



STATE BOARD OF EQUALIZATION  
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State Controller

RAMON J. HIRSIG  
Executive Director

June 26, 2009

To Interested Parties:

Notice of Proposed Regulatory Action  
by the  
State Board of Equalization

**Proposed to Adopt Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings**

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 also proposes to amend California Code of Regulations, title 18, section (Regulation) 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443,

38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on August 31, 2009. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on August 31, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **CURRENT LAW**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454,

43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5,

45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

## **PROPOSED AMENDMENTS**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 will neither create nor eliminate jobs in the State of

California nor result in the elimination of existing businesses nor create or expand business in the State of California.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Regulations 5237 and 5266 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an Initial Statement of Reasons and underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

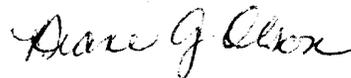
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE  
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 5237 and 5266, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

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Enclosures

## **Initial Statement of Reasons**

### **Proposed Amendments to California Code of Regulations, Title 18, Sections:**

#### ***5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings***

#### **SPECIFIC PURPOSE AND NECESSITY**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds of taxes and fees authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5237 is to clarify that, as a result of the May 27, 2009, vote, the Board has delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny the specified refunds, without further approval from the Board Members. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5266 is to clarify that, as a result of the May 27, 2009, vote, the Board has also delegated authority to Appeals Division staff to grant or deny petitions, claims for refund, and requests for relief, and cancel previously issued assessments, unless the amount granted exceeds \$100,000. The Board has determined that the proposed amendments to Regulations 5237 and 5266 are reasonably necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny the specified refunds.

#### **DOCUMENTS RELIED UPON**

The Board relied upon a May 7, 2009, memorandum from Ms. Randy L. Henry, the Deputy Director of the Board's Sales and Use Tax Department, to Mr. Raymond J. Hirsig, the Board's Executive Director, in deciding to delegate additional authority to Board staff to grant or deny claims for refund and proposing that Regulations 5237 and 5266 be amended to make them consistent with the new delegation. The memorandum contained background information regarding the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000, and the memorandum is available on the Board's Website at [http://www.boe.ca.gov/meetings/pdf/Item\\_P3a1\\_052709.pdf](http://www.boe.ca.gov/meetings/pdf/Item_P3a1_052709.pdf).

## **ALTERNATIVES CONSIDERED**

The Board considered, but did not approve, three alternative delegations of authority to Board staff and three conforming regulatory actions, on May 27, 2009. The first alternative would have delegated authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 11551, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$250,000. The second alternative would have delegated authority to Board staff to grant or deny such refunds regardless of the dollar amount. The third alternative would have made no change to the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000. (The alternatives are described in more detail in the May 7, 2009, memorandum.)

The Board did not approve the third alternative, which would have left the 1989 delegation of authority and Regulations 5237 and 5266 unchanged, because the \$50,000 limit on the 1989 delegation of authority needed to be increased to account for inflation. The Board did not approve the first and second alternatives, which would have increased the \$50,000 limit on the Board's 1989 delegation of authority to \$250,000 or eliminated the \$50,000 limit, respectively, because the Board wanted to increase Board staff's delegated authority more incrementally.

## **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has determined that the proposed amendments make the Board's internal processing of refunds more efficient and will not have a significant adverse economic impact on business.

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~  
\$100,000.**

- (a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.
- (b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.
- (c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).
- (d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.
- (e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.
- (f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

**5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.**

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

(i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and

(ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~ \$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452,

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45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302,  
46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4,  
50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044,  
55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224,  
55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501,  
60502, 60506, 60507, 60521, 60522, 60581.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulations: 5237 and 5266

Title: 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Staff request for authorization to publish a proposed amendment to Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds.

### History of Proposed Regulation:

August 31, 2009	Public hearing
August 24, 2009	45-day public comment period ends
June 26, 2009	OAL publication date; 45-day public comment period begins; IP mailing
June 15, 2009	Notice to OAL
May 27, 2009	Other Administrative Matters, Board Authorized Publication (vote 5 -0)

Sponsor: NA

Support: NA

Oppose: NA