the individual are “agents.”

(b) To determine whether a contribution of \$250 or more has been made by a person or his or her agent, contributions made by that person within the preceding 12 months shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter. Contributions from other employees or members of the agent’s law, accounting, or consulting firm, or similar entity, or contributions from participants, shall not be aggregated with those of the party and his or her agent.

(c) A person who has not represented a party or a participant during the preceding 12 months shall not be considered an agent for purposes of determining whether Section 15626 applies. A person who has ceased to represent a party or a participant is no longer an agent for purposes of determining whether Section 15626 applies.

**7006. Participants Under Government Code Section 15626.**

(a) A “participant” means any person who is not a party but who actually supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision.

(b) For purposes of Government Code Section 15626, a person actually “supports or opposes a particular decision” when he or she:

- (1) Communicates directly, either in person or in writing, with a board member or employees of the board for the purpose of influencing the decision in a proceedings; and/or
- (2) Testifies or makes an oral statement before the board during an adjudicatory proceeding pending before the board for the purposes of influencing the decision of the board; and/or
- (3) Communicates with the employees of the board, or when his or her agent lobbies in person testifies in person or otherwise communicates with board members and/or the employees of the board, for the purpose of influencing the board member’s decision in a proceeding and the board member knows or has reason to know that the communication has occurred.

(c) A person does not “actively support or oppose a particular decision” when he or she communicates to the public at large, other than those oral or written communications made in proceedings before the agency.

(d) “Financial interest” has the meaning described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code.

(e) A Political Action Committee organized pursuant to 2 U.S.C. Section 441(a)-(b) and/or Government Code Section 82013 is not considered a participant under Government Code Section 15626.

(f) When a close corporation is a participant in an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirements of Government Code Section 15626.

**7007. Receipt of Contributions Under Government Code Section 15626.**

For purposes of Government Code Section 15626,

(a) The term “contribution” has the same meaning prescribed in Government Code Section 82015 and the regulation adopted pursuant thereto. A contribution made pursuant to Section 301(b) of the Federal Election Campaign Act of 1971 (2 U.S.C.A. 431(2)) to a candidate for federal office or to a committee formed for the purpose of electing a candidate for federal office is not considered a contribution within the meaning of Section 15626. A contribution is deemed to be received if it has been accepted or received within the meaning of Government Code Section 84211(q).

(b) A person “accepts” or “receives” a contribution only if the contribution is for that person’s own candidacy or own controlled committee.

(c) A person “makes a contribution” to a board member or candidate only if the contribution is made for that board member’s or candidate’s own candidacy or controlled committee.

(d) A contribution to a board member from a political action committee organized under 2 U.S.C. Section 441(a)-(b) and/or Government Code Section 82013, affiliated with a party participant or agent to a party or participant is not a “contribution” for the purposes of Government Code Section 15626.

**7008. Prohibitions and Disqualification Under Government Code section 15626.**

(a) For purposes of Government Code Section 15626,

(1) A board member knows or has reason to know that a person has a financial interest in the decision in a pending adjudicatory proceeding if:

(A) The person is a named party; or

(B) The person is a participant and reveals facts in his or her written or oral support or opposition before the board which makes the person’s financial interest apparent.

(2) A board member knows, or should have known, about an adjudicatory proceeding pending before the board if either:

(A) The member has received notice of the pending adjudicatory proceeding. Notice includes receipt of an agenda or other written document from the staff identifying the proceeding and the party by name; or

(B) The board member has actual knowledge of the proceeding.

(3) A board member knows, or has reason to know about a contribution if:

(A) The contribution has been disclosed by the party or participant or agent pursuant to Section 15626; or

(B) The board member has actual knowledge of the contribution.

(b) A board member will be considered to have participated under Government Code Section 15626 in a matter if he or she, acting within the authority of his or her office:

(1) Votes on a matter.

(2) Takes part in the discussion regarding the matter.

(3) Urges other board members to reach a particular result in the matter.

(4) Is present and determines not to act when a vote is called without disclosure of the reasons for disqualification.

(c) Nothing in this section shall prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member’s participation is legally required

for the action or decision to be made. However, the fact that a member's vote is needed to break a tie does not make the member's participation legally required.

(d) In the event a board member's participation is legally required for the action or decision to be made, the board may bring back as many disqualified members as is necessary to establish a quorum. The preferred means of selecting which disqualified member should participate is by lot. Other means of random selection or other impartial and equitable means of selection may also be used.

**7009. Disclosure Under Government Code Section 15626.**

(a) A board member who is required by Government Code Section 15626 to disclose the receipt of a contribution shall make the disclosure on the public record at the beginning of the adjudicatory hearing or decision, if a hearing is held.

(b) A written record of any disclosure of receipt of a contribution made by a board member pursuant to Government Code Section 15626 shall be made available to the public.

(c) All statements filed pursuant to Government Code Section 15626 by parties, participants, and agents shall be incorporated into the written record of the proceeding and shall be made available to the public.

(d) The board staff shall report on the record if a hearing is held, or into the written record if no hearing is held:

(1) Whether any party or participant is a close corporation, and if so, the name of its majority shareholder:

(2) Whether any agent is an employee or member of any law, accounting, consulting or other firm, or similar entity or corporation, and if so, its name and address and whether a contribution has been made by any such person, firm, corporation, or entity.

**7010. Return of Contribution Under Government Code Section 15626.**

(a) If a member receives a contribution which would otherwise require disqualification and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful.

(b) For purposes of Government Code Section 15626, a return of that portion of any contribution or contributions over \$249 will be deemed a return of contribution which would otherwise require disqualification and the board member's participation in the proceeding shall be deemed lawful.

**7011. Notice of Contribution.**

(a) The Notice of Contribution to be completed by all parties, participants and agents, a close corporation and its majority shareholder, shall be on the forms described as Contribution Disclosure forms for parties, participants, or agents.

(b) The Contribution Disclosure form shall inquire of each party, participant, agent and close corporation and majority shareholder whether a contribution has been made to a member, and if so, in what aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision.

(1) Every party, participant, agent and close corporation and majority shareholder shall complete the Contribution Disclosure form prior to any pending adjudicatory proceeding or decision.

(2) Completion of a Contribution Disclosure form is required whether or not the party, participant, agent and close corporation and majority shareholder appears at the pending adjudicatory proceeding or decision.

(3) All parties, participants and agents shall disclose any and all fictitious business names they have utilized.

(c) The disclosure form filed by any party, participant, or agent shall be part of the public record of the related adjudicatory proceeding.

(d) The opinions issued by the Office of the Chief Counsel of the Board of Equalization interpreting Government Code Section 15626 and these regulations thereunder shall be maintained by the Office of Board Proceedings and shall be available to the public.

*History:* Effective August 20, 1994.

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**Notes**

<sup>1</sup> Government Code section 15626

<sup>2</sup> California Code of Regulations, title 18, section 7008, subdivisions (c) and (d), and Attorney General Opinion 95-324, November 17, 1995.

<sup>3</sup> California Code of Regulations, title 18, section 7004, subdivision (b).



# Rulemaking

## Rulemaking Protocol

The Sales and Use Tax Department or the Property and Special Taxes Department (program department), in conjunction with the Legal Department, identifies the need to adopt, amend, or repeal a regulation based on new legislation, a court decision, or other change in interpretation of existing law that has taxpayer impact. Proposed regulatory changes are presented to the Board at committee meetings and public hearings.

## Committee Meetings

The program department seeks authorization to publish a proposed regulatory change at a Board committee meeting. Committee meetings are held throughout the year in conjunction with Sacramento Board meetings. Before seeking authorization to publish, the program department seeks comments and suggestions from interested parties to resolve as many issues as possible regarding the proposed regulatory changes.<sup>1</sup> Before the committee meeting, the program department prepares an issue paper, which includes revenue and cost estimates completed by the Research and Statistics Section. The issue paper identifies, either in the body or by attachment, the provisions of the regulatory proposal that can be regarded as consent items and those that remain unresolved. At the committee meeting, the Board accepts public comment and hears the staff recommendation. The Board then decides whether to authorize publication.

If the Board authorizes publication, the Board Proceedings Division's regulations coordinator submits the *Notice of Proposed Regulatory Action* to the Office of Administrative Law for publication in the *California Regulatory Notice Register*, sends the notice to interested parties by U.S. mail and e-mail, and distributes the notice to Board staff. The coordinator also mails the notice and the revenue estimate to the Department of Finance and to legislative committees.

The proposed regulation must be noticed in the *California Regulatory Notice Register*, mailed to interested parties, and posted on the Board's website at least 45 days before the public hearing and close of the public comment period.<sup>2</sup>

## Public Hearings<sup>3</sup>

No sooner than 45 days after the publication date, the Board holds a public hearing on the proposed regulatory action. At the hearing, an Assistant Chief Counsel describes the proposed regulatory action and provides the staff recommendation. The Board considers the written and oral testimony of interested parties and may ask staff to respond and answer any questions raised by the Members or interested parties. The Board then votes on whether to adopt the proposed regulatory change.

At times, the Board may decide to continue a public hearing by announcing the continuance at the scheduled public hearing or by posting a notice at the entrance to the Board Room on the originally scheduled date. The Board Proceedings Division notifies the Office of Administrative Law and interested parties of the new public hearing date.

## Adoption

The Board may choose to adopt the regulation as published, approve it with changes closely related to the original version, or make changes that are not closely related to the original version.

If the Board adopts the regulation as published, the regulation is forwarded to the Office of Administrative Law for approval and filing with the Secretary of State.<sup>4</sup>

If the Board approves the regulation with changes that are sufficiently related to the original version, the full text, with the changes clearly indicated, is made available to the public for at least 15 days. The Board Proceedings Division's regulations coordinator sends the changed version to interested parties who commented on the original version. At the next Board meeting after the 15-day comment period, the Chief Counsel reports on any comments received and recommends whether the Board should adopt the changed version for filing with the Office of Administrative Law.<sup>5</sup>

If the Board makes changes to the proposed regulation that are not sufficiently related to the original version, the entire rulemaking process begins again.

A *Final Statement of Reasons* must accompany regulations submitted to the Office of Administrative Law for approval and must be posted on the Board's website. The statement must include a response to every public comment submitted orally or in writing regarding the proposed regulation.<sup>6</sup>

## Office of Administrative Law<sup>7</sup>

The Office of Administrative Law is charged with the review of regulations as provided in the Administrative Procedure Act. The Office of Administrative Law has 30 working days to review the regulation. If it approves the regulation, the Office of Administrative Law sends the regulation to the Secretary of State for filing. If it does not approve the regulation, the Office of Administrative Law returns it to the Board Proceedings Division for amendment and resubmission within 120 days.

## Effective Date

Regulations become effective 30 days after the Office of Administrative Law files them with the Secretary of State. Exceptions to this rule are regulations adopted under a statute requiring a specific effective date—in which case the regulation is effective on the date prescribed by the statute—or a Board request for an earlier or later effective date. The Board must show good cause for an earlier effective date.<sup>8</sup>

## Emergency Regulations<sup>9</sup>

When the Board makes a finding that the adoption, amendment, or a repeal of a regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare, the Board may adopt, amend, or repeal that regulation on an emergency basis. The emergency regulation is effective for only 120 days unless it is adopted through the formal rulemaking process within that time.

## Request from Public to Adopt, Amend, or Repeal a Regulation<sup>10</sup>

Except as otherwise provided by statute, any person may petition the Board to adopt, amend, or repeal a regulation. The petition shall state clearly and concisely:

- The substance or nature of the regulation, amendment, or repeal requested.
- The reason for the request.
- A reference to the authority of the state agency to take the requested action.

The Board is required to notify the petitioner in writing of the receipt of the petition. Within 30 days, the Board must either deny the petition in writing, indicating why the agency has reached its decision on the merits of the petition, or schedule the matter for public hearing. The Board will normally extend the time limit if the petitioner agrees.

Generally, the following procedure is followed in response to a petition:

- The Legal Department determines whether the submission meets the requirements listed above. If the submission does not meet these requirements, the Legal Department advises the petitioner.
- If the submission meets the requirements, the Board Proceedings Division notifies the petitioner in writing of the receipt of the petition and, when necessary, requests a waiver of the 30-day decision deadline.
- The appropriate program department prepares the necessary Board materials and the Board Proceedings Division places the petition on the Chief Counsel Matters—Rulemaking calendar for Board consideration.
- If the petition is granted in whole or in part, the Board Proceedings Division notifies the petitioner of the Board's decision and begins the rulemaking process.
- If the petition is denied, the Board Proceedings Division notifies the petitioner of the Board's decision.
- The Board's decision is transmitted in writing to the Office of Administrative Law for publication in the *California Regulatory Notice Register*.

Within 60 days of the Board's action on a petition to amend, adopt, or repeal a regulation, any interested party may request reconsideration of the action.

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**Notes**

- <sup>1</sup> Government Code section 11346.45.
- <sup>2</sup> Government Code section 11346.4.
- <sup>3</sup> Government Code section 11346.8.
- <sup>4</sup> Government Code section 11347.3
- <sup>5</sup> Government Code section 11346.8.
- <sup>6</sup> Government Code section 11346.9.
- <sup>7</sup> Government Code section 11340 et seq.
- <sup>8</sup> Government Code section 11343.4.
- <sup>9</sup> Government Code section 11346.1.
- <sup>10</sup> Government Code sections 11340.6 and 11340.7.

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