

## Historical Timeline

**Type of Regulations:**

Administrative

**Title:**

*Rules for Tax Appeals* (Cal. Code Regs., tit. 18, div. 2.1)

**Staff Contacts:**

*Chapters 1, 2, 5 and Rulemaking:* Bradley Heller, Senior Tax Counsel (916) 324-2657  
*Chapter 3:* Carole Ruwart, Senior Tax Counsel (916) 322-3682  
*Chapter 4:* Ian Foster, Tax Counsel (916) 445-7519  
*Proposed Text, Notices, and Comments:* Diane Olson: (916) 322-9569

The following timeline lists all of the Board meetings and interested parties meetings during which the *Board of Equalization Rules for Tax Appeals* were discussed and provides notices of important dates during the rulemaking process. More information is available on the Board's Web site at:

<http://www.boe.ca.gov/regs/timelineCAtax.htm>.

September 12, 2007: Public hearing  
July 28, 2007: 45 day public comment period begins  
July 27, 2007: Notice of public hearing published in California Regulatory Notice Register, Register 2007, No. 30-Z, notice sent to interested parties  
April 25, 2007: Board meeting, Board authorized publication of chapter 3, *Property Taxes* (Vote 3-1-1)  
March 20, 2007: Board meeting, Board deferred publication of chapter 3, *Property Taxes*  
February 1, 2007: Board meeting, staff provided an updated and overview  
November 20, 2006: Board meeting, Board authorized publication of *Rules for Tax Appeals*, except Chapter 3, *Property Taxes* (Vote 3-1-1)  
October 18, 2006: Interested parties meeting regarding *Rules for Tax Appeals*  
September 27, 2006: Board meeting, Board deferred publication of *Rules for Tax Appeals*. (Vote 3-2)  
August 29, 2006: Board meeting, staff provided a status report regarding chapter 4, *Appeals from Actions of the Franchise Tax Board*  
May 17, 2006: Board meeting, Board approved the concepts in chapter 3, *Property Taxes*, (Vote 4-1), but deferred conceptual approval of chapter 4, *Appeals from Actions of the Franchise Tax Board* (Vote 4-0)  
April 18, 2006: Board meeting, Board approved the concepts in chapter 1, *Title*, and chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees* (Vote 4-0); and staff provided status reports regarding chapter 3, *Property Taxes*, chapter 4, *Appeals from Actions of the Franchise Tax Board*, and chapter 5, *General Board Hearing Procedures*.  
April 5, 2006: Interested parties meeting regarding chapter 5, *General Board Hearing Procedures*  
March 15, 2006: Interested parties meeting regarding chapter 4, *Appeals from Actions of the Franchise Tax Board*  
February 23, 2006: Interested parties meeting regarding chapter 3, *Property Taxes*  
January 31, 2006: Board meeting, staff provided an overview of the project  
December 14, 2005: Interested parties meeting regarding chapter 4, *Appeals from Actions of the Franchise Tax Board*, and chapter 5, *General Board Hearing Procedures*  
November 16, 2005: Interested parties meeting regarding chapter 3, *Property Taxes*  
October 26, 2005: Interested parties meeting regarding chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*  
September 28, 2005: Board meeting, staff introduced the project



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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RAMON J. HIRSIG  
Executive Director

August 17, 2007

NOTICE OF RESCHEDULED PUBLIC HEARING TO DISCUSS THE  
PROPOSED REGULATORY ACTION BY THE STATE BOARD OF EQUALIZATION  
TO REPEAL THE RULES OF PRACTICE AND ADOPT THE PROPOSED  
RULES FOR TAX APPEALS

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board) has rescheduled the public hearing on the above referenced regulatory action from the originally noticed date of September 11, 2007. (See notice published in the July 27, 2007, California Regulatory Notice Register 2007, Number 30-Z.) A rescheduled public hearing will be held on the proposed regulatory action during the regularly scheduled Board meeting to be conducted on September 12, 2007, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory actions should be directed to Mr. Bradley Heller, (916) 324-2657, email [bradley.heller@boe.ca.gov](mailto:bradley.heller@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Bradley Heller, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Diane Olson, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080 by September 12, 2007.

STATE BOARD OF EQUALIZATION

Gary Evans, Acting Chief  
Board Proceedings Division



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**July 27, 2007**

**To Interested Parties:**

**Notice of Proposed Regulatory Action by the State Board of Equalization  
to Repeal the Rules of Practice and Adopt the Proposed Rules for Tax Appeals**

NOTICE IS HEREBY GIVEN TO INTERESTED PARTIES THAT:

The State Board of Equalization (Board), pursuant to its authority under California Constitution, article XIII, section 11, Government Code sections 15606, 15640, Public Resources Code sections 42475, 42881, and Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, proposes to:

- Repeal articles 1 through 8 (§§ 5010-5087) of chapter 9 of division 2 of title 18 of the California Code of Regulations (the Rules of Practice);
- Renumber existing divisions 2.1-2.3 of title 18 of the California Code of Regulations as divisions 2.2-2.4, respectively;
- Promulgate all five chapters of the new Board of Equalization Rules for Tax Appeals (proposed Rules) as sections 5000-5576 of a new division 2.1;
- Renumber article 9, *Taxpayer Bill of Rights Reimbursement Claims* (§§ 5090-5095) of the current Rules of Practice, as chapter 6, sections 5600-5605 of the new division 2.1; and
- Revise the cross references in chapter 6 of new division 2.1 so that they refer to the appropriate sections of chapter 5 of new division 2.1, instead of article 8 of the current Rules of Practice.

A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, CA at 1:30 p.m., or as soon thereafter as the matter may be heard, on September 11, 2007. Any interested person may present statements or arguments relevant to the proposed regulatory action either orally or in writing at the hearing. The Board will consider written statements and arguments if received by the time of the public hearing.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board is responsible for administering 25 revenue-generating tax and fee programs, including the sales and use tax, fuel, alcohol, tobacco, and other taxes, and also collects fees that fund specific state programs. (BOE Publication 156, *Revenue-Generating Tax and Fee Programs*.) In addition, the Board oversees the assessment practices of California's 58 county assessors, hears petitions appealing assessments of extraterritorial publicly owned land and improvements, and assesses the property of regulated railroads and specified public utilities. (BOE *Annual Report for Fiscal Year 2005-2006*.) The Board also serves as the administrative appellate body that hears appeals from actions of the Franchise Tax Board (FTB). The Board currently performs its administrative review functions and appellate duties (collectively "appeals processes") pursuant to the Rules of Practice (Cal. Code Regs., tit. 18, § 5010 et seq.).

In 2005, the Board began a thorough review of the Rules of Practice and invited all the interested parties involved in all of its tax and fee programs to participate. As a result of this review process, the Board concluded that taxpayers, Board staff, other participants in Board hearings, and members of the public would benefit from comprehensive revisions to the rules prescribing the Board's appeals processes. The purpose of the revisions is to codify important procedures not currently contained in the Rules of Practice, reorganize the rules for the Board's appeals processes in a more logical manner, and generally explain the Board's appeals processes as plainly and comprehensively as possible. (Detailed information regarding the review process is available on the Board's Web site at: <http://www.boe.ca.gov/regs/timelineCAtax.htm>.)

During the revision process, the Board determined that the current Rules of Practice were not suitable for piecemeal amendment and, in addition, given their subject matter, probably were located in an inappropriate division of title 18 of the California Code of Regulations. Consequently, the Board determined that the new, proposed Rules for Tax Appeals should be promulgated in a more appropriate part of title 18. Therefore, the Board is currently proposing the following actions to effectuate the necessary revisions:

- Repeal articles 1 through 8 (§§ 5010-5087) of the current Rules of Practice;
- Renumber existing divisions 2.1-2.3 of title 18 of the California Code of Regulations as divisions 2.2-2.4, respectively;
- Promulgate all five chapters of the Rules for Tax Appeals as sections 5000-5576 of a new division 2.1;
- Renumber article 9, *Taxpayer Bill of Rights Reimbursement Claims* (§§ 5090-5095) of the current Rules of Practice, as chapter 6, sections 5600-5605 of the new division 2.1; and
- Revise the cross references in chapter 6 of new division 2.1 so that they refer to the appropriate sections of chapter 5 of new division 2.1, instead of article 8 of the current Rules of Practice.

The Rules for Tax Appeals are divided into five chapters. Chapters 1 and 5 address general issues and procedures pertaining to all the Board's tax and fee programs. The three remaining chapters contain procedures pertinent to specific tax and fee programs. The five chapters are:

Chapter 1, *Title*

Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*

Chapter 3, *Property Taxes*

Chapter 4, *Appeals from Actions of the Franchise Tax Board*

Chapter 5, *General Board Hearing Procedures*

The chapters and the sections within the chapters are further explained below:

### **Chapter 1: Title of Division**

#### 5000 Statement of Intent; Title for Division

This regulation names the proposed Rules the "Board of Equalization Rules for Tax Appeals," creates the acronym "RTA," and states the purpose of the proposed rules, which is to improve the relationship between taxpayers and the Board.

### **Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees**

Chapter 2 generally incorporates the Board's existing appeals process procedures for business taxes and fees, including the sales and use tax, the special taxes and fees, and the Timber Yield Tax. The proposed Rules in chapter 2 do not contain substantial changes to current procedures. The proposed Rules in chapter 2 codify all of the Board's procedures for business taxes and fees appeals in one well-organized chapter and give taxpayers and Board staff additional time to file their opening briefs. The proposed regulations in chapter 2 incorporate and codify the following important rights and policies that were not included in the Rules of Practice:

- The right to request an appeals conference with the Appeals Division of the Board's Legal Department, and the right to request reconsideration of Decisions and Recommendations issued by the Appeals Division;
- The right to request an oral Board hearing; and
- The Board's longstanding policy of accepting untimely petitions as late protests.

**Article 1: Application of Chapter 2 and Definitions**

5200 Application of Chapter 2 and Definitions.

This section specifies the types of petitions, protests, applications, claims, and requests for relief and the tax and fee programs to which chapter 2 applies. This section also specifies that the general definitions contained in chapter 5 (section 5511) apply to chapter 2 unless there is a conflict with other provisions in chapter 2.

5201 Application of the International Fuel Tax Agreement.

This section specifies that the provisions in the International Fuel Tax Agreement (IFTA) control in cases where they conflict with the provisions of chapter 2.

5202 Notice Requirements.

This section provides that any notice given under chapter 2 must be served personally or by mail according to the statutory requirements for notice of a deficiency determination.

**Article 2A: Petitioning Notices of Determination and Notices of Deficiency Assessment**

5210 Persons Who May File Petitions for Redetermination.

This section provides that a person against whom a notice of determination or notice of deficiency assessment is issued may file a petition for redetermination and that a person directly interested in a notice of determination also may file a petition for redetermination. This section also defines the statutory phrase “person directly interested in a notice of determination.”

5210.5 Successor’s Petition for Reconsideration.

This section provides that a petition for reconsideration of a notice of successor liability may be filed in the same manner as a petition for redetermination concerning the same tax or fee law under which the notice of successor liability was issued.

5211 Limitation Period for Filing Petitions and Stay of Collection Activities.

This section sets forth the time in which all petitions (other than petitions for redetermination of jeopardy determinations) must be filed in order to be considered timely under chapter 2 and to prevent the petitioned Board action from becoming final and collectable. This section also codifies the Board’s Legal Department’s opinion that “premature” petitions are not timely, and provides notice of the fact that a timely filed petition will stay collection activities related to the amount being petitioned until the Board has acted on the petition and the Board’s action has become final.

5212 Contents of Petitions for Redetermination, and Supporting Arguments and Evidence.

This section describes the required contents of a petition for determination. It also gives taxpayers the options of using a Board-provided form in preparing their petitions and of filing supporting written arguments and documentary evidence together with their petitions. This section also clarifies that petitioners may request an appeals conference and/or an oral Board hearing in their petitions.

5212.5 Amendments to Petitions for Redetermination.

This section provides notice that a petition for redetermination may be amended and provides the time period during which a petition may be amended.

5213 Accrual of Interest.

This section notifies taxpayers that the filing of a petition for redetermination does not stop the accrual of interest on any taxes or fees that are eventually determined to be due and payable.

5214 Additional Copy of Petitions for Redetermination Filed Pursuant to the Tax on Insurers Law.

This section requires that a copy of a petition for redetermination filed pursuant to the Tax on Insurers Law (part 7 of division 2 of the Rev. & Tax. Code) be filed simultaneously with the Commissioner of Insurance in care of the Premium Tax Audit Bureau as suggested by the Department of Insurance.

5215 Scope of Petitions for Redetermination Filed Pursuant to Hazardous Substances Tax Law.

This section provides notice of statutory provisions applicable to petitions filed under the Hazardous Substances Tax Law (part 22 of divisions 2 of the Rev. & Tax. Code) and codifies the Board’s policies and procedures regarding the

Department of Toxic Substances Control's and State Department of Health Services' roles in the Board's appeals process.

5215.4 Scope of Petitions for Redetermination Filed Pursuant to Covered Electronic Waste Recycling Fee.

This section provides notice of provisions in Public Resources Code section 42464.6 applicable to petitions filed with regard to the Covered Electronic Waste Recycling Fee and codifies the Board's policies and procedures regarding the Department of Toxic Substances Control's role in the Board's appeals process.

5215.6 Scope of Petition for Redetermination Filed Pursuant to Water Rights Fee Law.

This section provides notice of provisions in Water Code section 1537 applicable to petitions filed with regard to the Water Rights Fee and codifies the Board's policies and procedures regarding the State Water Resources Board's role in the Board's appeals process.

5216 Filing Petitions for Redetermination.

This section explains how to file a petition and provides specific addresses for mailed petitions. This section also codifies the Board's policy of encouraging the electronic filing of petitions and related documents, and directs persons seeking more information on electronic filing requirements to the Board's Web site ([www.boe.ca.gov](http://www.boe.ca.gov)), which will contain directions that can be updated periodically. Finally, this section provides that the Chief of Board Proceedings may reject any petition or related document that is not filed in accordance with the provisions of this section.

5217 Assignment and Acknowledgment of Petitions for Redetermination.

This section notifies taxpayers of the Board's section or group to which their petition will be assigned. This section also requires Board staff to promptly acknowledge the receipt of petitions and notifies taxpayers that a request for additional documentary evidence may be included in the acknowledgement.

5218 Review of the Petition by the Assigned Section.

This section describes the assigned Board staff's initial review of petitions, including staff's ability to refer petitions to other staff for further investigation and comment. This section provides specific criteria applicable to the Board staff's review of petitions. This section also requires Board staff to present their initial findings to taxpayers and explains how taxpayers can appeal Board staff's initial findings.

5219 Mailing the Summary Analysis and Scheduling the Appeals Conference.

This section describes the process by which Board staff completes the initial review of a petition in situations where taxpayers disagree with all or a portion of Board staff's initial findings. It requires Board staff to mail a copy of its summary analysis to taxpayers and notifies taxpayers that an appeals conference will be scheduled after the summary analysis is received.

**Article 2B: Treatment of Premature or Untimely Petition as an Administrative Protest**

5220 Premature or Untimely Petition May Be Treated as an Administrative Protest.

This section explains that the Board has discretion to review premature or untimely petitions as administrative protests and codifies the Board's policy of liberally granting such review. This section also suggests that taxpayers file a claim for refund for each payment made on an administrative protest so that the Board is not statutorily barred from refunding any overpayments.

5220.4 Accrual of Interest.

This section notifies taxpayers that the treatment of a petition as an administrative protest does not stop the accrual of interest on any taxes or fees that are eventually determined to be owed.

5220.6 No Stay of Collection Activities.

This section notifies taxpayers that, unlike timely petitions for redetermination, the treatment of a premature or untimely petition as an administrative protest does not stay collection activities.

## **Article 2C: Contesting a Jeopardy Determination**

### **5221 Notice of Jeopardy Determination.**

This section describes the conditions under which a notice of jeopardy determination may be issued, and the contents of such a notice. This section also provides additional notice that the amounts stated in a notice of jeopardy determination are immediately due and payable, unlike amounts included in notices of determination.

### **5222 Persons Who May File a Petition for Redetermination of a Jeopardy Determination.**

This section describes the persons who may file a petition for redetermination of a jeopardy determination and provides procedures for filing. The procedures include provisions for mail and hand delivery, as well as for electronic filing. This section also allows the Chief of Board Proceedings to reject any petition that does not comply with the filing requirements.

#### **5222.4 Contents and of Petition for Redetermination of Jeopardy Determination.**

This section carries over the Board's policy from the existing Rules of Practice of requiring that petitions for redetermination of jeopardy determinations satisfy the same requirements as other petitions for redetermination.

#### **5222.6 Limitation Period for Petition for Redetermination of Jeopardy Determination.**

This section carries over from the existing Rules of Practice the time limits within which a petition for redetermination of a jeopardy determination must be filed and adds a clarifying provision explaining that the time limits provided for filing other petitions for redetermination are inapplicable to petitions for redetermination of jeopardy determinations.

### **5223 Security Requirement for Petition.**

This section carries over from the existing Rules of Practice the statutory requirement that taxpayers deposit the amounts shown on their respective notices of jeopardy determination before the Board can accept their petitions for redetermination for filing.

### **5224 Review of Petition for Redetermination of Jeopardy Determination.**

This section explains that a petition for redetermination of a jeopardy determination may be based upon any grounds, including the inappropriateness of issuing a jeopardy determination. This section explains that the Board's review of such a petition will follow the same procedures as for other petitions for redetermination, but that such review will be carried out "promptly" due to the nature of jeopardy determinations. This section also explains that the limitations on the Board's review contained in sections 5215 and 5215.4 apply to the Board's review of a petition for redetermination of a jeopardy determination.

### **5225 Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.**

This section explains that a person against whom a jeopardy determination is made has a right to file an application for an administrative hearing and explains the grounds upon which such an application may be based. This section encourages electronic filing of such applications and also contains provisions for mail and hand delivery. This section explains that if both a petition for redetermination and an application for administrative hearing are filed, then there will be a single hearing for both. This section also incorporates the co-filing requirement for petitions filed under the Tax on Insurer's Law, and directs taxpayers to the State Water Resources Board to resolve specified issues regarding the Water Rights Fee.

### **5226 Limitation Period for Filing Application for Administrative Hearing.**

This section carries over the 30-day time limit for filing an application for an administrative hearing and the Board's discretion to grant an exception to the time limit based upon a showing of reasonable cause from section 5032, subdivisions (a) and (e), of the existing Rules of Practice.

### **5227 Contents of Application for Administrative Hearing.**

This section carries over the requirement that applications for administrative hearings be in writing and the specific factual and legal grounds upon which such applications may be founded from section 5032, subdivision (c), of the existing Rules of Practice. This section also adds a signature requirement.

5228 Option to Post Security with Application for Administrative Hearing.

This section carries over the rights to obtain an administrative hearing without posting security and to have seized property protected from sale during the Board's review of a timely filed application for an administrative hearing from section 5032, subdivisions (d) and (e), and section 5033 of the existing Rules of Practice. This section carries over the requirement that taxpayers are liable for the expense of storing their property, but explains that the Board has discretion to waive, credit, or refund such expenses. This section also provides notice to taxpayers that other collection actions will only be stayed if sufficient security is deposited with the Board.

5229 Assignment of Application for Administrative Hearing to Appeals Division for Appeals Conference.

This section carries over and amplifies the provisions of sections 5034 and 5035 of the existing Rules of Practice regarding both the conduct of administrative hearings and the findings that may be made following an administrative hearing. In addition, this section provides both for a prompt administrative hearing in the form of an appeals conference and the prompt issuance of a Decision and Recommendation after such administrative hearing. This section also codifies the right to request an oral Board hearing if the taxpayer disagrees with the Decision and Recommendation.

**Article 3: Claims for Refund**

5230 Persons Who May File a Claim for Refund; Limitations on Certain Claims.

This section identifies the persons who may file a claim for refund under the tax and fee programs governed by the procedures in chapter 2. This section also identifies Motor Vehicle Fuel Tax, Hazardous Substances Tax Law, Covered Electronic Waste Recycling Fee, and Water Rights Fee claims for refund that must be filed with other agencies.

5231 Limitation Period for Claim for Refund.

This section organizes and sets forth all of the statutes of limitation or limitations periods applicable to claims for refund filed under the various tax and fee programs governed by the procedures addressed in chapter 2.

5231.5 Failure to File Timely Claim for Refund.

This section provides additional notice to taxpayers regarding the statutory effect of failing to file a claim for refund within the applicable limitations period by providing that the "failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment."

5232 General Contents of Claims for Refund.

This section describes the requirements for a valid claim for refund. This section gives taxpayers the ability to use a Board-provided form to file their claims, to provide a breakdown of their sales and use tax claims for refund into state, local, and district taxes to expedite processing, to include more than one reporting period in each claim, and to submit their documentary evidence together with their claims for refund. This section also provides notice of existing law that prohibits taxpayers from claiming a refund by deducting past overpayments from future tax and fee liabilities.

5232.4 Contents of Claims for Refund Under Diesel Fuel Tax Law.

This section brings together all of the particular requirements for a valid claim for refund under the Diesel Fuel Tax Law found in California Code of Regulations, title 18, sections 1430-1435.

5232.6 Requirements for Claims for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.

This section provides a cross reference to the specific requirements applicable to claims for refund of Alcoholic Beverage Tax included in the sales price of lost, unmarketable or condemned alcoholic beverages contained in California Code of Regulations, title 18, section 2553.

5232.8 Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.

This section provides a cross reference to the additional requirements for claims for refund of Cigarette and Tobacco Products Tax paid on the purchase of unused stamps and meter register settings found in California Code of Regulations, title 18, sections 4061-4065.

5233 Filing Claims for Refund.

This section explains how to file a claim for refund and provides specific addresses for mailed claims. This section also codifies the Board's policy of encouraging the electronic filing of claims and related documents, and directs persons seeking more information on electronic filing requirements to the Board's Web site, which will contain directions that can be updated periodically. Finally, this section provides that the Chief of Board Proceedings may reject any claim or related document that is not filed according to the provisions of this section.

5234 Assignment and Acknowledgment of Claim for Refund.

This section notifies taxpayers of the Board's section or group to which their claim for refund will be assigned. This section also requires Board staff to promptly acknowledge the receipt of claims for refund.

5234.5 Review Process for Claims for Refund and Requests for Additional Information.

This section notifies taxpayers of the Board's policy regarding the order in which claims for refund are processed. The section also explains that Board staff may request additional information in order to process a claim and describes the potential consequences of failing to provide the requested information.

5235 Action on the Claim for Refund.

This section describes the recommendations that Board staff can make following the initial review of claims for refund and the process that Board staff will follow once Board staff makes a recommendation to grant a claim for refund. This section also requires Board staff to explain the reasons for recommending that a claim for refund be denied and describes how taxpayers can appeal Board staff's initial recommendations when they disagree.

5236 Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.

This section describes the Board's policy of liberally granting requests for appeals conferences and oral Board hearings on claims for refund.

5237 Board Approval Required for Refunds Over \$50,000.

This section codifies the Board's policies regarding the reservation or delegation of authority to approve determinations on claims for refund. This section explains that the authority to approve determinations on claims for refund in excess of \$50,000 is reserved to the Board Members. This section also provides delegations of authority to approve claims for refund regarding duplicate or erroneous electronic funds transfers and certain claims for refund filed under the Diesel Fuel Tax Law.

5238 Credits and Offsets May Reduce Refunds.

This section explains the Board's statutory authority to reduce the amount of an overpayment that is actually refunded to a taxpayer by other amounts the taxpayer owes to the Board. This section also provides notice of unique provisions in the Diesel Fuel Tax Law permitting taxpayers to claim certain overpayments as credits on their returns, and explains that these credits are not subject to being reduced by other amounts the taxpayers owe to the Board.

5239 Combined Claims for Refund on Behalf of Class of Taxpayers.

This section describes the Board's policies for processing combined claims for refund filed on behalf of a class of taxpayers under the Sales and Use Tax Law and State-administered local sales, transactions, and use taxes as borrowed from section 5024 of the existing Rules of Practice without substantive alteration.

**Article 4A: Requests for Innocent Spouse Relief Under the Sales and Use Tax Law**

This article describes and amplifies the Board's procedural processes for claiming innocent spouse and other equitable relief under the Sales and Use Tax Law contained in California Code of Regulations, title 18, section 1705.1, subdivisions (d) and (h).

5240 Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, including State-administered local sales, transactions, and use taxes).

This section describes the persons who may file a request for innocent spouse relief under the Sales and Use Tax Law and provides a cross reference to the substantive requirements for relief, including the period in which a timely request must be filed. This section prescribes the contents of a complete request for innocent spouse relief and provides for the use of a Board-provided form. This section also encourages taxpayers to electronically file their requests for innocent spouse relief, but also provides procedures for filing by mail or hand delivery to the Board's headquarters.

5241 Acknowledgement and Review of Requests for Innocent Spouse Relief.

This section explains the initial assignment and review of requests for innocent spouse relief. This section notifies taxpayers that Board staff will contact their spouses and permit their spouses to submit information regarding their requests for innocent spouse relief. This section describes the process by which Board staff initially grants or denies requests for innocent spouse relief. This section also describes the manner in which taxpayers may request other equitable relief and the Board's initial process for reviewing requests for other equitable relief.

5242 Requests for Reconsideration by the Board.

This section notifies taxpayers of their right to request an oral Board hearing for the Board to reconsider Board staff's denials of their requests for other equitable relief, identifies the procedures for requesting an oral Board hearing, and codifies the Board's policy of liberally granting such oral hearings. This section also informs taxpayers that they may be required to attend an appeals conference if an oral Board hearing is granted.

**Article 4B: Successor's Request for Relief of Penalty Under the Sales and Use Tax Law**

5243 Successor's Request for Relief.

This section provides additional notice regarding the requirements for a complete request for relief of penalties filed under California Code of Regulations, title 18, section 1702, subdivision (d)(2). This section also explains that all such requests must be filed in the same manner as petitions for redetermination and permits requests for relief to be included petitions for redetermination.

**Article 4C: Other Requests for Relief of Penalties and Interest**

This article describes the procedures for requesting relief of penalties and interest.

5244 No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.

This section notifies taxpayers that there is no independent statutory right to an oral Board hearing on a request for relief, and that the Board has discretion to grant or deny an oral Board hearing on a request for relief. This section also notifies taxpayers that request for relief may be included in petitions for redetermination and claims for refund, that requests for relief included in petitions for redetermination and claims for refund must satisfy all the requirements for a complete request for relief, and requests for relief included in petitions for redetermination or claims for refund will be reviewed under the procedures applicable to such petitions for redetermination or claims for refund. This section also notifies taxpayers that the Board can associate requests for relief with related petitions for redetermination or claims for refund.

5245 Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.

The Revenue and Taxation Code grants the Board authority to relieve certain penalties in most of its tax and fee programs due to reasonable cause and circumstances beyond the taxpayer's control. The section lists all of the penalties that can be relieved for reasonable cause and organizes them by the particular tax or fee to which they relate for quick cross referencing. This section also prescribes the requirements for a complete request for relief for reasonable cause, and gives taxpayers the option to use a Board provided form.

5246 Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.

The Revenue and Taxation Code grants the Board authority to relieve interest under certain circumstances, however, the authority does not extend to all of the Board's tax and fee programs. This section lists all of the tax and fee programs in which the Board has statutory authority to relieve interest, prescribes the requirements for a complete request for relief of interest, and also gives taxpayers the option to use a Board-provided form.

5247 Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

The Revenue and Taxation Code grants the Board authority to relieve taxes, fees, penalties, and interest due to reasonable reliance on written advice, however, the authority does not extend to all of the Board's tax and fee programs. This section lists all of the tax and fee programs in which the Board has statutory authority to relieve taxes, fees, penalties, and interest due to reasonable reliance on written advice, and describes the requirements for a complete request for relief under this section.

5248 Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.

The Revenue and Taxation Code grants the Board authority to relieve interest due to disaster, however, the authority does not extend to all forms of interest imposed under all of the Board's tax and fee programs. This section lists all of the types of interest the Board can relieve due to a disaster in each of the Board's tax and fee programs, describes the requirements for a complete request for relief under this section, and also gives taxpayers the option to use a Board-provided form.

5249 Filing Requests for Relief.

This section provides that requests for relief of unpaid or paid amounts may be filed under the same procedures as apply to a petition for redetermination or a claim for refund, respectively.

5249.4 Assignment and Acknowledgement of Requests for Relief.

This section describes the assignment and acknowledgment of requests for relief and requires the assigned staff to provide their contact information to taxpayers in their acknowledgement letters. This section informs taxpayers that the assigned staff may request additional information in their acknowledgement letters. This section also informs taxpayers that requests for relief that are included in a petition for redetermination or claim for refund will be reviewed in accordance with the procedures applicable to such petitions or claims, and not the procedures in section 5249.6 of the proposed Rules.

5249.6 Reviewing Requests for Relief.

This section describes the Board's review process for requests for relief, explains that taxpayers may request review of Board staff's initial determination from the appropriate Deputy Director, and explains that taxpayers may also request an oral Board hearing if they disagree with the Deputy Director's determination. The section also provides notice of the Board's discretion to deny a request for an oral Board hearing and require taxpayers to attend appeals conferences prior to their oral Board hearings.

**Article 5: Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes**

5250 Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.

This section provides a cross reference to the provisions of California Code of Regulations, title 18, sections 1807 and 1828 regarding the Board's review of claims (inquiries) regarding the incorrect or non-distribution of local and district taxes, and provides procedures for filing such claims (inquiries), which encourage electronic filing.

**Article 6: Appeals Conferences**

The Appeals Division is part of the Board's Legal Department. Appeals Division staff is responsible for conducting appeals conferences and providing the Board Members with their independent and objective analysis of matters assigned to the Appeals Division for review. This article describes the procedures for Appeals Division review.

5260 Referral to Appeals Division for Appeals Conference; Preferred Location for Appeals Conference.

This section requires Board staff to contact taxpayers at the beginning of the Appeals Division review process to update the taxpayers' contract information and determine whether the taxpayers prefer to have their appeals conferences conducted at specific locations. This section also provides notice to taxpayers regarding the location where their appeals conferences will be held, unless taxpayers express another preference.

5261 Notice of Appeals Conference; Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.

This section requires Board Proceedings Division staff to issue each taxpayer a Notice of Appeals Conference, and prescribes the contents of the notices. This section notifies taxpayers that Response to Notice of Conference forms will be included with their Notices of Appeals Conference, and directs taxpayers to complete and return their forms to the Board Proceedings Division along with any additional arguments or evidence within 15 days after the date their Notice of Appeals Conference was mailed. This section also informs taxpayers that appeals conferences are not normally recorded, directs taxpayers to check the appropriate box on their Response to Notice of Conference form to indicate that they would like to record their appeals conferences, and requires taxpayers to provide a copy of any recording to the Appeals Division upon request.

5262 Requests to Reschedule or Postpone Appeals Conferences.

This section prescribes the manner in which a request to reschedule or postpone an appeals conference may be filed, and encourages the use of electronic means. This section explains that any appeals conferences may be rescheduled once to resolve a scheduling conflict, and may only be rescheduled a second time with the approval of the Chief Counsel. This section explains that appeals conferences scheduled to be conducted at district offices may be postponed, reassigned, and then conducted at a later time at the same district office. This section also permits the Chief of Board Proceedings to grant postponements requested within 15 days of the date the Notice of Appeals Conference was mailed to the taxpayer, and allows the Chief Counsel to grant postponements requested outside of that period and second or subsequent postponements in cases of extreme hardship.

5263 Ways to Expedite an Appeals Conference.

This section informs taxpayers that the Board Proceedings Division will expedite the scheduling of their appeals conferences if they agree in writing to attend an appeals conference conducted at the Board's headquarters, by video conference, or by teleconference by the time their Response to Notice of Appeals Conference forms are due. This section also codifies the Board's policy of trying to expedite the scheduling of appeals conferences for taxpayers who agree to appear on shortened notice.

5264 Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear.

This section requires appeals conferences to be conducted by Appeals Division staff that has not had any prior involvement in the matters under review, and requires that Appeals Division staff take a fresh look at the law and the facts, and make their own objective recommendation. This section explains that Board staff from the appropriate Department (as defined in section 5511 of the proposed Rules) and, in some cases, staff from other state agencies that jointly administer taxes and fees with the Board will participate in appeals conferences. This section describes the non-adversarial nature of appeals conferences and authorizes the participants to submit additional written arguments and documentary evidence before, during, and after an appeals conference. This section also provides notice of the effect of failing to appear at a scheduled appeals conference and requires Appeals Division staff to deliberate on each matter before preparing the Decision and Recommendation required by section 5265 of the proposed Rules.

5265 Issuance and Contents of a Decision and Recommendation.

This section requires Appeals Staff to prepare a written report of their findings called a Decision and Recommendation (D&R) within 90 days after the submission of any additional documents under section 5264 of the proposed Rules, and gives the Chief Counsel discretion to grant written requests for extensions. This section describes the arguments and evidence upon which a D&R will be based in cases where a party fails to attend an appeals conference, and prescribes the contents of all D&Rs. This section also requires the Board to provide copies of D&Rs to all of the parties to an appeals conference, suggests that the parties contact Appeals Division staff immediately after discovering any significant factual errors in their D&Rs, and gives Appeals Division staff authority to revise inaccurate D&Rs when necessary.

5266 Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings.

This section describes the various types of recommendations the Appeals Division may make in a D&R, and also describes the options for responding to a D&R. This section allows taxpayers, the Board's Departments, and other state agencies to agree with a D&R or request reconsideration of a D&R by Appeals Staff, but only allows taxpayers and other state agencies to request an oral Board hearing. The section requires Appeals Division staff to prepare a Supplemental Decision and Recommendation (SD&R) (as defined) to address any new information provided in a request for reconsideration, and also authorizes Appeals Division staff to issue a SD&R to clarify or correct the information, analysis, or conclusions contained in a prior D&R or SD&R. This section also explains the Board's policy of having the Board Members independently consider Appeals Division staff's recommendations to grant petitions, claims for refund, or requests for relief in amounts that exceed \$50,000.

5267 Issuance of Post Appeals Conference Notices.

Subdivision (a) of this section describes the circumstances under which taxpayers, the Board's Departments, and other state agencies' participation in the Board's appeals process will conclude following an appeals conference, and final notice of the Board's action on a petition, claim for refund, or request for relief will be issued. Subdivision (b) of this section codifies an important exception to subdivision (a) that prevents Appeals Division staff's

recommendations to grant certain petitions and claims for refund from becoming final so that the matters can be consolidated with related appeals scheduled for oral Board hearing.

5268 Procedures for Conducting Board Hearings.

This section specifies that oral Board hearings will be conducted under the procedures contained in chapter 5 of the proposed Rules and thereby provides a cross reference between the two chapters.

**Article 7: Optional Briefs for Board Hearings**

5270 Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing.

This section provides notice of the Board's policy permitting the parties to an oral Board hearing to file optional briefs. This section prescribes the manner of filing optional briefs; the time periods in which optional briefs may be filed; the length, content, and manner of filing optional briefs; and the contents of opening briefs, reply briefs, and responses to reply briefs. This section also provides notice of the Board's policy permitting the filing of non-party amicus briefs and allowing the parties to an oral Board hearing to respond, the Board's authority to require additional and post-hearing briefs, and the Board's policy permitting unrepresented taxpayers to submit briefs at their oral Board hearings.

5271 Extensions of Time for Filing Briefs.

This section describes the Chief Counsel's authority to grant a written request for an extension of the time period to file any brief for reasonable cause, and requires the Chief Counsel to make appropriate adjustments to the time period in which other parties must file a reply brief when an extension is granted.

**Chapter 3: Property Taxes**

Chapter 3 generally incorporates the existing procedures for the Board's property tax appeals processes, except appeals under the Timber Yield Tax Law and appeals of jeopardy assessments issued under the Private Railroad Car Tax Law, which are governed by chapter 2 of the proposed Rules. Chapter 3 does not substantially change the Board's current procedures. Instead, chapter 3 puts all the procedures applicable to property tax appeals (other than those noted above) in one well-organized chapter and ensures that those procedures are comprehensive in nature.

Chapter 3 is divided into four articles. Articles 1 and 4 set forth definitions and procedures that apply to the beginning and end of all of the Board's property tax appeals processes, respectively. Article 2 describes procedures specific to petitions for reassessment of unitary and non-unitary value of state-assessed property and petitions for reassessment of private railroad car value (state-assessee appeals). Article 3 describes procedures specific to the other three types of property tax appeals, and subchapters 2 through 4 of article 3 describe procedures that are specific to each of the three types of property tax appeals.

**Article 1: Application of Chapter and Definitions**

5310 Application of Chapter.

This section specifies the types of property tax appeals (i.e., petitions and applications) to which chapter 3 applies. This section also specifies that the rules and procedures contained in chapter 5 (commencing with section 5511) of the proposed Rules apply property tax appeals unless there is a conflict with provisions in chapter 3.

5311 Definitions.

This section provides that the definitions in chapter 5 of the proposed Rules apply to the provisions of chapter 3 unless otherwise indicated, and contains definitions for the following 17 terms that are specific to chapter 3: Appeals Conference, Appraisal Data Report, County-Assessed Properties Division, Hearing Summary, Organizational Clearance Certificate, Party, Petition, Petitioner, Respondent, Sample Findings, Summary Decision, Supplemental Clearance Certificate, Tax and Fee Programs Division, State-Assessed Properties Division, State-Assessed Properties Division's Analysis, and Written Findings and Decision.

5312 Application of Articles 2, 3, and 4.

This section explains the organization of the remaining articles in chapter 3 and tells readers where to find procedures that apply to each type of property tax appeal covered by chapter 3.

## **Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars**

Article 2 describes procedures specific to state-assessee appeals, including appeals involving escaped or excessive assessments, and assessment factor hearings during which the Board Members receive public testimony on issues relating to capitalization rates and other factors affecting values of state-assessed property and private railroad cars.

### **Subchapter 1: Application of Article**

#### 5321 Application of Article.

This section explains that the procedures in this article apply to all state-assessee appeals and assessment factor hearings.

### **Subchapter 2: Assessments and Assessment Factor Hearings**

#### 5322 Information Available to Assesseees; Assessment Factor Hearings.

This section identifies the types of data and reports that state assesseees may request regarding the valuation of their unitary and non-unitary property; notifies state assesseees and private railroad car taxpayers about the Board's Assessment Factor Hearings and the procedures for making oral presentations to the Board at such hearings; and notifies states assesseees and private railroad car taxpayers about their opportunity to make an oral or written presentation to the Board regarding the value of their property.

#### 5322.5 Validity of Assessment.

This section explains that assessments and taxes levied by the Board are valid even if the state assessee or private railroad car taxpayer does not receive a required notice or the Board fails to complete a required action by a date specified in this article.

### **Subchapter 3: Contents of Petitions and Filing Deadlines**

#### 5323 Time for Filing of Petitions.

This section describes the filing deadlines for all of the different types of state assessee and private railroad car tax petitions (state-assessee petitions) covered by article 2.

#### 5323.2 Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.

This section provides that appeals of private railroad car tax jeopardy assessments are governed by the procedures for appealing business taxes and fees notices of jeopardy determination and contains a cross reference to chapter 2, article 2C of the proposed Rules where the applicable procedures are located.

#### 5323.4 Contents of the Petition.

This section describes the contents of a valid state-assessee petition under article 2. This section requires that petitions be in writing; contain certain specified information regarding value and whether the petitions constitute claims for refund; identify any supporting documentation; state whether an appeals conference, oral Board hearing, or written findings and decision are requested; be signed under penalty of perjury; and be accompanied by a statement of authorization when required.

#### 5323.6 Submission of Petition.

This section requires ten copies of all state-assessee petitions to be filed along with the original by mail or personal delivery to the Board's headquarters. This section also codifies the Board's policy of encouraging electronic filing and allows petitioners to submit a compact disc containing an electronic copy of their petitions formatted as specified by the Board Proceedings Division in lieu of the required ten copies.

#### 5323.8 Duplicate Petitions.

Petitioners may only file one petition regarding an assessment. This section provides procedures for determining which petition was authorized by the petitioner in cases where the Board receives two or more petitions from the same petitioner for the same assessment, and creates a presumption in favor of the first petition received by the Board.

#### **Subchapter 4: Timeliness, Acceptance, and Dismissal of Petitions**

##### 5324 Timeliness of Petition.

This section describes the circumstances under which a state-assessee petition or other submission is considered timely filed. This section cross references the provisions of chapter 5 of the proposed Rules for determining whether there was “timely performance” and ascertaining the “mailing date” of a petition or other document. This section also permits petitions to be filed electronically so long as the original hard copies are mailed or delivered to the Board the next business day.

##### 5324.2 Extensions of Time.

This section describes the circumstances under which petitioners may request and the Board’s Chief Counsel may grant extensions of time to file petitions and supporting documents under this article. This section allows the Chief Counsel to grant only 15-day extensions for filing petitions due to the time-sensitive nature of state-assessee appeals, but gives the Chief Counsel the flexibility to grant an extension for a reasonable amount of time to file supporting documents.

##### 5324.4 Accepting or Rejecting a Petition.

This section describes the procedures by which petitions will be reviewed to determine whether they are valid, complete, and timely. It requires the Chief of Board Proceedings to accept and acknowledge valid, complete, and timely petitions, and forward petitions that raise an issue regarding their validity, completeness, or timeliness to the Chief Counsel. If the Chief Counsel decides that a petition is valid, complete, and timely, or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the petition, and any remaining issues regarding validity, completeness, or timeliness will be decided by the Board. If the Chief Counsel and the Chief of Board Proceedings agree that a petition is not valid, complete, or timely the Chief of Board Proceedings is required to reject the petition.

##### 5324.6 Submission of Additional Supporting Documents by Petitioner.

This section limits the documentary evidence that petitioners can present to the Board to their petitions, the supporting documents filed with their petitions, and other documents requested by Board staff or the Board Members. However, this section does not limit the Board Members or Board staff’s authority to request that petitioners submit additional documentary evidence. This section also requires documentary evidence to be submitted along with a declaration signed under penalty of perjury attesting to its authenticity, and requires documentary evidence that is not submitted with a petition or filed pursuant to a Board request to be returned to petitioners.

##### 5324.8 Dismissal of Petition.

This section clearly describes the circumstances under which a petition will be dismissed and requires the Chief of Board Proceedings to send each petitioner a notice of dismissal when a petition is dismissed which sets forth the reasons for the dismissal.

#### **Subchapter 5: Prehearing Meetings and Review of Petitions**

Subchapter 5 describes an optional process under which petitioners may request an informal meeting with Board staff to resolve the issues raised in their petitions.

##### 5325 Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.

This section requires Board staff to informally meet with petitioners who request a meeting to exchange relevant information and evidence, identify issues, and resolve as many issues as possible before their scheduled hearings. This section also provides notice to petitioners that this section does not limit Board staff’s authority to request additional information from the petitioner at any time.

##### 5325.4 Petitions Resolved Before Appeals Division Review.

This section describes the procedures by which Board staff will prepare and submit the “State-Assessed Properties Division’s Recommendation for Property Tax Petition” for petitions that petitioners and Board staff completely resolve prior to the beginning of the appeals conference or briefing processes. This section also prescribes the contents of recommendations and provides notice that the Board Members are not required to adopt Board staff’s recommendations.

**5325.6 Prehearing Review of All Other Petitions.**

This section requires the Appeals Division to review all state-assessee petitions that are not fully resolved by a joint recommendation as described in section 5325.4 above, and prepare either a Hearing Summary or Summary Decision for the Board Members. This section requires the Appeals Division to prepare a Revised Hearing Summary or Revised Summary Decision if any issues are partially or fully resolved between the issuance of a Hearing Summary or Summary Decision and the Board Members consideration of the petition to which the Hearing Summary or Summary Decision relates. This section also states that the Appeals Division may request additional information and analysis from the petitioner or Board staff when needed.

**Subchapter 6: Briefing Schedules and Appeals Conferences**

Subchapter 6 describes the briefing and appeals conference processes for state-assessee petitions. Subchapter 6 contains a briefing process for state-assessee petitions for which an appeals conference is scheduled, and another briefing process for other state-assessee petitions. This section also sets forth the procedures under which an appeals conference may be requested and granted.

**5326 General Briefing Procedures for Petitions Reviewed by the Appeals Division.**

This section lists the three types of briefs that can be filed during the briefing process for state-assessee appeals, and provides for the filing of a petition, Board staff's response to the petition, and the petitioner's optional reply to Board staff.

**5326.2 Briefing Schedule if No Appeals Conference is Scheduled.**

This section describes the deadlines for filing Board staff's response and the petitioner's reply described in section 5326, subdivisions (b) and (c) of the proposed Rules and the Appeals Division's Summary Decision when an appeals conference is not scheduled pursuant to section 5326.4 of the proposed Rules. This section gives the Chief Counsel authority to grant extensions of time for reasonable cause. This section requires Board staff's response to be submitted 45 days before the date a petition is scheduled for Board action, the petitioner's reply to be submitted 15 days after Board staff's response is mailed to the petitioner, and the Appeals Division's Summary Decision to be submitted at least 10 days before the date the petition is scheduled for Board action.

**5326.4 General Appeals Conference Procedures.**

This section describes the Board's recently implemented appeals conference procedures for state-assessee appeals. This section permits petitioners, Board staff, the Assistant Chief Counsel of the Appeals Division, and the Board Members to request an appeals conference for a state-assessee appeal, and requires an appeals conference to be held upon request. This section describes the nature of state-assessee appeals conferences, and the manner in which they will be scheduled and conducted. This section explains that appeals conference will not be recorded unless petitioners make their own arrangements for recording and agree to provide a copy of any recording to the Board. This section also explains that recordings of appeals conferences will become disclosable public records when the petition being discussed on the recording becomes a disclosable public record. This section also gives the Chief Counsel the authority to modify the time periods in sections 5326.6, 5327, and 5327.4, subdivision (c), of the proposed Rules for the filing of briefs, the holding of appeals conferences, submission of the Appeals Division's Hearing Summary or Summary Decision, and the issuance of notices of an oral Board hearing.

**5326.6 Scheduling of Appeals Conference; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.**

This section explains that an appeals conference will generally be scheduled at least 30 days before the state-assessee appeal to be discussed is scheduled for Board action. This section sets forth the briefing schedule for filing Board staff's response to the petition and the petitioner's reply to Board staff with regard to a state-assessee appeal scheduled for an appeals conference. This section also gives the Appeals Division authority to request additional information and briefing before, during, and after an appeals conference.

**Subchapter 7: Preparing Summaries, Scheduling Hearings, and Distributing Documents**

**5327 Appeals Division Hearing Summary or Summary Decision.**

This section requires the Appeals Division to prepare a Hearing Summary or Summary Decision and submit it to the Board Proceedings Division at least 10 days prior to scheduled Board action on a state-assessee appeal. This section requires the Appeals Division to promptly submit a Revised Hearing Summary or Summary Decision to the Board Proceedings Division. This section also authorizes the Chief Counsel to grant the Appeals Division extensions of

time to prepare and submit a Hearing Summary or Summary Decision when there is reasonable cause, including when an appeals conference is scheduled within 30-days of scheduled Board action.

5327.4 Oral Hearings – Scheduling of Hearings.

This section describes the statutory time limitations within which the Board must decide state-assessee appeals. This section also requires the Chief of Board Proceedings to send a Notice of Hearing to every petitioner who requests an oral Board hearing in its petition at least 45 days before the scheduled oral Board hearing date.

5327.6 Distribution of Documents.

This section lists the documents the Chief of Board Proceedings is required to distribute prior to scheduled Board action on a state-assessee appeal and lists the persons to whom they are to be distributed. Those documents include the petition and supporting documents, Board staff's response, the petitioner's reply, if any, and the Appeals Divisions Hearing Summary or Summary Decision.

**Subchapter 8: Consolidation and Withdrawal of Petitions**

5328 Consolidation of Petitions into a Single Hearing.

This section provides that multiple state-assessee petitions may be consolidated for hearing or decision under the procedures in chapter 5 of the proposed Rules for consolidation. This section also provides that Board staff will only prepare one response to a number of consolidated petitions, and that the Appeals Division will only prepare one Hearing Summary for a number of consolidated petitions.

5328.5 Withdrawal of a Petition.

This section permits petitioners to withdraw their state-assessee petitions up to the date of their scheduled oral Board hearings and provides procedures for doing so.

**Article 3: Other Property Tax Petitions**

This article describes the procedures specific to property tax appeals other than state-assessee appeals. The property tax appeals covered by article 3 generally follow the same appeals process but are not subject to the same time constraints as state-assessee appeals.

**Subchapter 1: Application of Article**

5331 Application of Article.

This section lists the three types of property tax petitions and applications to which article 3 applies, which are: applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements; petitions objecting to Board staff's findings of ineligibility for the welfare and veterans' organization exemptions; and petitions contesting Board staff's findings after conducting a survey of a county assessor's assessment practices.

**Subchapter 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property**

This subchapter contains procedures that only apply to applications appealing the assessment of public-owned land and improvements (petitions regarding publicly-owned property).

5332 Time of Filing of Application.

This section describes the filing deadlines for petitions regarding publicly-owned property, contains a cross reference to the procedures for filing petitions contained in section 5335 of the proposed Rules, and explains that the failure to file a timely petition bars the petitioner from relief.

5332.4 Contents of Application.

This section prescribed the contents of a complete petition regarding publicly-owned property. This section requires such petitions to be in writing, be authorized by the petitioners' governing bodies, include the documents containing such authorizations, contain the facts upon which the petitions are based, contain statements of authorities, state whether written findings and decisions are requested, and be signed by the petitioners' authorized representatives.

time to prepare and submit a Hearing Summary or Summary Decision when there is reasonable cause, including when an appeals conference is scheduled within 30-days of scheduled Board action.

5327.4 Oral Hearings – Scheduling of Hearings.

This section describes the statutory time limitations within which the Board must decide state-assessee appeals. This section also requires the Chief of Board Proceedings to send a Notice of Hearing to every petitioner who requests an oral Board hearing in its petition at least 45 days before the scheduled oral Board hearing date.

5327.6 Distribution of Documents.

This section lists the documents the Chief of Board Proceedings is required to distribute prior to scheduled Board action on a state-assessee appeal and lists the persons to whom they are to be distributed. Those documents include the petition and supporting documents, Board staff's response, the petitioner's reply, if any, and the Appeals Divisions Hearing Summary or Summary Decision.

**Subchapter 8: Consolidation and Withdrawal of Petitions**

5328 Consolidation of Petitions into a Single Hearing.

This section provides that multiple state-assessee petitions may be consolidated for hearing or decision under the procedures in chapter 5 of the proposed Rules for consolidation. This section also provides that Board staff will only prepare one response to a number of consolidated petitions, and that the Appeals Division will only prepare one Hearing Summary for a number of consolidated petitions.

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**Subchapter 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property**

This subchapter contains procedures that only apply to applications appealing the assessment of public-owned land and improvements (petitions regarding publicly-owned property).

5332 Time of Filing of Application.

This section describes the filing deadlines for petitions regarding publicly-owned property, contains a cross reference to the procedures for filing petitions contained in section 5335 of the proposed Rules, and explains that the failure to file a timely petition bars the petitioner from relief.

5332.4 Contents of Application.

This section prescribed the contents of a complete petition regarding publicly-owned property. This section requires such petitions to be in writing, be authorized by the petitioners' governing bodies, include the documents containing such authorizations, contain the facts upon which the petitions are based, contain statements of authorities, state whether written findings and decisions are requested, and be signed by the petitioners' authorized representatives.

**5332.6 Submission of Application and Board-Appraised Property.**

This section describes the filing requirements for petitions regarding publicly-owned property. This section requires such petitions to be filed with the county assessor whose assessment is questioned, and for such petitions to be mailed or personally delivered to the Board along with a proof of filing with the appropriate county assessor. This section also requires Board staff to notify the petitioner and relevant county assessor if any of the property covered by such a petition was appraised by Board staff, give each party access to the Board's appraisal records, and permit either party to call Board staff as a witness so long as the parties provide at least 10-days advance notice to the Board.

**Subchapter 3: Contents of Property Tax Welfare and Veterans' Organization Exemption Petitions and Filing Deadlines**

This subchapter contains procedures that only apply to petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption.

**5333 Time for Filing of Petitions.**

This section describes the filing deadlines for petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption and provides that a timely petition must be mailed to or received at the Board's headquarters before the expiration of such deadlines.

**5333.4 Contents of Petition.**

This section prescribes the contents of a complete petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption. It requires such petitions to be in writing, state the grounds upon which the petitioners qualify for the claimed exemption, be accompanied by the documents the petitioners want the Board to consider, indicate whether oral Board hearings or written findings and decisions are desired, and be signed by the petitioners or the petitioners' authorized representatives.

**5333.6 Submission of Petition.**

This section requires petitioners to file petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption by mail or in person at the Board headquarters as explained in section 5335 of the proposed Rules.

**Subchapter 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines**

This subchapter contains procedures that only apply to petitions contesting Board staff's findings after conducting a survey of a county assessor's assessment practices (property tax sampling program petitions).

**5334 Time for Filing of Petitions.**

This section provides notice to county assessors regarding their rights to file petitions contesting Board staff's findings after conducting surveys of their assessment practices. This section prescribes the deadlines for filing such petitions and provides that Board staff's finding become final if a petition is not filed within the prescribed deadlines. This section also prescribes the Board's standards for determining whether such a petition is timely.

**5334.4 Contents of the Petition.**

This section prescribes the required contents of a property tax sampling program petition and requires a petition to be in writing, identify the assessment the county assessor is contesting, state the specific issues raised and the adjustments sought, indicate whether an oral Board hearing is requested, and be signed by the county assessor or the county assessor's representative. This section also authorizes county assessors to use forms provided by the Board to prepare their petitions, and requires county assessors to submit their supporting evidence with their petitions.

**5334.6 Submission of Petition.**

This section requires property tax sampling program petitions to be mailed or personally delivered to the Chief of Board Proceedings in the manner provided by section 5335 of the proposed Rules.

**Subchapter 5: Filing and Distribution of Petitions, Briefs, and Other Documents**

The remaining subchapters in this article describe procedures that are applicable to all property tax appeals filed under chapter 3, except state-assessee appeals, unless otherwise specified.

5335 Submission of Petitions, Briefs, and Related Documents.

This section describes the procedures for filing property tax petitions, other than state-assessee petitions, and related briefs or other documents. This section requires original documents to be mailed or personally delivered to the Chief of Board Proceedings, and permits electronic filing in accordance with instructions provided by the Chief of Board Proceedings. This section also requires the parties to petitions regarding publicly-owned property to file their petitions, briefs, and other documents with the each other and enclose a proof of filing when they submit their documents to the Board.

5335.4 Timely Performance; Mailing Date.

This section specifically incorporates the provisions of section 5571 of the proposed Rules addressing the timeliness and mailing date of documents into article 3 by reference.

5335.6 Distribution of Documents.

This section requires the Board Proceedings Division to promptly distribute property tax petitions, briefs, related documents, Hearing Summaries and Summary Decisions to the petitioner, respondent (as defined in section 5311, subd. (b)(10) of the proposed Rules), Tax and Fee Programs Division, Appeals Division, and Board Members as appropriate.

**Subchapter 6: Accepting, Rejecting, and Perfecting Petitions and Applications**

5336 Accepting or Rejecting a Petition.

This section describes the procedures by which petitions will be reviewed to determine whether they are valid, complete, and timely. It requires the Chief of Board Proceedings to accept and acknowledge valid, complete, and timely petitions, and forward petitions that raise an issue regarding their validity, completeness, or timeliness to the Chief Counsel. If the Chief Counsel decides that a petition is valid, complete, and timely, or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the petition, and any remaining issues regarding validity, completeness, or timeliness will be decided by the Board. If the Chief Counsel and the Chief of Board Proceedings agree that a petition is not valid, complete, or timely the Chief of Board Proceedings is required to reject the petition.

5336.5 Perfecting a Petition.

This section allows petitioners to perfect timely but incomplete petitions. This section provides that the Board's briefing and resolution process for property tax appeals, other than state-assessee appeals, will not start until petitions are perfected. This section provides that a petition is perfected when it contains substantially all the information required by article 3, including the petitioner or petitioner's authorized representative's signature and contact information. This section also requires the Chief of Board Proceedings to notify petitioners when their petitions filed under article 3 are incomplete and explain that the petitioners have 30 days (not including extensions) to perfect their petitions before the petitions will be dismissed.

**Subchapter 7: Prehearing Meetings and Briefing Schedules**

Subchapter 7 describes an optional process under which petitioners may request an informal meeting with Board staff to resolve the issues raised in their petitions.

5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner.

This section requires Board staff to informally meet with petitioners who request a meeting to exchange relevant information and evidence, identify issues, and resolve as many issues as possible before their scheduled hearings. This section also provides notice to petitioners that this section does not limit Board staff's authority to request additional information from petitioners at any time. This section only applies to petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and property tax sampling program petitions. This section does not apply to petitions regarding publicly-owned property.

5337.4 Briefing: General Requirements.

This section requires all the parties to a property tax appeal, other than a state-assessee appeal, to submit their petitions, replies and responses, in the form of briefs, sets forth the requirements for all briefs, and provides a process for requesting and granting exceptions for reasonable cause. This section only requires the parties to submit one copy of their briefs and supporting documents, requires the Chief of Board Proceedings to provide written acknowledge of receipt, and requires the Chief of Board Proceedings to distribute such documents to the opposing party. This section requires written requests for extensions of time to file briefs, and grants the Chief Counsel authority to grant extensions based upon reasonable cause or the agreement of the parties and the Appeals Division. This section provides that a failure to file a brief within the required time periods, including extensions, constitutes a waiver of the right to file such brief and generally concludes the briefing schedule. This section also authorizes the filing of non-party (amicus) briefs and prescribes the rules applicable to the filing of such briefs.

5337.6 General Briefing Schedule.

This section lists the time periods in which briefs must be filed under article 3. This section permits petitioners to file an opening brief and a reply brief. However, this section only permits respondents to file opening briefs, unless they file written requests for permission to file reply briefs and the Chief Counsel grants them written permission based upon certain factors. This section also grants petitioners the right to file supplemental briefs in response to respondents' reply briefs, and gives the Chief Counsel authority to modify the briefing schedule to accommodate both extra briefs when necessary.

**Subchapter 8: Appeals Division Review, Prehearing Conferences, and Summaries**

5338 Appeals Division Review.

This section requires the Appeals Division to review the petition, briefs, and supporting documentation filed with regard to a property tax appeal, other than a state-assessee appeal, at the conclusion of the general briefing process to determine whether the Board has adequate information to decide the appeal. If the information is inadequate, the Appeals Division may request additional briefing from the parties under section 5523.4 of the proposed Rules. Once the information is adequate and the Appeals Division has conducted an appeals conference under section 5338.4 of the proposed Rules, this section requires the Appeals Division to notify the Chief of Board Proceedings that the petition is ready to be scheduled for an oral Board hearing, and requires the Chief of Board Proceedings to schedule and notice the oral Board hearing under the procedures in section 5522.6 of the proposed Rules.

5338.4 Appeals Conference.

This section requires the Appeals Division to conduct appeals conferences to discuss all property tax appeals, other than state-assessee appeals. This section describes the purpose and nature of the appeals conferences, prescribes the procedures for scheduling and noticing the appeals conferences, and informs the participants that appeals conferences are not recorded unless special arrangements are made. This section also provides additional authority for the Appeals Division to request additional briefing from any party to a petition until the Appeals Division has submitted its Hearing Summary or Summary Decision as required by section 5338.6 of the proposed Rules.

5338.6 Preparing and Revising Hearing Summaries.

This section requires the Appeals Division to prepare a Hearing Summary for each property tax appeal subject to article 3 within 90 days after each appeals conference or shorter period prescribed by the Chief of Board Proceedings, but in no case less than 30 days after each appeals conference. This section allows the Chief Counsel to grant extensions for reasonable cause and requires the Chief of Board Proceedings to provide a copy of each Hearing Summary to all the parties to the property tax appeal the Hearing Summary addresses. This section requires the Appeals Division to prepare a Summary Decision when property tax appeals are submitted for decision without an oral hearing, and provides procedures for the Appeals Division to revise Hearing Summaries and Summary Decisions if the parties fully or partially resolve issues after these documents are submitted to the Chief of Board Proceedings.

**Article 4: General Board Hearing and Notice Procedures**

This article contains Board hearing procedures that apply to all property tax appeals, unless otherwise indicated.

5340 Relation to General Board Hearing Procedures.

This section incorporates the Board hearing procedures from chapter 5 of the proposed Rules into chapter 3 by reference, makes them applicable to all property tax appeals filed under chapter 3, and provides that the procedures in chapter 3 control when they conflict with the provisions of chapter 5.

5341 Additional Briefing.

This section describes the respective authority of the Assistant Chief Counsel of the Appeals Division, individual Board Members, and the Board to request additional briefing or evidence whenever thought necessary. This section also describes the respective authority of the Appeals Division and the Board to determine the order, deadlines, and conditions under which any additional briefing or evidence must be submitted. This section requires that the Board Chair be notified of any request for additional briefing or evidence made under this section so that the Board Chair may postpone the hearing on the property tax appeal to which the request relates, if thought necessary.

5342 Notice of Hearing.

This section requires the Board to send all the parties to an oral Board hearing on a property tax appeal written notice of the date and time of such hearing in accordance with the notice procedures in chapter 5 of the proposed Rules. This section also requires notices of hearings on petitions regarding publicly-owned property to include a statement incorporating provisions of the California Constitution requiring the Board to determine the full cash value of property that is the subject of a hearing, and giving petitioners notice that the Board's determination may exceed the value on which the assessment being appealed is based.

5343 Submission for Decision Without Oral Hearing.

This section describes the circumstances under which a property tax appeal will be submitted to the Board for decision without an oral Board hearing, and requires the Appeals Division to prepare a Summary Decision summarizing the relevant facts and law and containing the Appeals Division's recommendation for Board action for each appeal submitted for decision without an oral Board hearing.

5344 Notice of Board Decisions.

This section requires to Board to notify all the parties to a property tax petition of the Board's decision in writing in accordance with the procedures in chapter 5 of the proposed Rules. Subdivision (b) of this section specifies all of the persons and entities that will receive written notice of the Board's decision on a petition regarding publicly-owned property. Subdivision (c) of this section informs petitioners that notice of the Board's decision on a petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption will also be sent to the county assessor for the county where the petitioner's property is located. Subdivision (d) of this section informs assessors and property owners that notice of the Board's decision on a property tax sampling program petition will also be sent to the property owners whose property values were at issue in the petition.

5345 Finality of Board Action; Written Findings and Decision.

This section provides notice to petitioners and other parties that the Board's decision on a property tax appeal is final and may only be modified to correct a clerical error. This section also describes the procedures under which a Written Findings and Decision may be requested by petitioners, and the procedures under which a Written Findings and Decision will be prepared by the Appeals Division and adopted by the Board.

**Chapter 4: Appeals from Actions of the Franchise Tax Board**

Chapter 4 generally carries over and clarifies the Board's current procedures for hearing appeals from actions of the FTB contained in the current Rules of Practice, and codifies Board's existing practices that are not contained in the current Rules of Practice. Chapter 4 also contains a new briefing schedule for innocent spouse appeals from the FTB that allows the non-appealing spouse to materially participate in the appeals process as required by law, and adds new pre-hearing conference procedures to the Board process for hearing appeals from the FTB. The pre-hearing conferences are similar to the appeals conferences provided for in chapters 2 and 3 of the proposed Rules. Board staff worked closely with FTB staff in drafting chapter 4.

**Article 1: Application of Chapter 4, Definitions, and Jurisdiction**

5410 Application of Chapter 4.

This section provides that chapter 4 applies to appeals from the FTB and does so by providing cross references to the laws under which persons may appeal to the Board from actions of the FTB. This section also provides that chapter 5 of the proposed Rules applies to appeals from the FTB, but the procedures in chapter 4 control in cases of a conflict between the two chapters.

5411 Definitions.

This section provides that the definitions in sections 5511 and 5512 of chapter 5 of the proposed Rules apply to chapter 4, and provides specific definitions for the terms “appellant” and “respondent” as used in chapter 4, which supersede conflicting definitions in chapter 5 due to the provisions of section 5410 of the proposed Rules.

5412 Jurisdiction.

Subdivision (a) of this section describes the circumstances under which the Board has jurisdiction to hear and decide a timely filed appeal from the actions of the FTB. Subdivision (b) of this section explains that the Board’s jurisdiction to hear appeals from the actions of the FTB is limited and describes issues the Board will not consider in an appeal from the actions of the FTB. Subdivision (c) of this section provides notice that the Board’s jurisdiction to hear appeals from the actions of the FTB may be expanded or limited by changes in the law (i.e., California Constitution, Revenue and Taxation Code, etc.).

**Article 2: How to File an Appeal from the Franchise Tax Board**

This article explains how taxpayers must file their written appeals from the actions of the FTB with the Board and describes the Board’s process for reviewing written appeals from the actions of the FTB for timeliness and completeness, and to determine whether the Board has jurisdiction to hear the appeal.

5420 Appeal Filing Requirements.

Subdivision (a) of this section describes the contents of a complete written appeal from the actions of the FTB other than an appeal described in subdivision (b), which include the appellant’s name, social security number or taxpayer identification number, and contact information, the amounts and years at issue, a statement of the facts involved and legal authorities relief upon, disclosure of any amounts that the appellant concedes, and the appellant or appellant’s authorized representative’s signature. Subdivision (b) of this section describes the contents of written appeals from the FTB’s denial of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law, which requires less information and does not require appellants to state the legal authorities upon which they rely.

5421 Methods for Delivery of Written Documents and Correspondence.

This section prescribes the procedures for properly filing written appeals from the actions of the FTB and allows appellants and the FTB to file documents electronically pursuant to instructions provided on the Board’s Web site. This section also explains that Board staff will mail or personally deliver notices to the parties to an appeal from the actions of the FTB, unless the parties consent to electronic delivery.

5422 Time for Filing an Appeal.

This section sets forth the statutory deadlines in which written appeals from the actions of the FTB must be filed with the Board in order to be considered timely and prevent the FTB action being appealed from becoming final and collectible, and explains which deadlines apply to each different type of FTB notice from which taxpayers may appeal to the Board. This section codifies the filing extensions provided by Code of Civil Procedure section 1013 and describes the extension that automatically applies when the last day to file a written appeal falls on a Saturday, Sunday, or holiday. This section also defines the date of filing for purposes of determining whether a written appeal from the actions of the FTB is timely filed.

5423 Accepting or Rejecting an Appeal.

This section describes the procedures by which written appeals from the actions of the FTB will be reviewed to determine whether they are timely filed and whether the Board has jurisdiction to hear the appeal. It requires the Chief of Board Proceedings to accept and acknowledge timely filed written appeals over which the Board has jurisdiction, and forward written appeals that raise an issue regarding their timeliness or the Board’s jurisdiction to the Chief Counsel. If the Chief Counsel decides that the Board has jurisdiction to hear an appeal and that it was timely filed or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the written appeal, and any remaining issues regarding timeliness or the Board’s jurisdiction will be decided by the Board. If the Chief Counsel or the Chief of Board Proceedings determines that the Board lacks jurisdiction to hear a written appeal or that the appeal is not timely the Chief of Board Proceedings is required to reject the written appeal. This section also permits the Chief Counsel and Chief of Board Proceedings to request information from the FTB regarding the Board’s jurisdiction to hear and the timeliness of any written appeal under review.

5424 Perfecting an Appeal.

This section allows appellants to perfect timely filed, but incomplete written appeals from the actions of the FTB. This section provides that the Board's briefing and resolution process for an appeal will not start until the appeal is perfected. This section provides that a written appeal is perfected when it contains substantially all the information required by section 5420 of the proposed Rules, including the appellant or appellant's authorized representative's signature and contact information. This section also requires the Chief of Board Proceedings to notify appellants when their written appeals are incomplete, and explain that the appellants have 90 days (not including extensions) to perfect their written appeals before their appeals will be dismissed.

**Article 3: Briefing Schedules and Procedures**

5430 General Requirements.

Subdivision (a) of this section requires all submissions with regard to appeals from the actions of the FTB to be in the form of briefs. Subdivision (b) of this section requires the Chief of Board Proceedings to acknowledge the filing of perfected written appeals and notify the parties that briefing will begin under one of three briefing schedules: the general briefing schedule, the briefing schedule for innocent spouse appeals, or the jeopardy determination briefing schedule. Subdivision (c) of this section incorporates the provisions of section 5522.8 of the proposed rules regarding the deferral or postponement of hearings and the due date of briefs, and requires requests for extensions of time to file briefs to be in writing. Subdivision (d) of this section requires parties to file one copy of their briefs and supporting exhibits, and requires the Chief of Board Proceedings to acknowledge receipt and distribute copies to the opposing parties. Subdivision (e) of this section prescribes the format of briefs, and gives parties 10 days to cure defects in their briefs. Subdivision (f) of this section provides that the failure to file a brief is a waiver of the right to file that brief and generally concludes the briefing process. Subdivision (g) of this section prescribes the procedures for the filing of non-party (amicus) briefs in appeals from the actions of the FTB.

5431 General Briefing Schedule.

This section describes the general, default briefing schedule that applies to appeals from the actions of the FTB other than innocent spouse appeals and appeals from FTB jeopardy determinations. This section provides that a perfected appeal is the appellant's opening brief, gives the FTB 90 days to file its opening brief, and gives the appellant 30 days to respond to the FTB's opening brief. This section requires the FTB to request permission to file a reply brief, provides standards for reviewing such requests, and only permits the FTB to file a reply brief if written permission is granted. If the FTB is granted permission to file a reply brief, this section will also give the appellant the right to file a supplemental brief in response so that the appellant always has the opportunity to file the last brief.

5432 Briefing Schedule for Innocent Spouse Appeals.

This section describes the briefing schedule applicable to innocent spouse appeals from the actions of the FTB and sets forth definitions and rules applicable only to innocent spouse appeals. This section provides for the consolidation of spouses' innocent spouse appeals where both spouses have requested innocent spouse relief from the FTB and are both appealing from denials of such relief. This section follows the generally applicable briefing schedule in section 5431 of the proposed Rules, but modifies the schedule to allow the non-appealing spouse to meaningfully participate in the appealing spouse's appeal. This section also requires the Board to take reasonable steps to protect an appealing spouse's contact information from being disclosed to his or her spouse, and contains provisions for the Board to conform its actions on innocent spouse appeals to the Internal Revenue Services actions on related requests for innocent spouse relief that are decided before the Board renders its decisions.

5435 Additional Briefing.

This section describes the respective authority of the Assistant Chief Counsel of the Appeals Division, individual Board Members, and the Board to request additional briefing or evidence whenever thought necessary. This section also provides provisions for the Appeals Division or the Board to determine the order, deadlines, and conditions under which any additional briefing or evidence must be submitted. This section requires that the Board Chair be notified of any request for additional briefing or evidence made under this section so that the Board Chair may postpone the hearing on the appeal from the actions of the FTB to which the request relates, if necessary.

#### **Article 4: Requesting and Scheduling Oral Hearings**

##### 5440 Right to Request an Oral Hearing.

Subdivision (a) of this section provides notice to appellants regarding their right to an oral Board hearing upon written request and describes the procedures for requesting an oral Board hearing, which permit appellants to request an oral hearing up to 30 days after the conclusion of briefing. Subdivision (b) of this section allows appealing spouses and non-appealing spouses who have been joined to their spouses' innocent spouse appeals to request oral Board hearings. Subdivision (b) of this section also provides that one joint oral Board hearing will generally be held for innocent spouse appeals, but provides important procedures permitting the Board to hold separate Board hearings where a court order prohibits either spouse from coming near the other spouse or the Chief of Board Proceedings determines that conducting one joint oral Board hearing would likely be unsafe, disruptive, or unjust.

##### 5441 Submission for Decision Without Oral Hearing.

This section describes the circumstances under which an appeal from the actions of the FTB will be submitted to the Board for decision on the basis of the written record on file and without an oral Board hearing.

##### 5442 Appeals Review; Scheduling the Oral Hearing.

This section requires the Appeals Division to review the briefs and supporting documentation filed with regard to appeals from the actions of the FTB for which an oral Board hearing is granted to determine whether the Board has adequate information to decide the appeals. If the information is inadequate, the Appeals Division may request additional briefing from the parties under section 5435 of the proposed Rules, order a pre-hearing conference under section 5443 of the proposed Rules, or both. After the Appeals Division determines that adequate information has been provided with regard to a particular appeal, this section requires the Appeals Division to notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral Board hearing and requires the Chief of Board Proceedings to schedule and notice the oral Board hearing under the procedures in section 5522.6 of the proposed Rules.

##### 5443 Pre-hearing Conference.

This section describes new pre-hearing conference procedures, which are similar to the Board's historical appeals conference procedures, for ensuring that the Board has adequate information to decide appeals from the actions of the FTB. This section allows the Appeals Division or the Board to order a pre-hearing conference to be conducted, allows appellants and the FTB to request that pre-hearing conferences be conducted, and only allows the Board to deny a request for a pre-hearing conference if the Appeals Division and Chief Counsel agree that the requested pre-hearing conference would be unproductive. This section provides procedures for determining the time and location of pre-hearing conferences, scheduling and noticing pre-hearing conferences, and recording pre-hearing conferences. This section also requires pre-hearing conferences to be informal and non-adversarial, and provides that the holding of a pre-hearing conference does not limit the Appeals Division's authority to request additional briefing and evidence under section 5435 of the proposed Rules.

##### 5444 Hearing Summary.

Subdivision (a) of this section defines the term "Hearing Summary" and prescribes the contents of a complete Hearing Summary. Subdivision (b) of this section requires the Appeals Division to prepare a Hearing Summary for each appeal from the actions of the FTB scheduled for an oral Board hearing, gives the Appeals Division at least 30 days to complete each Hearing Summary and grants the Chief Counsel the authority to grant extensions of time to prepare Hearing Summaries for reasonable cause. Subdivision (b) of this section also requires the Appeals Division to submit its Hearing Summaries to the Chief of Board Proceedings and requires the Chief of Board Proceedings to distribute the Hearing Summaries to the parties. Subdivision (c) of this section provides that Hearing Summaries may not be cited as precedent in order to clarify their purpose, which is to summarize appeals to assist the Board Members in rendering a decision.

#### **Article 5: Decisions, Opinions, and Frivolous Appeal Penalties**

##### 5450 Letter Decisions.

The Appeals Division will prepare a "Letter Decision" containing a short explanation of the reasons for the Board's decision on an appeal from the actions of the FTB whenever the Board decides an appeal without directing the preparation of a Summary Decision or Formal Opinion. Letter Decisions may not be cited as precedent.

The section defines the term “Letter Decision” and prescribes the contents of a Letter Decision. This section describes the circumstances under which a Letter Decision will be prepared. This section also prescribes the period in which a Letter Decision will be prepared and provided to the parties to an appeal, and provides that a Letter Decision may not be cited as precedent.

5451 Summary Decisions.

The Appeals Division will prepare a “Summary Decision” containing the findings of fact and conclusions of law that form the basis of the Board’s decision on an appeal from the actions of the FTB whenever an appeals is submitted for decision without an oral Board hearing under section 5441 of the proposed Rules or the Board directs the Appeals Division to prepare a Summary Decision. Summary Decisions may not be cited as precedent and do not reflect the Board’s decision on an appeal until they are adopted by the Board.

The section defines the term “Summary Decision” and prescribes the contents of a Summary Decision. This section describes the circumstances under which a Summary Decision will be prepared. This section also prescribes the period in which a Summary Decision will be prepared, requires Summary Decisions to be submitted to the Board for adoption, provides that Summary Decisions remain confidential until adopted, and provides that a Summary Decision may not be cited as precedent.

5452 Formal Opinions.

The Appeals Division will prepare a “Formal Opinion” containing the findings of fact and conclusions of law that form the basis of the Board’s decision on an appeal from the actions of the FTB, which is intended to set a precedent, whenever an appeal is submitted for decision without an oral Board hearing under section 5441 of the proposed Rules and the Appeals Division determines that a Formal Opinion might be appropriate or the Board directs the Appeals Division to prepare a Formal Opinion. Like Summary Decisions, Formal Opinions remain confidential until adopted by the Board, but, once adopted, they may be cited as precedent and reflect the Board’s decision on an appeal.

The section defines the term “Formal Opinion” and prescribes the contents of a Formal Opinion. This section describes the circumstances under which a Formal Opinion will be prepared. This section prescribes the period in which a Formal Opinion will be prepared, requires Formal Opinions to be submitted to the Board for adoption, provides that Formal Opinion remain confidential until adopted, and provides that a Formal Opinion may be cited as precedent. This section also codifies the criteria that must be considered in determining whether the preparation of a Formal Opinion would be appropriate with regard to a particular appeal, which are derived from Rule 976 of the California Rules of Court (criteria for publication of appellate opinions).

5454 Frivolous Appeal Penalty.

The Board may impose a frivolous appeal penalty on appellants appealing from the actions of the FTB under Revenue and Taxation Code section 19714. This section provides additional notice of the potential penalty to appellants considering an appeal, and codifies the criteria the Board considers in deciding whether to impose a frivolous appeal penalty so that appellants can determine whether the Board is likely determine that their appeals are frivolous.

**Article 6: Petitions for Rehearing and Rehearings**

5460 Finality of Decision.

This section provides that the Board’s decision on an appeal from the actions of the FTB becomes final 30 days from the date of the Board’s decision, unless one or more parties to the appeal file a petition for rehearing within that time. This section provides notice that the finality of a Board decision is not dependent upon the date the Board provides notice to the parties. This section also prohibits any party from filing more than one petition for rehearing.

5461 Petitions for Rehearing.

This section prescribes the time period in which a petition for rehearing must be filed, requires petitions for rehearing to be in writing and prescribes their required contents, which include the grounds upon which the petitions for rehearing are based, and codifies the grounds upon which the Board will grant a rehearing. This section also describes the Board procedures for determining whether a petition for rehearing is timely filed, and describes the process by which the Board will permit appellants and FTB staff to perfect incomplete, but timely filed appeals. Both sets of procedures are very similar to those provided in sections 5423 and 5424 of the proposed Rules, respectively.

5462 Briefing on Petition for Rehearing.

This section allows all the parties to an appeal from the actions of the FTB that do not file petitions for rehearing to file a Reply to Petition for Rehearing, and does not permit parties who have filed petitions for rehearing to file any other briefs. However, this section does not prohibit requests for additional briefing from either party under section 5435 of the proposed Rules. This section also makes selected provisions of section 5430 of the proposed Rules regarding extensions of time to file briefs, the submission and acknowledgment of briefs, the required format of briefs, the consequences of filing a brief, and non-party (amicus) briefs applicable to a non-filing party's Reply to Petition for Rehearing and the petition for rehearing process.

5463 Decisions on Petitions for Rehearing.

This section requires the Appeals Division to prepare a Decision on Petition for Rehearing upon the conclusion of the petition for rehearing briefing process and to submit the decision to the Board for adoption. This section provides that a Decision on Petition for Rehearing is confidential and does not represent the Board's decision on a petition for rehearing until it is adopted by the Board, and states that a Decision on Petition for Rehearing cannot be cited as precedent unless the Board adopts the decision as a Formal Opinion. This section also provides that the Board's original decision will be held in abeyance if a rehearing is granted or the Board's decision will become final 30 days after the Board Members vote to deny a rehearing.

5464 Briefing on Rehearing.

This section permits the parties to a rehearing to file additional briefs and provides two briefing schedules: a briefing schedule that applies when only one petition for rehearing is granted and another briefing schedule that applies when more than one petition for rehearing is granted. However, the Board has discretion to modify either briefing schedule. This section also makes selected provisions of section 5430 of the proposed Rules regarding extensions of time to file briefs, the submission and acknowledgment of briefs, the required format of briefs, the consequences of filing a brief, and non-party (amicus) briefs applicable to the Board's rehearing briefing process.

5465 Decision on Rehearing.

This section provides that the procedures contained in chapters 4 and 5 of the proposed Rules for the Board to hear and decide appeals from the actions of the FTB after the conclusion of the general briefing process contained in chapter 4 of the proposed Rules apply to a rehearing and the Board's decisions rendered after a rehearing. This section also provides that the Board's decision rendered after a rehearing becomes final 30 days from the date of the decision and represents the Board's final decision on the appeal.

**Chapter 5: General Board Hearing Procedures**

Chapter 5 contains general Board hearing procedures applicable to all of the Board's appeals processes, unless otherwise indicated. Chapter 5 generally incorporates the Board's existing practices, policies, and procedures for scheduling Board meetings and conducting Board hearings, and makes some revisions to the Board's historical practices with regard to the disclosure of information relevant to an oral Board hearing.

Chapter 5 is divided into seven articles: article 1 describes the application of the chapter and provides general definitions applicable to the proposed Rules; article 2 discusses the scheduling of Board meetings and hearings; article 3 describes the Board's process for issuing its public agenda notice; article 4 describes the laws applicable to the conduct of Board meetings and prescribes the burden of proof during an oral Board hearing; article 5 describes the manner in which the Board votes to decide a matter; article 6 prescribes the general time periods in which the Board will issue its post-hearing notices and the general petition for rehearing and rehearing processes; and article 7 prescribes the manner of filing documents under chapter 5 and provides rules for determining whether such documents were timely filed, describes the public record of an oral Board hearing and the Board's policy for disclosing confidential taxpayer information that is relevant to a Board hearing, and describes the Board's authority to conduct portion of oral Board hearings during closed session.

**Article 1: Application of Chapter and Definitions**

5510 General Application of Chapter 5.

This section provides that chapter 5 of the proposed Rules applies to Board hearings conducted under all of the Board's appeals processes by providing cross references to all the tax and fee laws under which the appeals processes are conducted. This section states that chapter 5 provides rules of general application and that where more specific rules or rules from other chapters of the proposed Rules apply they will be provided or cross referenced. This section provides a clear statement that chapter 4 of the proposed Rules supersedes the provision of chapter 5

whenever there is a conflict between the two chapters. This section also specifies that the International Fuel Tax Agreement (IFTA) supersedes the provisions of chapter 5 of the proposed Rules wherever there is a conflict between the IFTA and chapter 5.

5511 Definitions.

This section sets forth definitions for the following terms that apply to all of the proposed Rules unless otherwise provided in chapters 2, 3, or 4: Appeals Division, Board, Board Chair, Board Member, Board Proceedings Division, Board Staff, brief, Chief Counsel, Claimant, Chief of Board Proceedings, delivery service, Department, Deputy Director, Executive Director, extreme hardship, hearing, Hearing Summary, matter, party, person, reasonable cause, tax, taxpayer, and section.

5512 Construction.

This section clarifies the construction of the following common terms used in the proposed Rules in order to avoid potential confusion regarding their meaning: must, may, may not, will, should.

**Article 2: Requirements for Scheduling Board Meetings and Hearings**

**Subchapter 1. Meeting Calendars**

5521 Monthly Board Meetings.

This section describes the frequency and location of regular Board meetings. This section also provides notice of the Board's discretion to hold additional Board meetings, and the Board's authority to conduct meetings via teleconference.

5521.5 Adoption of Board Meeting Calendar.

This section describes the procedures by which the Board adopts its meeting calendars, and changes the date or location, or cancels all or a portion of a previously-scheduled meeting. This section also requires the Board to post an adopted meeting calendar on the Board's Web site within 15 days of adoption and promptly amend a posted meeting calendar to reflect any changes that are made after it is adopted.

**Subchapter 2. Requesting and Scheduling an Oral Hearing**

5522 Right to Request an Oral Hearing.

This section clarifies that all taxpayers have the right to file a written request for an oral hearing, and provides guidance to taxpayers regarding the requirements for making such requests for appeals filed under chapters 2, 3, and 4. This section also describes the Board's policy of liberally granting timely requests for oral Board hearings, and provides notice that the Board may hold an oral hearing even when one is not timely requested.

5522.2 Acknowledgement of Request for Oral Hearing.

This section requires Board staff to issue an acknowledge letter in response to each written request for an oral Board hearing indicating whether an oral Board hearing has been granted, and, if so, identifying the location where the oral Board hearing will be held. This section also requires taxpayers to submit requests to change the location of their oral Board hearings upon receipt of their acknowledgement letters and requires the Chief of Board Proceedings to submit the requests to the Board Chair for decision.

5522.4 Consolidation for Hearing or Decision.

This section describes the procedures by which multiple appeals pending before the Board may be consolidated for hearing or decision. This section allows Board Members, Appeals Division staff, and the parties to appeals to file written requests for consolidation, and written objections to requests for consolidation, and prescribes their contents. This section also requires the Chief Counsel to review such requests and objections, grant requests to consolidate when consolidation would not prejudice a substantial right of any party or all the parties agree to consolidation, and sustain objections that are not frivolous, unless deconsolidation would result in the misuse of administrative resources.

**5522.6 Notice of Board Hearing and Response.**

This section requires the Board Proceedings Division to mail a Notice of Board Hearing to each party in advance of their scheduled hearing date, and requires the notice to provide the session, date and location of the scheduled hearing and the due date for each party's Response to Notice of Hearing included with the Notice of Board Hearing, in addition to other information. This section requires each party to return their Response to Notice of Board Hearing by the required due date and indicate whether the party withdraws its request for a hearing, would like to waive its oral hearing and have the Board decide the appeal on the basis of the written record, or will attend the scheduled oral Board hearing. This section also provides that a party's failure to return the Response to Notice of Board Hearing may result in their appeal being removed from the oral Board hearing calendar and decided by the Board on the basis of the written record on file and without an oral Board hearing.

**5522.8 Dismissal, Deferral, and Postponement.**

This section provides notice to taxpayers that the Board will dismiss an appeal if the taxpayer requests dismissal, the Department concedes its position, or the parties stipulate to a dismissal. This section gives each Board Member, Appeals Division staff, and the parties the right to request that a hearing date or the due date of a brief be deferred or postponed for reasonable cause. This section grants the Chief of Board Proceedings the sole discretion to grant deferrals or postponements for 90 days or less, and requires the Chief Counsel to concur in the granting of certain specified deferrals or postponements that exceed 90 days. This section gives the Chief of Board Proceedings express authority to grant deferrals of up to nine months and additional postponements for the parties to engage in settlement negotiations, and gives the Chief Counsel express authority to grant deferrals and postponements for an indefinite period of time while litigation is pending in federal or state court. This section also requires the Chief of Board Proceedings to postpone an appeal filed under chapter 4 once the Board receives notice that the taxpayer is a debtor in a bankruptcy proceeding and to continue the postponement until the bankruptcy proceeding is concluded.

**Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing**

**5523 Representation at Hearings.**

This section describes the persons who may represent taxpayers during Board hearings and the acts representatives may perform on behalf of taxpayers. This section describes the Board's process for recognizing representatives and requires taxpayers to promptly notify the Board of the substitution or withdrawal of their representatives. This section also prohibits persons who are disbarred from representing taxpayers before the FTB from representing taxpayers in appeals from the actions of the FTB to the Board.

**5523.1 Power of Attorney.**

This section provides Board staff with the authority to require taxpayers to execute power of attorney forms jointly adopted by the Board and FTB authorizing their representatives to act on their behalf. This section prescribes the contents of the power of attorney forms, and requires staff to accept a substitute from containing substantially all of the required contents of the Board adopted form, including a statutory form power of attorney. This section also gives the Chief Counsel the authority to conclusively resolve any issues regarding the authority granted to a representative under a power of attorney form or other document.

**5523.2 Contribution Disclosure Forms.**

This section explains that the Quentin L. Kopp Conflict of Interest Act of 1990 (Act) (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001-7011 requires Board Members to disclose certain political contributions and disqualifies them from participating in certain adjudicatory proceedings (as described in subdivision (h) of the Act). This section explains that Board Members are required to make the disclosures identified in California Code of Regulations, title 18, section 7009, and every party, participant and agent (as defined in California Code of Regulations, title 18, section 7004-7006) is required to make the disclosures required by California Code of Regulations, title 18, section 7011 in order to comply with the disclosure requirements of the Act. This section also explains that the Board Proceedings Division will mail every party, participant, and agent contributions disclosure forms 45 days prior to their scheduled hearings, which should be filled out and returned prior to their hearings.

5523.3 Hearing Summary.

This section requires the Appeals Division to prepare and submit an objective Hearing Summary to the Chief of Board Proceedings within 40 days of a scheduled oral Board hearing for appeals filed under chapter 2, and within the time specified in chapter 3 or 4 for appeals filed under those chapters, and promptly submit any modifications made to the Hearing Summary after it is submitted. This section also requires the Board Proceedings Division to send copies of the Hearing Summary to all the parties within 30 days of a scheduled oral Board hearing and to promptly send copies of any modifications.

5523.4 Additional Briefing.

This section gives the Board Members and the Assistant Chief Counsel for the Appeals Division authority to request additional briefing in appeals filed under chapter 2, but only between the time the Hearing Summary is issued and the date of the taxpayer's oral Board hearing. This section requires the Chief of Board Proceedings to set a briefing schedule and notify the parties when additional briefing is requested. This section prescribes the format of and the requirements for filing additional briefs. This section also provides cross references to the provisions for requesting additional briefing in appeals filed under chapter 3 or 4.

5523.5 Preparation for Board Hearing and Subpoenas.

This section describes the facts and issues that will be discussed during an oral Board hearing and notifies the parties that the Board Members may ask questions regarding these facts and issues during their hearings. This section informs parties that the Board generally reserves 35 minutes for each oral Board hearing, the Chief of Board Proceedings will explain how much of the 35 minutes is allocated to each party at the beginning of each hearing, additional time to present complex matters may be requested in advance of a hearing, and the Board Chair has discretion to modify the time allocated to a party during an oral hearing. This section also provides notice of the Board's subpoena power and describes the procedures for requesting, issuing, and serving a subpoena.

5523.6 Presentation of Evidence or Exhibits.

This section describes the Board's policy of admitting all relevant evidence, including hearsay evidence. This section encourages the parties to oral Board hearings to submit their documentary evidence in advance of their hearings, explains that the Board may not delay a hearing to consider evidence that is submitted at a hearing, and provides notice of the Board's discretion to prohibit parties from submitting irrelevant, untrustworthy, or unduly repetitious evidence. This section explains that the Board will accept a stipulation of facts agreed to by the parties, and may require the parties to file such a stipulation. This section describes the Board's policy of taking official notice of information that may be judicially noticed by the California courts. This section also requires Board Proceedings Division staff to distribute copies of all documentary evidence, stipulations, etc. to the Board Members, each party, and the Appeals Division.

5523.7 Witnesses.

This section permits the parties to an oral Board hearing to present testimony from any person who can provide relevant information to the Board, provides notice of the Board Chair's authority to require witnesses to testify under oath, and provides notice of the Board's authority to initiate contempt proceedings to compel witnesses to comply with Board issued subpoenas. This section also encourages the parties to give the Board and each other advance notice of witnesses whose testimony they intend to present at their oral Board hearings, and codifies the parties' rights to cross examine each others' witnesses.

5523.8 Communications with Board Members.

This section codifies and provides notice of the Board's longstanding policy permitting constituents, taxpayers and their representatives, other agencies' staff, and Board staff to contact the Board Members at any time.

**Article 3: Public Notification of Board Meeting**

5530 Public Agenda Notice.

This section describes the procedures Board Proceedings Division staff must follow to comply with the Public Agenda Notice requirements of the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), prescribes the contents of the Board's Public Agenda Notices, and informs the public as to where and when they may obtain copies of Public Agenda Notices.

#### **Article 4: Conduct of the Board Meeting and Burden of Proof**

##### 5540 Conduct of the Board Meeting.

This section identifies and summarizes key provisions of the Government Code that require the Board to conduct public meetings, prevent Board Members and Board staff from engaging in activities that are incompatible with their duties, require the disclosure of certain political contributions, prohibit Board Members from participating in certain adjudicatory proceedings, require Board Members and Board staff to disclose certain financial interests, and prohibit Board Members and Board employees from making decisions in which they have a financial interest. (See Gov. Code, §§ 15625, 15626, 11129-11132, and 81000 et seq.) This section also provides clear notice to the public that everyone has the right to attend those portions of Board meetings conducted during open session, subject to the Board Chair's authority to take reasonable steps to preserve order.

##### 5541 Burden of Proof.

This section specifies that the burden of proof is upon the taxpayer as to all issues of fact, except in proceedings involving the issue of fraud with intent to evade tax or as otherwise provided by law.

#### **Article 5: Voting and Decisions**

##### 5550 Quorum.

This section requires a quorum (i.e., three Board Members) to be present and participating at a Board meeting for the Board to take any action, sets the minimum requirements for a quorum, and provides rules for determining whether Board Members or a deputy designated by the Controller may be counted towards satisfying the quorum requirement.

##### 5551 Voting and Decisions.

This section describes the Board's discretion to vote to decide an appeal at the end of an oral Board hearing, take the appeal under submission and decide it later, or continue the hearing later. This section describes the Board's discretion to adopt Memorandum Opinions for appeals filed under chapters 2 and 3 of the proposed Rules and Summary Decisions or Formal Opinions for appeals filed under chapter 4 of the proposed Rules, or direct the Appeals Division to prepare and submit such documents to the Board for consideration. This section provides that Formal Opinions and Memorandum opinions may be cited as precedent, unless they are depublished, overruled, or superseded, and that Summary Decisions may not be cited as precedent. This section also permits the Board Members to submit their own concurring or dissenting opinions for inclusion in Board adopted Formal Opinions and Memorandum Opinions.

#### **Article 6: Post Hearing Notices and Petitions for Rehearing**

##### 5560 Notice of Board Decision.

This section requires the Board to send written notice of its decision to all the parties to an appeal and prescribes the general time periods in which the Board will mail the notices. This section also provides that the Board's decision on an appeal filed under chapter 2 of the proposed Rules becomes final 30 days after the Board mails notice of its decision to the taxpayer, unless a petition for rehearing is filed or the Board Chair orders the decision to be held in abeyance within that 30-day period. This section also provides cross references to the more specific finality and petition for rehearing provisions applicable to appeals filed under chapters 3 and 4 of the proposed Rules.

##### 5561 Petition for Rehearing.

This section describes the time period in which the parties to an appeal filed under chapter 2 of the proposed Rules may file petitions for rehearing, and sets forth the four grounds which may form a basis for granting a petition for rehearing. This section provides procedures for filing petitions for rehearing that encourage electronic filing, and describes the Board's procedures for determining whether petitions for rehearing are timely filed. This section also provides a cross reference to the more specific petition for rehearing provisions applicable to appeals from the actions of the FTB filed under chapter 4 of the proposed Rules. This section does not contain a cross reference to the petition for rehearing provisions applicable to appeals filed under chapter 3 of the proposed Rules becomes decisions on appeals filed under chapter 3 are final and cannot be the subject of a petition for rehearing.

5562 Recommendation on Petition for Rehearing.

This section requires the Appeals Division to submit a recommendation to grant or deny a petition for rehearing to the Board for consideration as a non-appearance matter, requires a copy to be provided to each of the parties, and requires the Chief of Board Proceedings to notify all the parties of the Board's decision. This section provides that the Board's prior decision will be held in abeyance pending the outcome of a rehearing, if granted, or will become final 30-days after the Chief of Board Proceedings mails notice of the Board's decision to deny a rehearing. This section also provides a cross reference to the more specific provisions of chapter 4 of the proposed Rules applicable to decisions on petitions for rehearing filed with regard to appeals from the actions of the FTB.

5563 Rehearings.

This section requires the Chief of Board Proceedings to consult with the Appeals Division to determine an appropriate briefing schedule when a rehearing is granted, and then inform the parties to the appeal in writing. This section also provides a cross reference to the more specific provisions of chapter 4 of the proposed Rules applicable to rehearings held with regard to appeals from the actions of the FTB.

**Article 7: Correspondence, Public Hearing Records, and Copies**

5570 Mailing Address.

This section encourages the parties to appeals to file their hearing process correspondence with the Board via electronic means and directs electronic filers to instructions to be provided on the Board's Web site. This section also provides addresses for mailing and hand delivering hearing process correspondence to the Board.

5571 Timeliness of Documents.

This section defines the circumstances under which hearing process correspondence is considered timely filed, provides rules for determining the mailing date of hearing process correspondence, and describes the extension that automatically applies to the deadlines for filing hearing process correspondence when the last day to file falls on a Saturday, Sunday, or holiday.

5572 Hearing Record.

This section provides that the Board's Public Agenda Notices, minutes and transcripts of oral hearings, documents incorporated into the record of oral hearings, and documents to which the waivers described in section 5573 of the proposed Rules apply are disclosable public records. This section also provides general information regarding the Board's preparation and retention of minutes, recordings, and transcripts of oral Board hearings, and provides directions about how to obtain commonly requested copies of hearing minutes and transcripts.

5573 Waiver of Confidentiality.

The Revenue and Taxation Code generally requires the Board and the FTB to keep taxpayer information confidential and prohibits the Board and the FTB from disclosing taxpayer information. This section provides notice to taxpayers that oral Board hearings are generally conducted during open session at public meetings, and that the filing of appeals from the actions of the FTB or requesting oral Board hearings to discuss appeals filed under chapters 2 or 3 of the proposed Rules constitute waivers of the taxpayers rights to confidentiality with regard to specific information relevant to their appeals. This section provides that the waivers apply to all of the information provided to the Board by taxpayers and the FTB as soon as taxpayers file their appeals; and that the waivers only apply to certain information relevant to appeals filed under chapters 2 and 3 of the proposed Rules when the Board issues its first Public Agenda Notice providing notice of the taxpayers' requested oral Board hearings, and may be withdrawn by taxpayers who agree to waive their requests for oral Board hearings prior to the date that such a Public Agenda Notice is issued. The disclosable information relevant to appeals filed under chapter 2 of the proposed Rules, for which waivers are effective, includes: the hearing summaries prepared for taxpayers' oral Board hearings, and any other information actually disclosed on the transcripts of the taxpayers' oral Board hearings. The disclosable information relevant to appeals filed under chapter 3 of the proposed Rules, for which waivers are effective, includes: (1) taxpayers' petitions and applications filed under chapter 3 and the documents filed in support thereof; (2) briefs filed in response to or support of the petitions and applications and their supporting documents; (3) the hearing summaries or summary decisions prepared for the taxpayers oral Board hearings; and (4) any other information that is actually disclosed on the transcripts of the taxpayers' oral hearings. This section also contains exceptions providing that the waivers do not apply to information that may be used for identity theft, and information that is only discussed during a closed session conducted under the procedures provided in section 5574 of the proposed Rules.

5574 Request for Portion of Oral Hearing Conducted During Closed Session.

Subdivision (a) of this section explains the Board's authority to conduct portions of oral Board hearings for appeals filed under chapters 2 and 3 of the proposed Rules during closed session, except oral Board hearings for state-assessee appeals regarding the assessment of unitary or non-unitary property, or an electric generation facility. Subdivisions (b) and (e) of this section permit taxpayers to file requests for the Board to conduct portions of their eligible oral Board hearings during a closed session to protect their trade secrets and other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment or oppression within the meaning of Code of Civil Procedure section 2031.060, and prescribe the contents of such requests. Subdivision (c) of this section requires a request to be filed by the due date of the taxpayer's Response to Notice of Board Hearing, and subdivision (d) of this section describes the Board's process for reviewing and deciding requests. Subdivision (e) of this section requires the Board to provide notice of the Board Chair's decision to grant or deny such requests to taxpayers at least 5 days before their deadlines to waive their oral Board hearings and avoid the application of the waiver provisions in section 5573 of the proposed Rules.

5575 Privilege.

This section explains that the taxpayer waivers provided for in section 5573 do not have any effect on the Board's right to assert the privilege contained in Evidence Code section 952 with regard to communications between the Board's Legal Department or the Attorney General and the Board Members.

5576 Fees: Filing, Transcripts, and Copies.

This section provides notice to taxpayers and the public that the Board does not charge a fee for the filing of documents or the issuance of subpoenas, but does charge statutorily permitted fees to prepare transcripts and copy records.

**COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that no direct or indirect cost or savings to any state agency or any local agency or school district that is 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 to any local agencies, or costs or savings in federal funding to the State of California, will result from the proposed regulatory action.

**STATEMENT OF EFFECT ON BUSINESS**

The Board has made the initial determination required by Government Code section 11346.5, subdivision (a)(8) that the proposed regulatory action 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 adoption of the proposed regulatory actions will alter some of Board's internal procedures for hearing appeals, but 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, nor impact the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

**COST IMPACT ON 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 regulatory action.

**SIGNIFICANT EFFECT ON HOUSING COSTS**

The Board has made an initial determination that the proposed regulatory actions will not have significant effect on housing costs within the meaning of Government Code section 11346.5, subdivision (a)(12).

**FEDERAL REGULATIONS**

The proposed regulatory actions are not comparable to existing federal regulations or statutes.

## AUTHORITY

The proposed regulatory actions are authorized by California Constitution, article XIII, section 11; Government Code sections 15606, 15640, Public Resources Code sections 42475, 42881, and Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

## REFERENCE

The proposed regulatory actions will implement, interpret, or make the following laws more specific: Article XIII, sections 11 and 17 of the California Constitution; Civil Code section 1798.33; Code of Civil Procedure section 657; Evidence Code sections 952, 954; Government Code sections 7.9, 6254, 11120-11132, 15606, 15609, 15609.5, 15610, 15613, 15619, 15623, 15625, 15626, 15640, 15645, 81000-91014; Health and Safety Code section 105310; Public Resources Code sections 42464.6, 42475, 42881; Revenue and Taxation Code sections 20, 110, 214, 251, 254.5, 254.6, 270, 721, 721.5, 722, 724, 725, 731, 732, 733, 734, 741, 742, 743, 744, 746, 747, 748, 749, 758, 759, 833, 1840, 1841, 5107, 5148, 6074, 6456, 6482, 6483, 6512, 6513, 6536, 6538, 6538.5, 6561, 6561.5, 6562, 6592, 6593, 6593.5, 6596, 6814, 6832, 6901, 6902, 6902.3, 6902.4, 6904, 6905, 6906, 6981, 7051, 7056, 7081, 7208, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7674, 7661, 7698, 7700, 7700.5, 7710, 7710.5, 7711, 8101, 8101.2, 8101.6, 8101.7, 8102, 8126, 8128, 8128.1, 8129, 8191, 8251, 8255, 8777, 8778, 8802, 8803, 8826, 8828, 8828.5, 8851, 8851.5, 8852, 8877, 8878, 8878.1, 8878.5, 8879, 9024, 9151, 9152, 9152.1, 9153, 9196, 9251, 9255, 11251, 11291, 11292, 11293, 11352, 11338, 11339, 11340, 11341, 11351, 11352, 11353, 11354, 11651, 11651.5, 11655, 12426, 12428, 12429, 12632, 12636, 12637, 12951, 12977, 12978, 12979, 12980, 12981, 13170, 18533, 19006, 19043.5, 19045, 19047, 19048, 19072, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19542, 19545, 19714, 20645, 30171, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30202, 30203, 30222, 30223, 30241, 30243, 30243.5, 30261, 30261.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30362.1, 30363, 30364, 30365, 30421, 30451, 30455, 32255, 32256, 32256.5, 32257, 32271, 32291, 32301, 32301.5, 32302, 32311, 32312, 32313, 32401, 32402, 32402.1, 32403, 32404, 32407, 32440, 32451, 32455, 38412, 38413, 38422, 38423, 38431, 38433, 38434, 38435, 38441, 38442, 38443, 38452, 38453, 38454, 38455, 38564, 38601, 38602, 38602.5, 38603, 38604, 38605, 38631, 38701, 38705, 38706, 40072, 40073, 40082, 40083, 40091, 40092, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40112.1, 40113, 40114, 40115, 40121, 40171, 41071, 41072, 41081, 41082, 41085, 41086, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41102, 41103, 41104, 41107, 41128, 43157, 43158, 43158.5, 43159, 43201, 43301, 43302, 43303, 43350, 43351, 43352, 43451, 43452, 43452.1, 43453, 43454, 43491, 43501, 45155, 45156, 45156.5, 45157, 45201, 45301, 45302, 45303, 45351, 45352, 45353, 45651, 45652, 45652.1, 45653, 45654, 45801, 45851, 46156, 46157, 46157.5, 46158, 46201, 46252, 46253, 46301, 46302, 46303, 46351, 46352, 46353, 46454, 46501, 46502, 46503, 46504, 46505, 46551, 46601, 50112.2, 50112.3, 50112.4, 50112.5, 50113, 50114, 50115, 50116, 50120.1, 50120.2, 50120.3, 50139, 50140, 50140.1, 50141, 50142, 50151, 50152, 55001, 55044, 55045, 55046, 55046.5, 55061, 55081, 55082, 55083, 55101, 55102, 55103, 55221, 55222, 55222.1, 55223, 55224, 55281, 55301, 60209, 60210, 60211, 60212, 60302, 60314, 60330, 60332, 60333, 60350, 60351, 60352, 60474, 60501, 60502, 60505, 60505.5, 60506, 60507, 60521, 60522, 60522.1, 60523, 60581, 60601, 60609; Water Code section 1537; and California Code of Regulations, title 18, sections 1702, 1705.1, 1807, 1828.

## CONTACT

Questions regarding the substance of the proposed regulatory actions should be directed to Mr. Bradley Heller, (916) 324-2657, email [bradley.heller@boe.ca.gov](mailto:bradley.heller@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Bradley Heller, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Diane Olson, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080 by September 11, 2007.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by the Board, or identified and brought to the Board's attention would be more effective in carrying out the purpose for which this regulatory action is proposed, or be as effective and less burdensome to affected private persons than the proposed regulatory action. The Board considered alternative provisions for sections 5326.4, 5523.8, and 5574 of the proposed Rules as described in more detail in the Initial Statement of Reasons, and determined that none of the alternatives would be more effective in carrying out the purposes for which the sections were proposed, or be as effective and less burdensome to affected private persons than the proposed sections.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS

The Board has prepared an Initial Statement of Reasons, and underscore and strike-out versions of the Board's current and proposed regulations showing the Board's proposed regulatory actions. These documents and all information on which the proposed regulatory action is 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 are available on the Internet at the Board's Web site, <http://www.boe.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Board will prepare the Final Statement of Reasons for the proposed regulatory action in accordance with Government Code section 111346.9 after the Board conducts the public hearing on September 11, 2007. The Final Statement of Reasons will be made available on the Internet at the Board's Web site once it is prepared. The Final Statement of Reasons will also be available for inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the September 11, 2007, hearing, the Board may, in accordance with law, adopt the proposed regulatory actions if the text of the proposed regulations remains substantially the same as described in the text originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the proposed regulatory action. The text of any modified regulations will be mailed to those interested parties who commented on the proposed regulatory actions orally or in writing or who asked to be informed of such changes. The modified text of regulations will also be available to the public from Ms. Olson. The Board will consider written comments on the modified text of regulation for fifteen days after the date on which the modified text is made available to the public.

Sincerely,



Kristine Cazadd  
Chief Counsel

KC:BH:dgo

Enclosures

## **Board of Equalization Rules for Tax Appeals**

### **Initial Statement of Reasons/Non-Controlling Summary**

Government Code section 15606 authorizes the Board of Equalization (Board) to promulgate regulations “for its own government and for the transaction of its business,” and numerous other Revenue and Taxation Code sections authorize the Board to promulgate regulations for each of its specific tax and fee programs. The Board is promulgating the Rules for Tax Appeals (new Rules) to create a comprehensive set of procedural regulations which cover all of the Board’s administrative review functions with regard to Board-administered tax and fee programs and the Board’s appellate duties with regard to appeals from the actions of the Franchise Tax Board (FTB) (collectively, the “appeals processes”). The new Rules are easier to understand and provide a greater degree of clarity than the Board’s current Rules of Practice (Cal. Code Regs., tit. 18, § 5010 et seq.) and Board Meeting Reference<sup>1</sup>, while retaining flexibility to respond to individual circumstances and new or changed Board responsibilities. For example, the new Rules improve upon the existing Rules of Practice by codifying all of the procedures applicable to the Board’s appeals processes in one place, organizing them by tax and fee program, and providing common procedures for taxpayers to follow were practicable.

This rulemaking is necessary because the current Rules of Practice are not well-suited to piecemeal amendment but instead require a complete reorganization and restructuring. This is because, one, the existing organizational structures of the articles and sections addressing each tax and fee program are too inconsistent and vary too widely and, two, due to their subject matter, the Board’s procedural rules should be placed in a new, more suitable division of title 18 of the California Code of Regulations. In addition, it is necessary to update the Board’s procedural rules to reflect current practices and to make those changes determined to be necessary or desirable after consulting with taxpayers, tax practitioners, and other interested parties. Accordingly, the Board proposes to repeal the current Rules of Practice and adopt the new Rules in order to comprehensively replace the existing procedural rules with improved regulations that consistently, clearly, and fully describe the Board’s appeals processes in a structurally integrated and logical framework. In this way, the Board intends to improve its relationship with tax and fee payers.

As indicated the new Rules are designed to reorganize and consolidate into a more useful framework all of the Board’s procedures for reviewing petitions, applications, claims for refund, and requests for relief for all of the tax and fee programs administered by the Board, and the procedures for hearing appeals from the FTB. The purpose of the new Rules is to provide taxpayers and tax professionals with a single, well-organized, and clear source for all of the procedural information they need to know, from the initiation of the appeals process to the final Board decision. The Board intends that these new Rules will set forth all the Board’s procedural regulations in a logically organized structure that provides consistent and clear requirements and guidelines. To accomplish this goal, the new Rules are organized into five chapters. The first and fifth chapters contain provisions of general application, and the second, third, and fourth chapters each contain procedures applicable to one of three broad categories of tax and fee programs as follows:

Chapter 1, *Title*

Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*

Chapter 3, *Property Taxes*

Chapter 4, *Appeals from Actions of the Franchise Tax Board*

Chapter 5, *General Board Hearing Procedures*

Chapters 2, 3, 4, and 5 of the new Rules combine procedures from various statutes, regulations, Board publications, and the Board’s existing practices and policies, and arrange those procedures in chronological order based upon their place in the appeals process. The combined and reorganized procedures codify the Board best existing practices, carry over those best practices to other tax programs where appropriate, and address specific areas of public concern, including awareness of Board policies and procedures, the disclosure of information related to taxpayer appeals, the publication of Board opinions, and the appropriateness of communications with Board Members.

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<sup>1</sup> Available on the Board’s Web site at: [www.boe.ca.gov/meetings/pdf/BMeetingReferenceBook2007.pdf](http://www.boe.ca.gov/meetings/pdf/BMeetingReferenceBook2007.pdf).

The new Rules are the result of a two-year review, drafting, and approval process in which:

- Board staff prepared more than 25 drafts of the various chapters;
- A broad variety of interested parties, including other state agencies, submitted hundreds of comments;
- Board staff held seven interested parties' meetings to hear and discuss the interested parties' comments; and
- The Board Members held 10 Board Meetings to hear from both Board staff and the interested parties, discuss new proposed regulations, and grant staff authority to begin the rulemaking process.

Throughout this process, the Board made extraordinary outreach efforts to involve interested parties. In addition to notifying all of the interested parties that had requested notice of rulemaking activities pertaining to any of the Board's various tax and fee programs, the Board notified statewide media, issued press releases, and placed prominent notice of the project on its Web site. Board staff thoroughly explained the project to revise the Board's Rules of Practice to everyone in attendance at the September 28, 2005, Board Meeting, and the Board recorded and broadcast the meeting on the California Channel, a public affairs station out of Sacramento. The major issues of each chapter and overall progress on the project were covered by a nationwide tax publication, and were the topic of two annual California Tax Policy Conferences (2005 and 2006) and several presentations to other tax professional groups (e.g., annual meeting of county assessors, county bar associations). In addition, drafts of proposed regulations, notices to and comments from interested parties, explanatory materials, and transcripts of interested parties' meetings and Board Meetings were posted on a dedicated page on the Board's Web site (<http://www.boe.ca.gov/regs/timelinCAtax.htm>). The materials the Board relied upon in granting staff approval to begin the rulemaking process are contained on this Web page. All the significant interested parties' comments are identified and responded to in the Response to Public Comment - Matrix<sup>2</sup> prepared for the November 20, 2006, Board Meeting.

The Board Members and Board staff's interactions with the interested parties were extremely productive and the interested parties process increased public participation as the Legislature intended. (See Government Code section 11346.45.) Many longstanding and new issues were identified and resolved. While consensus was not reached on every issue, all the interested parties' comments were thoughtfully considered and incorporated where appropriate. Board staff remained open to telephone calls, e-mails, and requests for additional meetings from interested parties throughout the entire process. The Board Members requested additional interested parties meetings and provided staff with direction when needed during the process. All of the provisions described below were improved as a result of the collaborative efforts of the Board Members, Board staff, staff from other agencies, including the FTB, and a wide spectrum of interested parties representing diverse interests.

### **Summary of New Rules and Improvements to Current Rules of Practice**

Chapter 1 contains the name for the new Rules of Tax Appeals, and provides a clear statement of the Board's ultimate intent for their implementation, which is to improve the Board's relationship with tax and fee payers (taxpayers).

Chapter 2 codifies all of the Board's existing practices for handling appeals involving the 25 revenue-generating tax and fee programs (business taxes and fees), including the Sales and Use Tax, administered by the Board (see BOE Publication 156, *Revenue-Generating Tax and Fee Programs*), and improves them by: (1) codifying the Board's policy of accepting untimely petitions for redetermination as late protests; (2) clarifying that taxpayers requesting relief have the right to request both an appeals conference and an oral hearing; (3) giving taxpayers and Board staff additional time to prepare briefs; and (4) guaranteeing taxpayers the right to file the last brief.

Chapter 3 codifies the Board's current practices for handling property tax appeals, including the practice of having the Appeals Division review appeals prior to the Board's consideration, and provides a more detailed description of each step in the property tax appeals process than the existing Rules of Practice.

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<sup>2</sup> The matrix is available on the Board's Web site at: <http://www.boe.ca.gov/regs/pdf/ResponsePublicComment-Matrix.pdf>.

Chapter 4 restates most of the Rules of Practice provisions and codifies the Board's existing practices for handling appeals from the FTB. Chapter 4 also improves the Board's existing practices in several ways. Chapter 4 adds new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals. Chapter 4 provides notice of the criteria for the imposition of frivolous appeal penalties and establishes new procedures to help resolve jurisdictional issues. Chapter 4 also contains new procedures for holding discretionary prehearing conferences that can be used to better develop the facts and issues raised in complicated or complex appeals when requested by the appellant or the FTB or deemed necessary either by the Board's Appeals Division or the Board Members. Other new procedures include specific briefing schedules for petitions for rehearing and rehearings.

Chapter 5 restates most of the Rules of Practice provisions and codifies the Board's existing practices for conducting oral hearings and deciding appeals in all of the Board's appeals processes. Chapter 5 makes several important improvements over the Rules of Practice, including:

- Clarifying that all appellants have the right to request an oral hearing;
- Describing the conflict-of-interest provisions applicable to the Board;
- Permitting individual Board Members to adopt their own dissenting and concurring opinions when the Board adopts a Formal Opinion or Memorandum Opinion;
- Codifying the Board's longstanding policy permitting all interested persons to communicate with the Board Members at any time;
- Making oral hearings more understandable to the public; and
- Protecting trade secrets and information that could be used for identity theft from disclosure.

The new Rules are necessary because, in comparison to the current Rules of Practice, they are:

- Easier to use because they are organized by tax, type of review, and the chronological order of the steps in the Board's appeals processes, and are not unnecessarily technical;
- More comprehensive because they address all of the types of appeals processes and all the stages of review available;
- More uniform between tax and fee programs wherever uniformity is desirable and practicable;
- Better for taxpayers and tax professionals because they create a single source of information that will bolster the public nature and openness of the Board's operations and clarify everyone's right to equal access while maximizing the efficient use of the Board's resources;
- The result of a general consensus among interested parties, Board staff, and the FTB; and
- Much more likely to ensure that all taxpayers have a plain, speedy and adequate remedy available to challenge tax and fee determinations as guaranteed by state law. (See the Harris-Katz Taxpayers' Bill of Rights (Rev. & Tax. Code, §§ 7080-7099.1) applicable to Sales and Use Tax Appeals, the Katz-Harris Taxpayers' Bill of Rights Act (Rev. & Tax. Code, §§ 21001-21028) applicable to appeals from actions of the FTB, the various California Taxpayers' Bills of Rights (Rev. & Tax. Code, §§ 8260-8277, 9260-9278, 30458-30459.8, 32460-32476, 40200-40216, 41160-41176, 43511-43527, 45856-45872, 50156-50156.18, 46611-46627, 55321-55337, 60621-60636) applicable to all special taxes and fees appeals other than Tax on Insurers appeals.)

### **Explanation of the Initial Statement of Reasons**

The specific purpose and necessity for the Board to adopt each proposed section is identified below. Where the Board relied upon specific historical documents in proposing the adoption of a section or considered alternative language for the same section, the documents the Board relied upon and the alternative language considered are identified. Some of the sections contain new procedures, and others contain reworded procedures carried over from the Rules of Practice. "New" sections contain newly codified procedures that do not have a corresponding section or provision in the Rules of Practice. "Restated" sections contain reworded procedures carried over from the Rules of Practice without substantive alteration. All restated sections will be noted.

## Specific Discussion of Each Proposed Section

### Chapter 1: Title of Division

#### 5000 Statement of Intent: Title for Division

The Board currently conducts its hearings under the Rules of Practice. The purposes of this section are to name the new division in a way that distinguishes the new Rules from the former Rules of Practice, create an easy to remember acronym “RTA,” and provide a clear statement of the Board’s purpose for the new Rules, which is to improve the relationship between taxpayers and the Board. Naming the new Rules the Rules for Tax Appeals and providing an easy to remember acronym are necessary to provide commonly understood references to the new regulatory provisions. The statement of intent was included to ensure that the Board’s intent for the new Rules was well publicized and applied by Board staff when interpreting the meaning of individual sections.

### Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

The Board’s current policies and procedures for business taxes and fees appeals, including appeals involving the Sales and Use Tax and Timber Yield Tax, are contained in the current Rules of Practice, BOE Publication 17, *Appeals Procedures*, BOE Publication 57, *Innocent Spouse Relief from Sales and Use Tax*, BOE Publication 87, *Guide to the California Timber Yield Tax*, and BOE Publication 117, *Filing Claims for Refund*.<sup>3</sup> The purpose of chapter 2 is to codify the Board’s best historical practices and procedures for reviewing business taxes and fees appeals in one comprehensive, chronologically organized set of regulations. Chapter 2 is necessary to minimize the duplication of regulations with similar procedures for the various business taxes and fees programs, and to ensure that all taxpayers can more easily understand their rights during the Board’s appeals processes.

### Article 1: Application of Chapter 2 and Definitions

#### 5200 Application of Chapter 2 and Definitions.

The purposes of this section are to provide specific guidance to taxpayers as to the tax and fee programs and types of petitions, protests, applications, claims, and requests for relief to which chapter 2 applies, and provide cross-references to the generally applicable definitions in chapter 5 of the new Rules. Listing the tax and fee programs is necessary to eliminate the need to consult all of the various statutes to see whether the procedures for a particular program are covered in this chapter. Listing the types of review that are covered by chapter 2’s procedures improves public understanding of all of the Board’s administrative review processes. The provision stating that the definitions in section 5511 and 5512 apply to chapter 2, but that the provisions in chapter 2 control where there is a conflict are necessary to ensure that taxpayers, tax professionals, Board staff, and the public correctly interpret the provisions of chapter 2. Placing this section at the beginning of chapter 2 is appropriate because it contains provisions of general applicability to the entire chapter.

#### 5201 Application of the International Fuel Tax Agreement.

The International Fuel Tax Agreement (IFTA) is a cooperative agreement among states and provinces in the U.S. and Canada designed to simplify fuel tax licensing and reporting requirements for interstate motor carriers. In California, the IFTA is administered by the State Board of Equalization. Several of the business tax and fee programs administered by the Board involve fuel taxes that are covered by the IFTA. The purpose of this provision is to specify the hierarchy of authority when provisions of the IFTA and the Board’s procedures conflict. This provision was previously codified in section 5071 of the current Rules of Practice. Placement of this provision in its own separately-titled section is necessary to improve its visibility to taxpayers, Board staff, and the public.

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<sup>3</sup> These publications are available on the Board’s web site at: <http://www.boe.ca.gov/cgi-bin/pubs.cgi>.

5202 Notice Requirements.

The purpose of this section is to carry over and restate the provisions of section 5036 of the current Rules of Practice regarding notices. This section is necessary to provide guidance to taxpayers regarding the manner in which the Board provides notice.

**Article 2A: Petitioning Notices of Determination and Notices of Deficiency Assessment**

5210 Persons Who May File Petitions for Redetermination.

The purposes of this new section are to provide clear guidance to taxpayers and the public as to who is allowed to file a petition for redetermination and provide a definition for the statutory phrase “person directly interested in a notice of determination.” This section is necessary to make the new Rules comprehensive, improve their clarity, and ensure that all eligible persons are aware of their rights.

5210.5 Successor’s Petition for Reconsideration.

The purpose of this new section is to specify that successor liabilities proposed to be assessed under five different tax and fee programs may be petitioned by such alleged successors using the same procedures set forth in chapter 2 for filing petitions for redetermination under the same tax and fee programs. This section codifies the Board’s longstanding practice of reviewing successors’ petitions for reconsideration in the same manner as petitions for redetermination, and is necessary to provide clear guidance to alleged successors seeking to appeal proposed assessments of successor liabilities without having to distinguish between the two types of petitions in every subsequent section.

5211 Limitation Period for Filing Petitions and Stay of Collection Activities.

The purpose of this new section is to codify and provide additional notice of the statutes of limitation or limitations periods applicable to the filing of petitions in the various tax and fee programs that are the subject of chapter 2, the statutory effect of filing a timely petition, the consequences of failing to file a timely petition, and the Board Legal Department’s opinion that prematurely filed petitions are not timely. This section is necessary to prevent taxpayers from filing their petitions outside the applicable statute of limitations period and having the Board institute unexpected collection actions.

5212 Contents of Petitions for Redetermination, and Supporting Arguments and Evidence.

This section carries over and amplifies the provisions of section 5021, subdivision (a) of the current Rules of Practice. The purposes of this section are to codify and assist taxpayers, taxpayer representatives, and Board staff in understanding what constitutes a valid petition, and to inform taxpayers that an appeals conference and an oral Board hearing may be requested in their petitions. This section is necessary to improve administrative efficiency by helping taxpayers complete their petitions and encouraging taxpayers to submit supporting arguments and materials early in the appeal process, while not discouraging later submissions.

5212.5 Amendments to Petitions for Redetermination.

This section gives taxpayers notice of their right to amend their petitions at any time before the Board issues its orders or decisions on such petitions. The purpose of this section is to carry over and amplify the provisions of section 5021, subdivision (b) of the current Rules of Practice, regarding taxpayers’ rights to amend their petitions. This section is necessary to continue to codify taxpayers’ rights to amend their petitions at any time before the Board issues its orders or decisions on such petitions.

5213 Accrual of Interest.

When a petition is not finally decided until years after a tax or fee liability being petitioned was incurred, the accrued interest can be as much as or greater than the ultimate taxes or fees found to be owed. Accrued interest can be minimized or eliminated, however, by payment of all or a portion of the disputed amount of taxes and fees prior

to the Board's action on the petition becoming final. The purpose of this new section is to put taxpayers on notice regarding the continuing accrual of interest during the pendency of a Board appeal. This section is necessary to give taxpayers additional notice regarding the accrual of interest and ensure that the new Rules provide a comprehensive guide to the appeals process.

5214 Additional Copy of Petitions for Redetermination Filed Pursuant to the Tax on Insurers Law.

The purpose of this new section is to give notice of the provisions of Revenue and Taxation Code section 12428 requiring that a duplicate Tax on Insurers petition be filed with the Commissioner of Insurance. This section is necessary to ensure that all procedural requirements related to the filing of petitions under the Tax on Insurers Law (part 7 of division 2 of the Rev. & Tax. Code) can be found in the new Rules.

5215 Scope of Petitions for Redetermination Filed Pursuant to Hazardous Substances Tax Law.

The purposes of this new section are to set forth the specific requirements for petitions filed under the Hazardous Substances Tax Law (part 22 of divisions 2 of the Rev. & Tax. Code) and codify and notify taxpayers that, in keeping with legislative intent, petitions alleging certain grounds for redetermination that are within the technical expertise and regulatory authority of other affected agencies will be referred to those agencies for decision prior to the Board's consideration. This section is necessary to ensure that the Board's policies and procedures regarding the Department of Toxic Substances Control and State Department of Health Services' roles in the Board's appeals process are understood by petitioners, the affected agencies, and Board staff. This section is necessary to provide notice of the Department of Toxic Substances Control and State Department of Health Services' roles in the Board's appeals process and make the new Rules comprehensive.

5215.4 Scope of Petitions for Redetermination Filed Pursuant to Covered Electronic Waste Recycling Fee.

The purpose of this new section is to codify and notify taxpayers that, in keeping with legislative intent, the Board will refer all petitions involving a determination as to whether an item is or is not a covered electronic device to the Department of Toxic Substances Control for determination prior to the Board's consideration of the petition. This section is necessary to ensure that the Board's policies and procedures regarding the Department of Toxic Substances Control's role in the Board's appeals process are understood by petitioners, the Department of Toxic Substances Control, and Board staff. Inclusion of this section increases the comprehensiveness of the new Rules.

5215.6 Scope of Petition for Redetermination Filed Pursuant to Water Rights Fee Law.

The purpose of this new section is to provide additional notice of obscure provisions in the Water Code, which give the State Water Resources Control Board authority to hear petitions for redetermination regarding the amount of the water rights fee or the person or entity required to pay such fee. This section is necessary to codify and ensure that taxpayers and Board staff understand that, in keeping with legislative intent, the Board will not consider either of these grounds in the Board's appeals process. Inclusion of this section increases the comprehensiveness of the new Rules.

5216 Filing Petitions for Redetermination.

The purpose of this new section is to codify the manner in which petitions may be filed and to encourage electronic filing in a manner that can be adapted as technology changes. This section is necessary to codify and ensure that taxpayers and representatives know where to file petitions and related documents, and understand the consequences of failing to follow these requirements. Inclusion of this section is also necessary to maintain the chronological sequence of chapter 2.

5217 Assignment and Acknowledgment of Petitions for Redetermination.

The purpose of this new section is to describe and inform taxpayers about the beginning of the Board's process for reviewing petitions. This section is necessary to maintain the chronological sequence of chapter 2 and give taxpayers notice that they should be promptly receiving an acknowledgment letter from the section or group assigned to their petitions, which may contain a request for additional information.

5218 Review of the Petition by the Assigned Section or Group.

The purpose of this new section is to codify and describe the Board's initial review of petitions, the manner in which the Board presents its initial findings to the taxpayer, and the manner in which taxpayers may appeal those initial findings. This section is necessary to ensure that taxpayers and taxpayers' representatives understand the initial review process and their appeal rights if they disagree with the Board initial findings.

5219 Mailing the Summary Analysis and Scheduling the Appeals Conference.

The purposes of this section are to require Board staff to provide a written analysis of any initial findings with which taxpayers disagree and to inform taxpayers that their appeals conferences will be scheduled after they receive copies of their written analyses. This section is necessary to provide taxpayers and representatives with information to track the progress of their petitions from the initial stage of review to the appeals conference stage.

**Article 2B: Treatment of Premature or Untimely Petition as an Administrative Protest**

5220 Premature or Untimely Petition May Be Treated as an Administrative Protest

The purposes of this section are to explain that the Board has discretion to review premature (early) or untimely (late) petitions as administrative protests and codify the Board's policy of liberally granting such review. This section is necessary to codify and ensure that all taxpayers and Board staff are aware of the administrative protest process and the Board's policy of liberally granting review of administrative protests.

5220.4 Accrual of Interest.

When an administrative protest is not finally decided until years after the tax or fee liability at issue was incurred, the accrued interest can be as much as or greater than the ultimate taxes or fees owed. Accrued interest can be minimized or eliminated, however, by payment of all or a portion of the disputed amount of taxes and fees prior to the Board's action on the administrative protest becoming final. The purpose of this section is to put taxpayers on notice regarding the accrual of interest. This section is necessary to ensure that the Rules for Tax Appeals provide a comprehensive guide to the appeals process.

5220.6 No Stay of Collection Activities.

The purpose of this section is to clearly point out to taxpayers and their representatives the critical difference between filing a timely petition, which stays collection activities, and having a premature or untimely petition treated as an administrative protest, which does not stay collection activities. This section is necessary to codify and ensure that taxpayers understand this critical distinction.

**Article 2C: Contesting a Jeopardy Determination**

The Board currently reviews jeopardy determinations using procedures codified in sections 5030-5036 of the current Rules of Practice. Article 2C generally carries over the current procedures but reorganizes and rephrases them to conform to the structure and organization of the remaining articles and chapters of the new Rules.

5221 Notice of Jeopardy Determination.

The purposes of this section are to improve taxpayers' awareness and provide a natural introduction to the process for appealing notices of jeopardy determination. This section is necessary to codify and ensure that taxpayers and Board staff understand the contents of a notice of jeopardy determination, the conditions under which jeopardy determinations are issued, and that amounts stated in a notice of jeopardy determination are collectible under different conditions than other liabilities.

## 5222 Persons Who May File a Petition for Redetermination of a Jeopardy Determination

This section carries over the provisions of section 5031 of the current Rules of Practice regarding the persons who may file a petition for redetermination of a jeopardy determination. The purposes of this section are to codify and explain who may file a petition for redetermination of a jeopardy determination and prescribe the procedures for filing such petitions. This section is necessary to ensure that taxpayers understand whether they have the right to file a petition for redetermination of a jeopardy determination. This section is also necessary to ensure that taxpayers and their representatives are aware of the filing requirements for petitions and of the potential consequences of failing to comply with those requirements.

### 5222.4 Contents of Petition for Redetermination of Jeopardy Determination.

The purpose of this section is to codify and carry over without substantive alteration the Board's existing policy of requiring petitions for redetermination of jeopardy determinations to satisfy the same requirements as other petitions for redetermination. This section is necessary to inform taxpayers about the requirements for a complete petition for redetermination of a jeopardy determination.

### 5222.6 Limitation Period for Petition for Redetermination of Jeopardy Determination.

The purpose of subdivision (a) of this section is to codify in the Board's procedural regulations and carry over without substantive alteration the time limit for filing a petition for redetermination of a jeopardy determination found in the first sentence of section 5031 of the current Rules of Practice. The purpose of subdivision (b) of this section is to codify and clarify that the shorter time limit found in subdivision (a) takes precedence over the longer time limits applicable to filing other petitions for redetermination. This section is necessary to ensure that taxpayers have notice of when to file a timely petition for redetermination of a jeopardy determination.

### 5223 Security Requirement for Petition.

The purpose of this section is to codify in the Board's procedural regulations and carry over without substantive alteration the provisions found in the first sentence of section 5031 of the current Rules of Practice requiring taxpayers filing petitions from notices of jeopardy determination to deposit security with the Board. This section is necessary to give taxpayers notice of this statutory requirement.

### 5224 Review of Petition for Redetermination of Jeopardy Determination.

The purposes of this section are to codify and explain that: a petition for redetermination of a jeopardy determination may be based upon any grounds, including the inappropriateness of issuing a jeopardy determination; the Board's review of such a petition will follow the same procedures applicable to other petitions for redetermination, but that such review will be carried out "promptly" due to the nature of jeopardy determinations; and the limitations on the Board's review contained in sections 5215 and 5215.4 apply to the Board's review of a petition for redetermination of a jeopardy determination. This section is necessary to ensure that taxpayers understand the scope of their rights to appeal jeopardy determinations.

### 5225 Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

This section carries over into the new procedural rules most of the provisions of section 5032, subdivision (b) of the current Rules of Practice without substantive alteration. The purposes of this section are to codify and explain that: a person against whom a jeopardy determination is made has a right to file an application for an administrative hearing; list the grounds upon which such an application may be based; encourage electronic filing of such applications (although provisions for mail and hand delivery are provided); explain that if a petition for redetermination and an application for administrative hearing are both filed, there will be a single hearing for both; incorporate the co-filing requirement for petitions filed under the Tax on Insurer's Law; and direct taxpayers to the State Water Resources Board to resolve specified issues regarding the Water Rights Fee. This section is necessary to apprise taxpayers regarding their rights to file an application for an administrative hearing and the grounds for such applications, provide procedures for filing such applications, and define the scope of administrative hearings.

This section is also necessary to ensure that the new Rules contain comprehensive procedures for taxpayers who request review of jeopardy determinations.

5226 Limitation Period for Filing Application for Administrative Hearing.

The purposes of this section are to codify and carry over the 30-day time limit for filing an application for an administrative hearing and the Board's discretion to grant an exception to the time limit based upon a showing of reasonable cause from section 5032, subdivisions (a) and (e), of the current Rules of Practice without substantive alteration. This section is necessary to give taxpayers notice of the time limit and the Board's discretion to accept late applications when there is reasonable cause.

5227 Contents of Application for Administrative Hearing.

The purpose of this section is to codify and carry over the requirements for an application for administrative hearing from section 5032, subdivision (c), of the current Rules of Practice with the clarification that applications are required to be signed by the taxpayer or the taxpayer's representative and not other substantive alterations. The section is necessary to prescribe the contents of a complete application; the signature requirement is necessary to ensure that applications are properly authorized by the taxpayer.

5228 Option to Post Security with Application for Administrative Hearing.

The purposes of this section are to: codify and carry over the rights to obtain an administrative hearing without posting security and have seized property protected from sale during the administrative hearing process from section 5032, subdivisions (d) and (e), and section 5033 of the current Rules of Practice; codify and carry over the requirement that taxpayers are liable for the expense of storing their property, but further explain that the Board has discretion to waive, credit, or refund such expenses; and codify and provide notice to taxpayers that other collection actions will only be stayed if sufficient security is deposited with the Board. This section is necessary to apprise taxpayers of their rights during the administrative hearing process, and ensure that they are not surprised by the Board's collection activities.

5229 Assignment of Application for Administrative Hearing to Appeals Division for Appeals Conference.

This section amplifies the provisions of sections 5034 and 5035 of the current Rules of Practice regarding the conduct of an administrative hearing. The purposes of this section are to require that administrative hearings be conducted promptly in the form of appeals conferences and require the prompt issuance of Decision and Recommendations following administrative hearings; and codify the right to request an oral Board hearing if taxpayers disagree with their Decision and Recommendations. This section is necessary to set forth a reasonably expeditious appeals conference and hearing process for taxpayers and comprehensively describe such administrative hearing process to ensure that taxpayers understand all of their rights.

**Article 3: Claims for Refund**

The purposes of article 3 are to codify and carry over the provisions of section 5022 of the current Rules of Practice regarding claims for refund, provide more specificity regarding all the Board's procedures for reviewing claims for refund, and provide notice of lesser known procedures that are only applicable to specific tax and fee programs. This article is necessary to ensure that taxpayers properly prepare and file their claims for refund and ensure that taxpayers' claims for refund are properly reviewed by Board staff.

5230 Persons Who May File a Claim for Refund; Limitations on Certain Claims.

The purposes of this section are to identify the persons who may file claims for refund under the tax and fee programs governed by the procedures in chapter 2, and also, in keeping with statutory law, note those Motor Vehicle Fuel Tax, Hazardous Substances Tax Law, Covered Electronic Waste Recycling Fee, and Water Rights Fee claims for refund that must be filed with other agencies. This section is necessary to inform taxpayers about their rights to file claims for refund and ensure that certain specified claims are filed with the correct agency.

5231 Limitation Period for Claim for Refund.

The purpose of this section is to list all the statutes of limitation applicable to claims for refund filed under all the different tax and fee programs governed by the procedures in chapter 2. This section is necessary to codify such rules in the Board's new procedural regulations and ensure that the new Rules are comprehensive, that taxpayers have notice of when to file timely claims for refund, and that Board staff are aware of all the applicable varied statutes of limitation and limitations periods.

5231.5 Failure to File Timely Claim for Refund.

The purpose of this section is to codify and provide additional notice to taxpayers regarding the statutory affect of failing to file a claim for refund within the applicable statute of limitations period. This section is necessary to ensure that this article provides comprehensive guidance to taxpayers and Board staff regarding the affect of the statutes of limitation.

5232 General Contents of Claims for Refund.

The main purposes of this section are to codify and carry over the provision of section 5022 of the current Rules of Practice regarding the contents of claims for refunds and to amplify those provisions with more specific instructions to taxpayers regarding the requirements for a valid claim for refund in a similar manner to section 5212 of the new Rules, which describes the contents of a valid petition for redetermination. Another purpose of this section is to notify taxpayers regarding additional or optional information that may be included with their claims for refund. This section is necessary to maximize the usefulness of the new Rules and provide clear guidance to taxpayers and Board staff regarding the required and optional contents of claims for refund.

5232.4 Contents of Claims for Refund Under Diesel Fuel Tax Law.

The purposes of this new section are to codify and help taxpayers better understand all the specific requirements for claims for refund made under the Diesel Fuel Tax Law that are currently found in California Code of Regulations, title 18, sections 1430-1435, and ensure that these requirements are addressed in the new Rules. This section is necessary to make the new Rules comprehensive and help taxpayers more easily understand all the requirements for a valid and complete claim for refund under the Diesel Fuel Tax Law without having to refer to a set of procedural regulations found in another division.

5232.6 Requirements for Claims for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.

The purpose of this new section is to provide a cross reference to the more easily understood requirements for claims for refund of Alcoholic Beverage Tax included in the sales price of lost, unmarketable or condemned alcoholic beverages found in California Code of Regulations, title 18, section 2553. This section is necessary to improve the comprehensiveness of the new Rules by ensuring that the contents of all types of refund claims are addressed in this article.

5232.8 Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.

The purposes of this new section are to describe the requirement that claims for refund of taxes paid on the purchase of unused stamps and meter register settings be filed on Board prescribed forms (Cal. Code Regs., tit. 18, § 4061-4065), and direct taxpayers to contact the Board's Excise Taxes and Fees Division for the proper forms. This section is necessary to improve administrative efficiency by providing taxpayers with additional notice of the Board prescribed form requirement and give taxpayers a specific Board contact from which to obtain the required forms.

5233 Filing Claims for Refund.

The purposes of this new section are to explain how to file claims for refund and encourage electronic filing. This section is necessary to codify and ensure that taxpayers and representatives know the requirements for filing claims for refund and related documents and the consequences of failing to follow these requirements and to encourage electronic filing. Inclusion of this section is also necessary to maintain the chronological sequence and

comprehensive nature of chapter 2.

5234 Assignment and Acknowledgment of Claim for Refund.

The purposes of this new section are to describe the beginning of the administrative review process for claims for refund and require Board staff to promptly acknowledge the filing of claims for refund. This section is necessary to maintain the chronological sequence of chapter 2 and give taxpayers notice that they should be promptly receiving an acknowledgment letter from the assigned section or group after they file their claims for refund.

5234.5 Review Process for Claims for Refund and Requests for Additional Information.

The purposes of this new section are to codify and notify taxpayers of the Board's policy regarding the order in which claims for refund are processed, explain that Board staff may request additional information in order to process a claim, and describe the potential consequences of failing to provide the requested information. This section is necessary to notify taxpayers about the order in which their claims will be processed, the Board's ability to request additional supporting information, and the consequences to taxpayers of failure to provide information to support their claims for refund when requested.

5235 Action on the Claim for Refund.

The purposes of this new section are to describe the initial recommendations Board staff can make after reviewing claims for refund, explain the procedures that apply when Board staff's initial recommendation is to grant a claim for refund, require Board staff to explain their reasons for recommending that a claim be denied, and explain how taxpayers can appeal Board staff's initial recommendations when they disagree. This section is necessary to improve the Board's relationship with the public by ensuring that all claimants are aware of the procedures that apply when Board staff recommends granting a claim for refund, and their rights to request further review by the Appeals Division and the Board when they disagree with Board staff's initial recommendations.

5236 Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.

There is no statutory requirement that the Board grant an appeals conference or oral Board hearings on a claim for refund. However, the Board's longstanding policy is to liberally grant appeals conferences and oral Board hearings. The purpose of this section is to codify the Board's policy regarding the granting of appeals conferences and oral Board hearings. This section is necessary to ensure that all taxpayers are aware of the Board's policy and that appeals conferences and oral Board hearings are granted accordingly.

5237 Board Approval Required for Refunds Over \$50,000.

The purposes of this section are to codify the Board's policies regarding the reservation and delegation of authority to the Executive Director to approve determinations on claims for refund and inform taxpayers about the procedures by which Board staff's recommendations on certain claims for refund are submitted to the Board for approval. This section is necessary to ensure that taxpayers and Board staff are aware of these policies and the additional procedural steps required for the Board to approve certain refunds. This section is also necessary to ensure that the new Rules are comprehensive.

5238 Credits and Offsets May Reduce Refunds.

The purposes of this new section are to give taxpayers notice that their refunds may be reduced by other amounts that they owe to the Board, and provide notice of unique provisions in the Diesel Fuel Tax Law permitting taxpayers to claim certain overpayments as credits on their returns and explain that these credits are not subject to being reduced by other amounts taxpayers owe to the Board. This section is necessary to improve the Board's relationship with the public by ensuring that claimants and Board staff understand how the Board calculates the net amount refunded to taxpayers. This section is also necessary to ensure that the new Rules are comprehensive.

5239 Combined Claims for Refund on Behalf of Class of Taxpayers.

The purpose of this section is to carry over the provisions of section 5024 of the current Rules of Practice regarding the filing of claims for refund on behalf of a class of taxpayers without substantive alteration. This section is necessary to ensure that the new Rules are comprehensive and provide procedures for these statutorily authorized combined claims for refund.

**Article 4A: Requests for Innocent Spouse Relief Under the Sales and Use Tax Law**

The purpose of this article is to ensure that the new Rules contain the procedures for claiming innocent spouse and other equitable relief under the Sales and Use Tax Law. This article is necessary to ensure the comprehensive nature of the new Rules and connect the innocent spouse procedures to the Board's overall appeals process.

5240 Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, including State-administered local sales, transactions, and use taxes).

The purposes of this section are to describe with specificity the persons who may file a request for innocent spouse relief, provide a cross reference to the substantive requirements for innocent spouse relief contained in California Code of Regulations, title 18, section 1705.1, subdivision (a), prescribe the contents of a complete request for innocent spouse relief, and encourage taxpayers to electronically file their requests for innocent spouse relief. This section is necessary to ensure that eligible taxpayers understand how to file timely and complete claims for innocent spouse relief, and to ensure the comprehensive nature of the new Rules.

5241 Acknowledgement and Review of Requests for Innocent Spouse Relief.

The purposes of this new section are to describe the Board's initial review process for requests for innocent spouse and other equitable relief, and notify taxpayers that Board staff will contact their spouses and permit their spouses to submit information regarding their requests for innocent spouse relief. This section is necessary to amplify the procedures described in California Code of Regulations, title 18, section 1705.1, and ensure that the new Rules are comprehensive in nature.

5242 Requests for Reconsideration by the Board.

The purposes of this new section are to clearly notify taxpayers of their right to request an oral Board hearing for the Board to reconsider Board staff's denials of their requests for other equitable relief, provide procedures for requesting an oral Board hearing, codify the Board's policy of liberally granting oral Board hearings, and inform taxpayers that they may be required to attend an appeals conference if an oral Board hearing is granted. This section is necessary to inform taxpayers about their right to request an oral Board hearing on the denial of a request for other equitable relief, the procedures for making such requests, the Board's policy of liberally granting such requests, and the Board's discretion to require taxpayers to attend an appeals conference.

**Article 4B: Successor's Request for Relief of Penalty Under the Sales and Use Tax Law**

5243 Successor's Request for Relief.

The purposes of this section are to provide additional notice regarding the requirements for a complete request for relief of penalties filed under California Code of Regulations, title 18, section 1702, subdivision (d)(2), explain that such requests must be filed in the same manner as petitions for redetermination, and notify taxpayers that they may include their requests for relief in their petitions for redetermination. This section is necessary to provide guidance regarding the filing of successors' requests for relief under California Code of Regulations, title 18, section 1702, subdivision (d)(2), and ensure that the new Rules provide comprehensive procedures for all the Board's administrative review processes.

#### **Article 4C: Other Requests for Relief of Penalties and Interest**

The purpose of this article is to codify the Board's policies and procedures for reviewing requests for relief of penalties and interest not related to the amount of the underlying tax liability, which policies and procedures are not contained in the current Rules of Practice. This article is necessary to ensure that the new Rules are comprehensive and constitute a complete source of reference regarding Board appeals procedures.

5244 No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.

The purposes of this new section are to notify taxpayers that there is no independent statutory right to an oral Board hearing on a request for relief under this article; requests for relief may be included in petitions for redetermination and claims for refund; requests for relief included in petitions for redetermination and claims for refund must satisfy all the requirements for a complete request for relief; requests for relief included in petitions for redetermination or claims for refund will be reviewed under the procedures applicable to such petitions for redetermination or claims for refund; and that the Board can associate requests for relief with related petitions for redetermination or claims for refund. This section is necessary to ensure that taxpayers and Board staff clearly understand that the Board has discretion to grant or deny an oral Board hearing on a request for relief, taxpayers can include their requests for relief in their petitions for redetermination or claims for refund, that such petitions for redetermination and claims for refund will be reviewed just like other petitions for redetermination and claims for refund, and that the Board may associate requests for relief with related petitions for redetermination or claims for refund to increase administrative efficiency.

5245 Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.

The purposes of this new section are to list all of the penalties that the Board can relieve for reasonable cause in order to inform all eligible taxpayers about the relief to which they are entitled, and prescribe the contents of complete requests for relief due to reasonable cause. This section is necessary to ensure that all eligible taxpayers receive the relief to which they are entitled, and ensure that the new Rules provide comprehensive procedures for all of the Board's appeals processes.

5246 Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.

The purposes of this new section are to list all of the tax and free programs in which the Board has statutory authority to relieve interest in order to inform all eligible taxpayers about the relief to which they are entitled, and describes the requirements for complete requests for relief of interest, and give taxpayers the option to use a Board-provided form. This section is necessary to ensure that all eligible taxpayers receive the relief to which they are entitled, and ensure that the new Rules provide comprehensive procedures for all of the Board's appeals processes.

5247 Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

The purposes of this new section are to list all of the tax and free programs in which the Board has statutory authority to relieve taxes, fees, penalties, and interest due to reasonable reliance on written advice, and describe the requirements for complete requests for relief under this section. This section is necessary to ensure that all eligible taxpayers receive the relief to which they are entitled, and ensure that the new Rules provide comprehensive procedures for all of the Board's appeals processes.

5248 Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.

The purposes of this new section are to list all of the types of interest the Board can relieve due to a disaster in each of the Board's tax and fee programs, describe the requirements for complete requests for relief under this section, and give taxpayers the option to use a Board-provided form. This section is necessary to ensure that all eligible taxpayers receive the relief to which they are entitled, and ensure that the new Rules provide comprehensive procedures for all of the Board's appeals processes.

5249 Filing Requests for Relief.

The purpose of this new section is to provide procedures for taxpayers to file their requests for relief of unpaid or paid amounts that do not fall into any other category in this chapter. This section is necessary to explain how to file requests for relief and to ensure that the new Rules are comprehensive.

5249.4 Assignment and Acknowledgement of Requests for Relief.

The purposes of this new section are to inform taxpayers about the Board's procedures for assigning and acknowledging requests for relief, require assigned Board staff to provide their contact information to taxpayers in their acknowledgement letters, inform taxpayers that the assigned staff may request additional information in their acknowledgement letters, and explain that requests for relief included in petitions for redetermination or claims for refund will be reviewed in accordance with the procedures applicable to such petitions or claims.

This section is necessary to ensure that taxpayers understand how their requests for relief are assigned, require Board staff to promptly acknowledge requests for relief, and inform taxpayers that they will be receiving acknowledgment letters from Board staff, which may request additional information. This section is also necessary to ensure that the new Rules are comprehensive.

5249.6 Reviewing Requests for Relief.

The purposes of this new section are to describe the Board's process for review requests for relief, explain that taxpayers may request review of Board staff's initial determination from the appropriate Deputy Director and may also request an oral Board hearing, and provide notice of the Board's discretion to deny a request for an oral Board hearing and require taxpayers to attend appeals conferences prior to their oral Board hearings. This section is necessary to ensure that taxpayers understand the Board's process for reviewing requests for relief and all of their avenues for additional review.

**Article 5: Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes**

5250 Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.

Detailed procedural regulations applicable to local and district tax inquiries are contained in California Code of Regulations, title 18, sections 1807 and 1828, and only apply to inquiring jurisdictions and their consultants (as defined therein). The Board is currently considering revising sections 1807 and 1828, but does not expect to amend either section before the new Rules are promulgated. The purposes of this new section are to provide a cross reference to the Board's procedures for reviewing claims (inquiries) of incorrect or non-distribution of local and district taxes contained in sections 1807 and 1828, and provide procedures for filing such claims (inquiries) that encourage electronic filing. This section is necessary to make the new Rules as comprehensive as possible and provide procedures for the filing of claims of incorrect or non-distribution of local and district taxes.

**Article 6: Appeals Conferences**

The Appeals Division is part of the Board's Legal Department. Appeals Division staff is responsible for conducting appeals conferences and providing the Board Members with their independent and objective analysis of matters assigned to the Appeals Division for review. The purpose of this article is to reorganize the provisions of section 5023 of the current Rules of Practice, and provide more detailed provisions that describe the entire Appeals Division review process. This article is necessary to make the new Rules comprehensive in scope.

5260 Referral to Appeals Division for Appeals Conference; Preferred Location for Appeals Conference.

The purposes of this section are to require Board staff to contact taxpayers at the beginning of the Appeals Division review process to update taxpayers' contact information and determine whether taxpayers prefer to have their appeals conferences conducted at specific locations; and to provide notice to taxpayers regarding the location where their appeals conferences will be held, if they do not express another preference. The provisions of this section are drawn from section 5023, subdivision (a) of the current Rules of Practice, but have been revised to put more of an

emphasis on Board staff to verify whether taxpayers prefer to have their appeals conferences held at specific locations. This section is necessary to improve the Board's relationship with the public by ensuring that taxpayers know the Board will try to conduct their appeals conferences at their preferred locations, and that taxpayers know the default location where their appeals conferences will be held if they do not express a preference.

5261 Notice of Appeals Conference; Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.

This section carries over provisions from section 5023, subdivisions (a) and (d) of the current Rules of Practice regarding recording appeals conferences and the submission of additional arguments and evidence. The purposes of this section are to require Board Proceedings Division staff to issue each taxpayer a Notice of Appeals Conference and prescribe the contents of the notices; instruct taxpayers to complete and return their Response to Notice of Appeals Conference forms to the Board Proceedings Division along with any additional arguments or evidence within 15 days after the date their Notice of Appeals Conference was mailed; and advise taxpayers that their appeals conferences will not be recorded unless they check the appropriate box on their Response to Notice of Conference forms, record the appeals conferences themselves, and provide a copy of any recording to the Appeals Division upon request. This section is necessary to ensure that taxpayers understand how the Board provides notice of appeals conferences. This section is also necessary to ensure that all taxpayers are aware of their responsibility to respond to their Notices of Appeals Conference, their ability to submit additional arguments and evidence to the Appeals Division prior to their appeals conferences, and their ability to record their appeals conferences.

5262 Requests to Reschedule or Postpone Appeals Conferences.

This section carries over provisions from section 5023, subdivision (b) of the current Rules of Practice regarding the rescheduling and postponement of appeals conferences. The purposes of this section are to prescribe the manner in which requests to reschedule or postpone appeals conferences may be filed, and encourages the use of electronic means; explain the procedures for rescheduling and postponing appeals conferences; and describe the standards under which the Chief of Board Proceedings and Chief Counsel may grant a postponement. This section is necessary to ensure that taxpayers understand the Board's procedures for rescheduling or postponing their appeals conferences when necessary.

5263 Ways to Expedite an Appeals Conference.

Some taxpayers request that the Board expedite the scheduling of their appeals conferences. The purpose of this new section is to codify the three circumstances under which the Board will expedite the scheduling of appeals conferences and the Board's policy of trying to expedite the scheduling of appeals conferences for taxpayers who agree to appear on shortened notice. This section is necessary to ensure that all taxpayers are aware of the circumstances under which the Board will expedite the scheduling of their appeals conferences, and to ensure that the new Rules are comprehensive in nature.

5264 Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear.

This section derives most of its provisions from section 5023, subdivisions (a), (c), and (d) of the current Rules of Practice regarding the nature of appeals conferences, the effect of failing to appear at a scheduled appeals conference, and the submission of additional documents for Appeals Division review. The first purpose of this section is to amplify the provisions of section 5023, subdivision (a) of the current Rules of Practice by: (1) explaining that appeals conferences will be conducted by Appeals Division staff that have not had any prior involvement in the matters under review and who are required to take a fresh look at the law and the facts and make their own objective recommendation; and (2) explaining that staff from the appropriate Department (as defined in section 5511 of the new Rules) and, in some cases, staff from other state agencies that jointly administer taxes and fees with the Board will participate in appeals conferences. The second purpose of this section is to carry over language from section 5023, subdivisions (a) and (d) of the current Rules of Practice regarding the non-adversarial nature of appeals conferences and the ability to submit additional written arguments and documentary evidence before, during, and after an appeals conference. The third purpose of this section is to carry over the provisions of section 5023, subdivision (c) of the current Rules of Practice regarding the effect of failing to appear at a scheduled

appeals conference. The fourth purpose of this section is to require Appeals Division staff to deliberate on each matter before preparing the Decision and Recommendation required by section 5265 of the new Rules. This section is necessary to ensure that all taxpayers, Board staff, and staff from other agencies understand the nature of appeals conferences and Appeals Division staff's responsibilities and have notice regarding the persons who may participate in an appeals conference and the ability to submit additional arguments and documentary evidence before, during, and after an appeals conference.

5265 Issuance and Contents of a Decision and Recommendation.

The purposes of this section are to carry over and amplify the provisions of section 5023, subdivision (e) of the current Rules of Practice. Subdivisions (a) and (b) of this section carry over the provisions of section 5023, subdivision (e) of the current Rules of Practice regarding the Appeals Division's preparation of written reports called Decision and Recommendations (D&Rs). Subdivisions (c) and (d) of this section amplify the current Rules of Practice by codifying the required contents of D&Rs, suggesting that the parties to an appeals conference contact Appeals Division staff immediately after discovering a significant factual error in their D&Rs, and giving Appeals Division staff authority to revise inaccurate D&Rs when necessary. This section is necessary to ensure that D&Rs are prepared in a timely manner, contain all of the necessary elements, and accurately describe the facts upon which they are based.

5266 Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings.

The purposes of this section are to carry over, amend and amplify the provisions of section 5023, subdivision (f) of the current Rules of Practice regarding request for oral Board hearings. This section carries over the provisions of the current Rules of Practice regarding a taxpayer's right to request an oral Board hearing within 30 days after the issuance of a D&R. This section amends the provisions of the current Rules of Practice by deleting the Department's ability to request an oral Board hearing in order to resolve differences between Board staff earlier in the appeals process. This section amplifies the current Rules of Practice by addressing the rights of other state agencies who participate in appeals conferences, giving all the participants the ability to request reconsideration of a D&R by Appeals Division staff, requiring Appeals Division staff to prepare SD&Rs to respond to requests for reconsideration, authorizing Appeals Division staff to prepare SD&Rs to clarify or correct D&Rs or SD&Rs, and describing the procedure by which Appeals Division staff's recommendations granting amounts in excess of \$50,000 are forwarded to the Board Members for independent consideration, unless an oral Board hearing has been granted. This section is necessary to accurately describe the Board's current practices and policies with regard to Appeals Division staff's discretion to make recommendations; taxpayers, the Departments, and other state agencies' rights to request reconsideration of a D&R and an oral Board hearing when they disagree with Appeals Division staff's recommendations; Appeals Division staff's responsibility to prepare Supplemental D&Rs (or SD&Rs); and the Board's policy of having the Board Members approve recommendations to grant amounts in excess of \$50,000.

5267 Issuance of Post Appeals Conference Notices.

The purposes of this section are to carry over and amplify the provisions of the last sentence in section 5023, subdivision (f) of the current Rules of Practice regarding the issuance of post-appeals-conference notices when no oral Board hearing is scheduled, and codify and provide notice of the Board's policy regarding the consolidation of related petitions and claims for refund involving the validity of a resale or exemption certificate for Sales and Use Tax purposes. This section is necessary to ensure that taxpayers, the Board's Departments, and other state agencies understand how the Board's appeals process concludes for petitions, claims for refund, and requests for relief that are not scheduled for an oral Board hearing. This section is necessary to ensure that taxpayers understand that petitions and claims for refund involving the validity of resale or exemption certificates may be consolidated with related petitions or claims for refund and scheduled for an oral Board hearing even though the taxpayers received favorable recommendations from Appeals Division staff. This section is also necessary to permit the Board Members to fully consider the issues raised by a resale or exemption certificate.

5268 Procedures for Conducting Board Hearings.

The purpose of this section is to provide a clear link between the completion of the appeals conference stage in the Board's appeals process and the procedures applicable to oral Board hearings for taxpayers, Board staff, and other

state agencies that are parties to a petition, claim for refund, or request for relief that has been scheduled for an oral Board hearing. This section is necessary to provide a clear cross reference to the procedures for the next stage in the Board's appeals process, and ensure that chapter 2 is comprehensive.

### **Article 7: Optional Briefs for Board Hearings**

The purpose of this section is to describe the Board's optional briefing process for appeals subject to the provisions of chapter 2 of the new Rules. This article is necessary to ensure that the new Rules are comprehensive.

#### 5270 Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing.

The purposes of this section are to carry over the comprehensive, optional briefing provisions of section 5075 of the current Rules of Practice (other than subdivision (g)), and modify those provisions to provide parties with an additional five days to prepare and file their opening briefs and reply briefs. The Board Members considered whether to give the parties an additional five days to prepare and file their opening and reply briefs or continue to utilize the shorter periods in section 5075 of the current Rules of Practice at the April 16, 2006, Board meeting. The Board Members were concerned that the modification might extend the overall appeals process, but approved the modification after directing Board staff to issue Notices of Board Hearings 15-days earlier than previously required so that the modification did not extend the overall appeals process. This section is necessary to carry over the Board's current rules for optional briefing, improve those rules by giving the parties more time to prepare and file their opening briefs and reply briefs, and ensure the comprehensive nature of chapter 2.

#### 5271 Extensions of Time for Filing Briefs.

The purposes of this section are to carry over the provisions of section 5075, subdivision (g) of the current Rules of Practice, which allows the Chief of Board Proceedings to grant a "reasonable extension of time" for the filing any brief upon a showing of "extreme hardship;" and revise those provisions to shift the authority for granting extensions from the Chief of Board Proceedings to the Chief Counsel, change the standard for granting an extension from "extreme hardship" to "reasonable cause," and require the Chief Counsel to grant appropriate extensions of time to reply to briefs for which an extension is granted. This section is necessary to provide procedures for requesting and granting extensions of time to file briefs, liberalize the legal standard for granting extensions, and move the authority to make the determination as to whether that legal standard is satisfied to the Chief Counsel.

### **Chapter 3: Property Taxes**

The current Board policies and procedures for property tax appeals, except appeals under the Timber Yield Tax Law and appeals of jeopardy assessments issued under the Private Railroad Car Tax Law, are contained in the current Rules of Practice, BOE Publication 29, *California Property Tax: An Overview*,<sup>4</sup> the State Assessment Manual,<sup>5</sup> California Code of Regulations, title 18, section 904 (Property Tax Rule 904), and Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*.<sup>6</sup> The purpose of chapter 3 is to codify the Board's best historical practices and procedures for reviewing property tax appeals in one comprehensive, chronologically organized set of regulations. Chapter 3 is necessary to minimize the duplication of regulations with similar procedures for property tax appeals and to ensure that all taxpayers and county assessors can more easily understand their rights during the Board's property tax appeals processes.

### **Article 1: Application of Chapter and Definitions**

#### 5310 Application of Chapter.

The purposes of this section are to provide specific guidance to taxpayers and assessors as to the types of property tax appeals (i.e., petitions and applications) to which chapter 3 applies and advise taxpayers and assessors that the

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<sup>4</sup> This publication is available on the Board's Web site at: <http://www.boe.ca.gov/proptaxes/pdf/pub29.pdf>.

<sup>5</sup> This manual is available on the Board's Web site at: <http://www.boe.ca.gov/proptaxes/pdf/SAM-FINAL2003.pdf>.

<sup>6</sup> The Assessors' Handbook is available on the Board's Web site at: <http://www.boe.ca.gov/proptaxes/pdf/SAM-FINAL2003.pdf>.

general rules and procedures in chapter 5 of the new Rules apply to chapter 3 except in the case of conflict with the specific provisions of chapter 3. Comprehensively listing all the types of property tax appeals is necessary to eliminate the need to consult all of the various statutes to see whether the procedures for a particular type of property tax appeal are covered in this chapter. The provision stating that the rules and other procedures in chapter 5 of the new Rules apply to chapter 3 unless there is a conflict is necessary for clarification purposes and to ensure that taxpayers, tax professionals, Board staff, and the public correctly interpret the provisions of chapter 3. Placing this section at the beginning of chapter 3 is appropriate because it contains provisions of general applicability to the entire chapter.

#### 5311 Definitions.

The purpose of this section is to provide clear guidance to taxpayers, county assessors, and Board staff regarding the meaning of terms used in chapter 3 by providing definitions for specific terms used in chapter 3, and providing a cross reference to the generally applicable definitions in chapter 5 of the new Rules. This section is necessary to ensure that all persons interested in the Board's property tax appeals processes understand the meaning of terms used in this chapter.

#### 5312 Application of Articles 2, 3, and 4.

The purpose of this section is to provide clear guidance to readers regarding the organization of chapter 3 so that they can more easily find the procedures for the types of property tax appeals they are concerned about. This section is necessary to ensure that the procedures in article 2 applicable to petitions for reassessment of unitary and non-unitary value of state-assessed property and private railroad car values (state-assessee appeals) are not applied to other types of property tax appeals governed by the procedures in article 3 or vice versa, and that everyone understands that the procedures in article 4 apply to all types of property tax appeals.

### **Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars**

The purpose of article 2 is to describe the procedures in chapter 3 that are specifically applicable to state-assessee appeals, but not other types of property tax appeals. Many of the procedures specifically applicable to state-assessee appeals are substantively different or have different time limitations than the procedures applicable to other types of appeals because the Board is statutorily required to decide most state-assessee appeals on an annual basis (e.g., no later than December 31 of each year for state assesses and no later than January 31 of the following year for private railroad car taxpayers). Therefore, the new rules must necessarily codify the special procedures applicable to state-assessee appeals in a separate article of chapter 3 to ensure that taxpayers are not confused by the procedures applicable to other types of property tax appeals.

#### **Subchapter 1: Application of Article**

##### 5321 Application of Article.

This section is carried over from section 5040, subdivision (b) of the current Rules of Practice without substantive alteration. The purpose of this section is to establish that the procedures in article 2 apply to state-assessee appeals. The section is necessary to ensure that everyone understands the proper application of article 2.

#### **Subchapter 2: Assessments and Assessment Factor Hearings**

##### 5322 Information Available to Assesseees; Assessment Factor Hearings.

Subdivision (a) of this section is carried over from section 5041, subdivision (b) of the current Rules of Practice regarding capitalization rate studies and value indicators without substantive alteration. Subdivision (b) of this section is carried over from section 5043 of the current Rules of Practice regarding assessment factor hearings without substantive alteration. Subdivision (c) of this section codifies existing Board practice of allowing state assesseees to make oral or written presentations to the Board regarding the value of their property. The purpose of this section is to identify the information state assesseees can request regarding the value of their property, and the opportunities state assesseees have to make presentations to the Board regarding the value of their property before the

Board sets a value. This section is necessary to ensure that state assessees understand and may exercise their opportunities to participate in the Board's value setting process before having to resort to an appeal, and to put the state-assessee appeals process in context.

#### 5322.5 Validity of Assessment.

This section restates Revenue and Taxation Code section 725 regarding the validity of assessments. The purpose of this section is to improve the relevance of the new Rules by including statutory language mandating the validity of an assessment despite the taxpayer's failure to receive notice or the Board's failure to take a required action by a specified date. Inclusion of this section is necessary to ensure that taxpayers, county assessors and Board staff have a common understanding of the circumstances under which assessments are valid.

### **Subchapter 3: Contents of Petitions and Filing Deadlines**

#### 5323 Time for Filing of Petitions

The purpose of this section is to set forth all of the deadlines for filing the different types of state-assessee petitions subject to article 2. This section is necessary to ensure that state assessees and taxpayers understand these deadlines and file timely petitions to preserve their appeal rights.

#### 5323.2 Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.

This section carries over the provisions of section 5030, subdivision (b) of the current Rules of Practice, which provide that petitions for reassessment of private railroad car tax jeopardy assessments are governed by the same procedures as petitions for redetermination of special taxes and fees jeopardy determinations. This section also provides a cross reference to the applicable procedures in chapter 2 of the new Rules. The purpose of this section is to provide a cross reference to the procedures for appealing private railroad car tax jeopardy assessments in chapter 2. This section is necessary to ensure that taxpayers utilize the proper procedures to appeal private railroad car tax jeopardy assessment.

#### 5323.4 Contents of the Petition.

This section restates section 5041, subdivision (c)(1) of the current Rules of Practice regarding the contents of state-assessee petitions, including the requirement that petitions indicate whether an oral Board hearing or written findings and decision is requested, and adds the language in subdivision (b)(4) of this section requiring petitions to indicate whether an appeals conference is requested. The purpose of this section is to prescribe the contents of a valid state-assessee petition under article 2, and provide procedures for requesting appeals conferences, oral hearings, and written findings and decisions. This section is necessary to ensure that taxpayers, taxpayer representatives, and Board staff have the same understanding about what constitutes a valid petition, and when an appeals conference, oral Board hearing, or written findings and decision may be requested.

#### 5323.6 Submission of Petition.

This section restates section 5041, subdivision (c)(3) of the current Rules of Practice regarding the submission of state-assessee petitions, and adds an exception to the original provisions allowing petitioners to submit a compact disc containing an electronic copy of their petitions formatted as specified by the Board Proceedings Division in lieu of submitting ten hard copies. The purpose of this section is to require petitioners to provide 10 additional copies of their petitions or an electronic file which can be easily copied, so that their petitions can be quickly distributed to all the Board Members and appropriate Board staff. This section is necessary to ensure that taxpayers are aware of and comply with this additional filing requirement.

#### 5323.8 Duplicate Petitions.

This section restates the provisions of section 5041, subdivision (c)(2) of the current Rules of Practice, regarding duplicate petitions. The purposes of this section are to provide procedures for determining which petition was authorized by the petitioner in cases where the Board receives two or more petitions from the same petitioner for the

same assessment, and create a presumption in favor of the first petition received by the Board. This section is necessary to ensure that petitioners, their representatives, and Board staff have a common understanding as to which petition will be processed in cases where petitioners and their representatives file two or more petitions for the same assessment.

#### **Subchapter 4: Timeliness, Acceptance, and Dismissal of Petitions**

##### 5324 Timeliness of Petition.

This section restates the provisions of section 5041, subdivision (c)(3), and the first two sentences of section 5042 of the current Rules of Practice regarding the timely filing of state-assessee petitions. However, subdivision (c) of this section requires original hard copies of electronically transmitted petitions and other documents to be mailed or delivered to the Board the next business day after they were transmitted, whereas the current Rules of Practice require electronically transmitted petitions and documents to be mailed or delivered to the Board within a reasonable time after their transmission. The purpose of this section is to prescribe the requirements for timely filed petitions and other documents under article 2, and further clarify the meaning of a “reasonable time” as used in section 5041, subdivision (c)(3) of the current Rules of Practice. This section is necessary to ensure that all petitioners understand the requirements for the timely filing of their petitions and are able to comply.

##### 5324.2 Extensions of Time.

This section restates the provisions of section 5041, subdivision (f) of the current Rules of Practice regarding extensions of time to file petitions and other documents, changes the period for which an extension to file a petition may be granted from a “reasonable period of time” to “15 days,” and moves the authority to grant extensions to the Chief Counsel. The purposes of this section are to provide procedures for requesting and granting extensions to file petitions and other documents under article 2, and make the Chief Counsel responsible for ensuring that extensions are fairly granted. This section is necessary to ensure that petitioners and Board staff are aware of the requirements for requesting and granting extensions, and the length of the extensions that may be granted by the Chief Counsel.

##### 5324.4 Accepting or Rejecting a Petition.

The purposes of this section are to carry over the substance of the final two sentences in section 5042 of the current Rules of Practice, which require untimely petitions to be dismissed and permit incomplete petitions to be dismissed, modify those provisions to require the dismissal of incomplete petitions, and provide notice of the Board’s internal procedures for determining validity, completeness, and timeliness. This section is necessary to ensure that petitioners understand the Board’s internal procedures and know that the Board will accept petitions that raise a genuine issue of fact regarding their validity, completeness, or timeliness, and will only reject petitions that are clearly invalid, incomplete, or untimely.

##### 5324.6 Submission of Additional Supporting Documents by Petitioner.

The purpose of this section is to restate and revise the provisions of section 5041, subdivision (h) of the current Rules of Practice regarding the acceptance and distribution of documents to correspond more closely to existing Board practices. This section is necessary to inform taxpayers about limitations on the documentary evidence they can present to the Board after they file their petitions and to ensure that those limitations do not infringe on the Board’s authority to request additional documentary evidence from petitioners.

##### 5324.8 Dismissal of Petition.

The purposes of this section are to provide clear notice to taxpayers regarding the circumstances under which their petitions will be dismissed and require the Chief of Board Proceedings to send petitioners notices of dismissal containing the reasons therefore. This section is necessary to ensure that taxpayers understand the consequences of filing invalid, incomplete, or untimely petitions and that the Board Proceedings Division sends petitioners notices of dismissal when their petitions are dismissed.

## **Subchapter 5: Prehearing Meetings and Review of Petitions**

The purpose of subchapter 5 is to describe an optional process under which petitioners may request an informal meeting with Board staff to resolve the issues raised in their petitions. Subchapter 5 is necessary to ensure that petitioners understand and take advantage of this valuable option.

### **5325 Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.**

The purposes of this new section are to codify a longstanding Board policy encouraging petitioners and Board staff to work together on an informal basis to obtain additional information and resolve issues amicably whenever possible, and inform petitioners that this policy does not abrogate Board staff's authority to request additional information from petitioners at any time. This section is necessary to provide notice to all petitioners regarding their rights to informally meet with Board staff to try and resolve their petitions and require Board staff to meet with petitioners when requested. This section is also necessary to ensure that petitioners clearly understand that Board staff may request additional information from petitioners before, during, and after informal meetings requested pursuant to this section. The policies codified in this section conserve resources and improve the Board's relationship with taxpayers by providing additional access to Board staff.

#### **5325.4 Petitions Resolved Before Appeals Division Review.**

The purposes of this new section are to provide procedures for petitioners and Board staff to present their joint recommendations to resolve petitions to the Board for consideration, and provide notice that the Board Members are not required to adopt such recommendations. This section is necessary to provide a process for joint recommendations to resolve petitions to be presented to the Board as early as possible in the appeals process without the need for an appeals conference, additional briefing, or oral arguments, and to ensure that petitioners understand that the Board Members must approve a joint recommendation before it is effective.

#### **5325.6 Prehearing Review of All Other Petitions.**

The purposes of this section are to codify the Board's existing practice of having the Appeals Division review all petitions that are not resolved prior to the appeals conference and briefing processes and prepare an analysis and/or recommendation to assist the Board Members; provide procedures for Appeals Division staff to amend their analyses and recommendations when necessary; and give Appeals Division staff authority to request additional information to complete their analyses and recommendations. This section is necessary to provide clear guidance to petitioners and Board staff regarding the Appeals Division's role in the Board's overall appeals process for state-assessee petitions, and require the Appeals Division to prepare the required analyses and recommendations.

## **Subchapter 6: Briefing Schedules and Appeals Conferences**

Subchapter 6 describes the current briefing and appeals conference processes for state-assessee appeals, which require Appeals Division review. Subchapter 6 contains a briefing process for state-assessee appeals for which an appeals conference is requested and scheduled, and another briefing process for state-assessee appeals for which an appeals conference is not requested. This subchapter also sets forth the procedures under which an appeals conference may be requested and granted.

Prior to 2005 the Appeals Division did not review state-assessee appeals. In 2005, the Appeals Division began reviewing state-assessee appeals based solely on the written record, and, in 2006, the Appeals Division also began to hold appeals conferences for all state-assessee appeals where the petitioner requested an oral Board hearing. On April 25, 2007, the Board directed staff to implement the Appeals Division review procedures contained in this subchapter for the 2007 state-assessee appeals, and include the procedures in the new Rules. The purpose of this subchapter is to codify the Board's existing practices for Appeals Division review of state-assessee appeals, and this subchapter is necessary to provide notice of these recently implemented practices and procedures to petitioners.

5326 General Briefing Procedures For Petitions Reviewed by the Appeals Division.

This section carries over the three types of documents section 5041, subdivisions (c), (d) and (e) of the current Rules of Practice permit to be filed during the briefing process for state-assessee appeals. This section identifies the State-Assessed Properties Division as the Board division responsible for preparing Board staff's analysis. This section also carries over the provisions of section 5075, subdivision (a) of the current Rules of Practice, which treat a state-assessee's petition as the state-assessee's opening brief. The purpose of this section is to provide a list of the documents that can be filed in the state-assessee appeals briefing process. This section is necessary to ensure that taxpayers and Board staff correctly interpret the provisions of this subchapter and do not file inappropriate documents that are not listed in this section.

5326.2 Briefing Schedule If No Appeals Conference Is Scheduled.

This section carries over the state-assessee briefing schedule from section 5041, subdivisions (d) and (e) of the current Rules of Practice and modifies that schedule to provide time for the Appeals Division to review the briefs and prepare a Summary Decision with regard to appeals for which no appeals conference is scheduled. This section also carries over the discretion to grant extensions for the filing of briefs from section 5041, subdivision (f) of the current Rules of Practice, shifts the authority to grant extensions to the Chief Counsel, and expands the authority to include granting extensions for the filing of Summary Decisions. The purpose of this section is to update section 5041, subdivisions (d), (e), and (f) of the current Rules of Practice so that the state-assessee appeals briefing schedule accounts for the additional layer of Appeals Division review. This section is necessary to provide a state-assessee appeals briefing schedule for petitions that are not scheduled for an appeals conference.

5326.4 General Appeals Conference Procedures.

This new section describes the Board's recently implemented appeals conference procedures for state-assessee appeals and permits petitioners, Board staff, the Assistant Chief Counsel of the Appeals Division, and the Board Members to request an appeals conference to discuss a state-assessee appeal, and requires an appeals conference to be held upon request. Prior to directing Board staff to include these provisions in the new Rules, the Board Members considered three alternatives prepared by staff at the April 25, 2007, Board Meeting. (A transcript of the meeting is available at <http://www.boe.ca.gov/regs/timelinCAtax.htm>.) The three alternatives only differed with respect to the persons who could request an appeals conference. Alternative 1 was adopted by the Board and is codified in this section of the new Rules. Alternative 2 provided that appeals conferences could only be requested by the Appeals Division or a Board Member. Alternative 3 provided that an appeals conference could only be requested by a petitioner. The Board directed staff to include the language from alternative 1 in this section because it provides the most access to the recently implemented appeals conference process. The purposes of this section are to codify the Board's new appeals conference process for state-assessee appeals, and ensure that the new appeals conference process can be used whenever petitioners, Board staff, or the Board Members believe it would be helpful. This section is necessary to provide notice of the new state-assessee appeals conference process and set forth the procedures for requesting, scheduling, and conducting state-assessee appeals conference.

5326.6 Scheduling of Appeals Conference; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.

This section carries over the state-assessee briefing schedule from section 5041, subdivisions (d) and (e) of the current Rules of Practice and modifies that schedule to coordinate with the Board's recently implemented state-assessee appeals conference process. The purposes of this section are to provide a briefing schedule for state-assessee appeals that are scheduled for an appeals conference and give the Appeals Division authority to request additional information and briefing when necessary. This section is necessary to provide notice of the briefing schedule for state-assessee appeals scheduled for an appeals conference and grant the Appeals Division authority to request additional information and briefing from the parties to an appeals conference.

## **Subchapter 7: Preparing Summaries, Scheduling Hearings, and Distributing Documents**

### **5327 Appeals Division Hearing Summary or Summary Decision.**

The purposes of this new section are to set forth deadlines for the Appeals Division to prepare and submit Hearing Summaries and Summaries Decisions, and Revised Hearing Summaries and Revised Summary Decisions, and to give the Chief Counsel authority to extend those deadlines for reasonable cause. This section is necessary to ensure that a Hearing Summary, Summary Decision, Revised Hearing Summary, or Revised Summary Decision is provided to each petitioner and the Board Members far enough in advance of scheduled Board action to permit thoughtful consideration of the information contained therein, and to provide some flexibility in the deadlines when necessary.

#### **5327.4 Oral Hearings – Scheduling of Hearings.**

This section carries over the provisions of section 5040, subdivision (c)(1) and (c)(2) of the current Rules of Practice regarding the deadlines for deciding state-assessee appeals, and provides a clarification regarding the exception for appeals of escape assessments described in Revenue and Taxation Code section 758. This section also carries over the provisions of section 5076, subdivision (c) of the current Rules of Practice regarding notices of Board hearings. The purposes of this section are to identify the dates by which the Board must decide state-assessee appeals and require the Chief of Board Proceedings to issue timely notice of properly requested oral Board hearings. This section is necessary to ensure that taxpayers, Board staff, and Board Members are aware of these important statutory limitations on the Board's authority to conduct its own affairs, and to ensure that petitioners receive timely notice of their oral Board hearings.

#### **5327.6 Distribution of Documents.**

This section carries over and amplifies the provisions of section 5041, subdivision (g) of the current Rules of Practice regarding the distribution of documents prior to scheduled Board action on a state-assessee appeal so that the distribution list includes the Appeals Division's Hearing Summary or Summary Decision. The purposes of this section are to require the Chief of Board Proceedings to distribute the necessary documents prior to scheduled Board action on a state-assessee appeal, and to provide notice regarding the documents that will be distributed and the persons to whom they will be distributed. This section is necessary to ensure that taxpayers, Board staff, and Board Members are aware of the Board's internal procedures for distributing documents relating to scheduled Board action on a state-assessee appeal, and to require the Chief of Board Proceedings to promptly distribute such documents.

## **Subchapter 8: Consolidation and Withdrawal of Petitions**

### **5328 Consolidation of Petitions into a Single Hearing.**

This section provides a cross-reference to the provisions in chapter 5 of the new Rules regarding consolidation, which are derived from section 5074 of the current Rules of Practice, and provides that only one Board staff response and Appeals Division Hearing Summary will be prepared for consolidated petitions. The purposes of this section are to provide clear guidance to petitioners and Board staff regarding the consolidation of state-assessee petitions, and the documents staff will prepare to respond to consolidated petitions and advise the Board Members about consolidated petitions scheduled for Board action. This section is necessary to provide petitioners with additional notice of the consolidation provisions in chapter 5 of the new Rules, and relieve Board staff and the Appeals Division from the obligation to address each consolidated petition in a separate response and Hearing Summary.

#### **5328.5 Withdrawal of a Petition.**

This new section codifies existing Board policy permitting petitioners to withdraw their state-assessee petitions. The purposes of this section are to provide petitioners with notice of their rights to withdraw their state-assessee petitions and provide the procedures for them to do so. This section is necessary to provide notice to petitioners of their rights to withdraw their state-assessee petitions, and provide procedures for them to exercise this important right.

### **Article 3: Other Property Tax Petitions**

The purpose of article 3 is to describe the procedures applicable to property tax appeals other than state-assessee appeals before the general Board hearing procedures in chapter 5 of the new Rules apply. This section is necessary to describe the Board's existing appeals process for property tax appeals other than state-assessee appeals and ensure the comprehensive scope of chapter 3.

#### **Subchapter 1: Application of Article**

##### 5331 Application of Article.

The purpose of this section is to identify the types of property tax petitions and applications subject to the provisions of article 3. This section is similar to the provisions in sections 5050 and 5060 of the current Rules of Practice, but expands the coverage provided by the Rules of Practice so that the new Rules also cover petitions objecting to Board staff's findings of ineligibility for the veterans' organization exemption and petitions contesting Board staff's findings after conducting a survey of a county assessor's assessment practices. This section is necessary to ensure that taxpayers can clearly identify and apply the procedures applicable to property tax petitions and applications other than state-assessee petitions, and to ensure that the new Rules are more comprehensive than the Rules of Practice.

#### **Subchapter 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property**

The purpose of this subchapter is to set forth procedures that only apply to applications appealing the assessment of public-owned property (petitions regarding publicly-owned property).

##### 5332 Time of Filing of Application.

This section carries over and restates the provisions of sections 5050, subdivision (b), 5052, subdivision (a), and 5074.5 of the current Rules of Practice regarding the time for filing petitions regarding publicly-owned property. This section also provides additional notice regarding the consequences of failing to file a timely petition. The purpose of this section is to provide additional notice of the deadlines for filing petitions regarding publicly-owned property, and the consequences for failing to file a timely petition. This section is necessary to ensure that petitions are filed in a timely manner, and that no petitioners are inadvertently barred from relief.

##### 5332.4 Contents of Application.

This section restates the provisions of sections 5051 of the current Rules of Practice regarding the contents of a petition regarding publicly-owned property and adds a signature requirement. The purpose of this section is to prescribe the contents of petitions regarding publicly-owned property. This section is necessary to provide petitioners with notice of the required contents of a complete petition regarding publicly-owned property, and ensure that petitioners have an opportunity to comply.

##### 5332.6 Submission of Application and Board-Appraised Property.

This section restates provisions of sections 5052, subdivision (b), and 5056, of the current Rules of Practice requiring petitions regarding publicly-owned property to be filed with the county assessor whose assessment is being questioned, requiring petitioners to provide proof of filing with the appropriate county assessor when they file their petitions with the Board; and requiring Board staff to notify petitioners and assessors when Board staff has appraised property covered by such a petition, provide the parties with the Board's appraisal records, and allow the parties to call Board staff as witnesses. This section also clarifies those provisions by directing petitioners to the mail and personal delivery provisions contained in section 5335 of the new Rules. The purposes of this section are to prescribe the manner of filing petitions regarding publicly-owned property, ensure that petitioners and assessors have access to the Board's appraisal data for properties covered by such petitions, and give petitioners and county assessors the right to call Board staff as witnesses. This section is necessary to ensure that all petitioners understand and have an opportunity to comply with the Board's filing requirements, and that all petitioners and county assessors

are aware of Board appraised property, have access to the Board's appraisal records, and can call Board staff as witnesses when necessary.

**Subchapter 3: Contents of Property Tax Welfare and Veterans' Organization Exemption Petitions and Filing Deadlines**

The purpose of this subchapter is to set forth procedures that only apply to petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption.

5333 Time for Filing of Petitions.

This section carries over the 60-day time limit for filing petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption from section 5062 of the current Rules of Practice. The purposes of this section are to set forth the deadlines for filing petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and prescribe rules for determining whether particular petitions are timely. This section is necessary to ensure that all petitioners understand the deadlines for filing their petitions and the Board's standards for determining whether their petitions were timely filed.

5333.4 Contents of Petition.

This section carries over and restates the provisions of section 5063, subdivision (a) of the current Rules of Practice regarding the required contents of petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and the provisions of section 5081, subdivision (b), of the current Rules of Practice regarding the issuance of a written findings and decision. The purposes of this section are to clearly prescribe the contents of a complete petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and require petitioners to request a written findings and decision in their petitions. This section is necessary to inform petitioners about the required contents of a complete petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption and give them an opportunity to comply.

5333.6 Submission of Petition.

This section carries over and restates the filing requirements for petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption from section 5063, subdivision (a) of the current Rules of Practice. The purposes of this section are to prescribe the manner of filing petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and incorporate the provisions of section 5335 by reference. This section is necessary to ensure that petitioners know how to file petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption.

**Subchapter 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines**

The purpose of this new subchapter applicable to petitions contesting Board staff's findings after conducting a survey of a county assessor's assessment practices (property tax sampling program petitions) is to codify the Board current practices for implementing the provisions of Government Code section 15640, subdivision (f), which require the Board to create procedures for county assessors to appeal such findings. Including these procedures in the new Rules is necessary to ensure that the new Rules are comprehensive in nature.

5334 Time for Filing of Petitions.

This new section adapts the filing deadlines for petitions regarding publicly-owned property from article 5 of the current Rules of Practice to property tax sampling program petitions, and carries over and restates the provisions from section 5074.5 of the current Rules of Practice regarding the Board's standards for determining whether a petition was timely filed. The purposes of this section are to prescribe the deadlines for filing property tax sampling program petitions and provide notice of the Board's standards for determining whether a petition is timely. This

section is necessary to provide useful information to county assessors and public agencies regarding the deadlines for filing property tax sampling program petitions, provide notice of the Board's standards for determining whether a petition is timely, and provide notice that relief is barred if a timely petition is not filed.

#### 5334.4 Contents of the Petition.

The purposes of this new section are to prescribe the contents of property tax sampling program petitions, permit county assessors to use Board-provided forms to prepare their petitions and require county assessors to submit their supporting evidence with their petition. This section is consistent with the requirements for the contents of other property tax petitions and is necessary to codify existing Board practice with regard to the required contents of property tax sampling program petitions.

#### 5334.6 Submission of Petition.

The purpose of this section is to prescribe the manner in which county assessors must file property tax sampling program petitions. This section is consistent with other similar provisions regarding the filing of property tax petitions, and is necessary to codify existing Board practice and inform county assessors about the manner in which their petitions must be filed.

### **Subchapter 5: Filing and Distribution of Petitions, Briefs, and Other Documents**

The purpose of the remaining subchapters in this article is to describe procedures that are applicable to all property tax appeals filed under chapter 3, except state-assessee appeals, unless otherwise specified. These subchapters are necessary to describe procedures that are common to all property tax appeals other than state-assessee appeals without unnecessary duplication.

#### 5335 Submission of Petitions, Briefs, and Related Documents.

This section carries over and restates the provisions of sections 5052, subdivision (a) and 5063, subdivision (a) of the current Rules of Practice regarding the manner of filing, and expands those provisions to permit electronic filing. This section carries over the provisions of section 5052, subdivision (b) of the current Rules of Practice requiring petitioners filing petitions regarding publicly-owned property to file their petitions with the assessors whose assessments are being challenged and provide a proof of filing to the Board, and expands those provisions to cover all documents filed by either party to such a petition. The purpose of this section is to prescribe the manner of filing petitions, briefs, and related documents with regard to property tax appeals other than state-assessee appeals. This section is necessary to ensure that all of the parties to such appeals understand how to file their petitions, briefs, and related documents in the manner required by the Board.

#### 5335.4 Timely Performance; Mailing Date.

Section 5571 of the new Rules carries over and restates provisions from section 5074.5 of the current Rules of Practice addressing the timeliness and mailing date of documents. The purposes of this section are to incorporate section 5571 of the new Rules into article 3 by reference and thereby provide rules for determining whether petitions, briefs, and other documents are filed within the time periods contained in sections 5332, 5333, 5334 and in the manner required by sections 5332.6, 5333.6, 5334.6, and 5335 of the new Rules. This section is necessary to provide uniform procedures for determining whether petitions, briefs, and other documents are timely filed in accordance with article 3.

#### 5335.6 Distribution of Documents.

This section carries over the provisions of section 5063, subdivision (g) of the current Rules of Practice regarding the distribution of documents related to petitions appealing Board staff's findings of ineligibility for the welfare exemption, makes the provisions applicable to all property tax appeals other than state-assessee appeals, and modifies the original language to require prompt distribution. The purposes of this section are to require the Chief of Board Proceedings to promptly distribute the documents relevant to property tax appeals other than state-assessee appeals, and to provide notice regarding the documents that will be distributed and the persons to whom they will be

distributed. This section is necessary to ensure that petitioners, county assessors, Board staff, and Board Members are aware of the Board's internal procedures for distributing documents relating to property tax appeals other than state-assessee appeals, and to require the Chief of Board Proceedings to promptly distribute such documents.

## **Subchapter 6: Accepting, Rejecting, and Perfecting Petitions and Applications**

### **5336 Accepting or Rejecting a Petition.**

The purposes of this section are to carry over the substance of the final two sentences in section 5042 of the current Rules of Practice which require untimely state-assessee petitions to be dismissed and permit incomplete petitions to be dismissed; make the provisions applicable to all property tax petitions filed under article 3; modify those provisions to require the dismissal of incomplete petitions; provide notice of the Board's internal procedures for determining validity, completeness, and timeliness; and provide notice of the Board's policy which is to only reject petitions that are clearly invalid, incomplete, or untimely. This section is necessary to ensure that petitioners, county assessors, and Board staff understand the Board's internal procedures for accepting and rejecting petitions, and know that the Board will accept petitions that raise a genuine issue of fact regarding their validity, completeness, or timeliness, and will only reject petitions that are clearly invalid, incomplete, or untimely.

#### **5336.5 Perfecting a Petition.**

Sections 5075, subdivision (b) and 5075.1, subdivision (b) of the current Rules of Practice already codify some of the Board's existing policies allowing petitioners and appellants to perfect incomplete or nonconforming petitions and briefs. The purpose of this new section is to codify the Board's existing policy and practice under which the Chief of Board Proceedings is required to give petitioners additional time to cure defects in timely, but incomplete property tax petitions, other than state-assessee petitions. This section is necessary to codify the Board's existing policy and practice with regard to the perfection of property-tax petitions other than state-assessee petitions, ensure that all petitioners are aware of their rights to perfect their petitions, and ensure that Board staff does not prematurely dismiss any property tax petitions.

## **Subchapter 7: Prehearing Meetings and Briefing Schedules**

### **5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner**

The purposes of this new section are to codify a longstanding Board policy encouraging petitioners and Board staff to work together on an informal basis to obtain additional information and resolve issues amicably whenever possible, and inform petitioners that this policy does not abrogate Board staff's authority to request additional information from petitioners at any time. This section is necessary to provide notice to all petitioners regarding their rights to informally meet with Board staff to try and resolve their appeals and require Board staff to meet with petitioners when requested. This section is also necessary to ensure that petitioners clearly understand that Board staff may request additional information from petitioners before, during, and after informal meetings requested pursuant to this section. The policies codified in this section conserve resources and improve the Board's relationship with taxpayers by providing additional access to Board staff. This section does not apply to petitions regarding publicly-owned property because the Board is not a party to those appeals (the parties are the petitioning public entity and the assessor of the county in which the public entity's property is located).

#### **5337.4 Briefing: General Requirements**

This section carries over the provisions of section 5075, subdivisions (a), (b), (g), (h) of the current Rules of Practice regarding the briefing requirements for property tax appeals, extends those provisions to all property tax appeals other than state-assessee appeals, shifts the authority to grant extensions of time to file briefs to the Chief Counsel, and liberalizes the grounds for granting extensions. The purposes of this section are to prescribe the requirements for petitions and briefs filed with regard to property tax appeals other than state-assessee appeals, and provide rules for granting extensions of time to file petitions and briefs. This section is necessary to provide clear guidance to taxpayers and Board staff regarding the requirements for petitions and briefs filed under article 3 and the requirements for requesting and granting extensions of time to file briefs under article 3.

5337.6 General Briefing Schedule.

This section contains a briefing schedule derived from section 5075.1 of the existing Rules of Practice, which contains the Board's current briefing schedule for appeals from the actions of the FTB. This section also clarifies the meaning of "Board Staff" in subdivision (c)(2) of that section, revises the standard for granting respondents permission to file reply briefs, and makes the revised briefing schedule applicable to all property tax appeals other than state-assessee appeals. The purpose of this section is to codify a briefing schedule for article 3 that gives petitioners and respondents more time to file their briefs and always gives petitioners the opportunity to file the last brief. This section is necessary to inform petitioners and respondents about the time periods within which their briefs must be filed.

**Subchapter 8: Appeals Division Review, Prehearing Conferences, and Summaries**

5338 Appeals Division Review.

The purposes of this new section are to explain the Appeals Division's role in the Board's prehearing review process for property tax appeals other than state-assessee appeals, authorize the Appeals Division to request additional information when necessary to obtain adequate information for the Board to review appeals, and provide for the scheduling of oral Board hearings when the Appeals Division has completed its review. This section is necessary to codify the Board's current policy and practice of having the Appeals Division review all property tax appeals to ensure that the Board has adequate information before scheduling appeals for an oral Board hearing. This section is also necessary to provide notice regarding the Appeals Division's authority to request additional briefing with regard to property tax appeals other than state-assessee appeals.

5338.4 Appeals Conference.

This new section carries over the provisions of section 5023 of the current Rules of Practice authorizing the Appeals Division to conduct appeals conference to discuss special taxes and fees appeals and makes them applicable to property tax appeals other than state-assessee appeals. The purposes of this new section are to codify the Board's current policy of having the Appeals Division conduct appeals conferences to discuss all property tax appeals other than state-assessee appeals, describe the purpose and nature of the appeals conferences, and provide procedures for scheduling, noticing, and conducting the appeals conferences. This section is necessary to provide clear guidance regarding the Board's current policy and practice of having the Appeals Division conduct appeals conferences to discuss all property tax appeals other than state-assessee appeals, describe the purpose and nature of the appeals conferences, and provide procedures for scheduling, noticing, and conducting the appeals conferences.

5338.6 Preparing and Revising Hearing Summaries.

The purpose of this new section is to codify the Board's existing practices of having the Appeals Division prepare Hearing Summaries for all property tax petitions scheduled for an oral Board hearing and Summary Decisions for property tax petitions submitted to the Board for decision without an oral Board hearing, which are not codified in the current Rules of Practice. This section is necessary to codify the Board's existing practices regarding the preparation and distribution of Hearing Summaries and Summary Decisions, and provide notice of the practices to the parties to property tax appeals.

**Article 4: General Board Hearing and Notice Procedures**

5340 Relation to General Board Hearing Procedures.

The purposes of this new section are to incorporate the Board hearing procedures from chapter 5 of the new Rules into chapter 3, make them applicable to all property tax appeals, and provide a rule for resolving conflicts between the provisions in the two chapters. This section is necessary to clarify that the Board hearing procedures in chapter 5 of the new Rules apply to all property tax appeals, and ensure that everyone understands how to resolve potential conflicts between the procedures in the two chapters.

5341 Additional Briefing.

This section carries over the provisions of section 5075.1, subdivision (e) of the current Rules of Practice authorizing the Board and Board Staff to request additional briefing and evidence in appeals from actions of the FTB, revises those provisions to give each individual Board Member authority to request additional briefing and evidence, and makes the provisions applicable to all property tax appeals, including state-assessee appeals. The purpose of this section is to ensure that the Appeals Division and the Board Members can obtain whatever additional briefing and evidence they need to thoroughly consider or decide a property tax appeal. This section is necessary both to codify the respective authority of the Assistant Chief Counsel of the Appeals Division and of the individual Board Members to request additional briefing and evidence and to provide notice to the parties who may be the subject of such a request.

5342 Notice of Hearing

Subdivision (a) of this section incorporates the hearing notice provisions from chapter 5 of the new Rules into chapter 3 of the new Rules, and makes them applicable to all property tax appeals. Subdivision (b) of this section carries over the provisions of section 5055 of the current Rules of Practice regarding the statement required to be included on all notices of hearing for petitions regarding publicly-owned property. The purposes of this section are to incorporate the hearing notice provisions of chapter 5 of the new Rules into chapter 3 of the new Rules, and continue to require Board staff to include the necessary statement on notices of hearings for petitions regarding publicly-owned property. This section is necessary to provide comprehensive procedures for issuing notices of hearing for property tax appeals, and ensure that petitioners filing petitions regarding publicly-owned property understand the Board's constitutional responsibility to determine the full cash value of the property at issue in their petitions.

5343 Submission for Decision Without Oral Hearing.

This section carries over language in sections 5064 and 5076, subdivision (f) of the current Rules of Practice providing for property tax appeals to be submitted to the Board for decision based upon the written record and without an oral Board hearing. The purpose of this section is to continue to codify the circumstances under which property tax appeals will be submitted to the Board for decision without an oral Board hearing, and require the Appeals Division to prepare Hearing Summaries to aid the Board in deciding property tax appeals submitted for decision without an oral Board hearing. This section is necessary to ensure that property tax appeals can be decided without an oral Board hearing, and to provide notice to petitioners regarding the circumstances under which their property tax appeals will be submitted to the Board for decision without an oral Board hearing. The cross references to chapter 5 of the new Rules in this section promote uniformity between the provisions of chapters 3 and 5 regarding the submission of appeals for decision without an oral Board hearing.

5344 Notice of Board Decisions.

This section carries over the notice provisions from section 5081.2 of the current Rules of Practice and adds provisions providing property owners with notice of the Board's decisions on property tax sampling program petitions involving the value of their property. The purposes of this section are to restate section 5081.2 of the current Rules of Practice regarding notice of the Board decisions, and extend the written notification requirement to property owners whose property values become the subject of property tax sampling program petitions. This section is necessary to promote uniformity across the various tax and fee programs, and ensure that all affected persons and entities receive notice of the Board's decisions on property tax appeals.

5345 Finality of Board Action; Written Findings and Decision.

This section restates the provisions of section 5081.2, subdivision (b), and section 5082.2, subdivision (b) of the current Rules of Practice regarding requests for a Written Findings and Decision and the finality of the Board's decisions on property tax appeals, and extends those provisions to property tax sampling program petitions. The purposes of this section are to provide notice to petitioner and other parties to property tax appeals regarding the finality of the Board decisions and provide procedures for petitioners to request and the Board to issue Written Findings and Decisions. This section is necessary to provide notice regarding the finality of the Board's decisions

on property tax appeals and provide procedures for petitioners to request and the Board to issue Written Findings and Decisions.

#### **Chapter 4: Appeals from Actions of the Franchise Tax Board**

The current Board policies and procedures for appeals from the FTB are contained in the current Rules of Practice, BOE Publications 81, *Franchise and Personal Income Tax Appeals*,<sup>7</sup> and the Board Meeting Reference. The purposes of chapter 4 are to codify the Board's best historical practices and procedures for hearing appeals from the actions of the FTB in one comprehensive, chronologically organized set of regulations, add procedures for innocent spouse appeals from the actions of the FTB, which permit the non-appealing spouse to materially participate in the appeals process as required by law, and provide new pre-hearing conference procedures. Chapter 4 is necessary to ensure that appellants can more easily understand and exercise their rights during the Board's process for hearing appeals from the actions of the FTB, and to comply with statutory changes to the Board's process for hearing innocent spouse appeals from the actions of the FTB.

#### **Article 1: Application of Chapter 4, Definitions, and Jurisdiction**

##### 5410 Application of Chapter 4.

The purposes of this section are to explain that chapter 4 applies to appeals from the actions of the FTB and provide a list of the laws authorizing the Board to hear such appeals, and explain that chapter 5 also applies to appeals from the actions of the FTB, but the provisions of chapter 4 control in cases of a conflict between the two chapters. This section is necessary to explain that chapters 4 and 5 of the new Rules apply to all statutorily authorized appeals from the actions of the FTB, and ensure that taxpayers, tax professionals, Board staff, and the public apply the proper procedures when there is a conflict between the two chapters.

##### 5411 Definitions.

This section is similar to section 5010 of the current Rules of Practice. The purpose of this section is to provide clear guidance to taxpayers, the FTB, and Board staff regarding the meaning of terms used in chapter 4. This section is necessary to ensure that all persons interested in the Board's review of appeals from the actions of the FTB understand the meaning of terms used in this chapter and apply the provisions correctly.

##### 5412 Jurisdiction.

The purposes of this new section are to provide clear guidance to taxpayers regarding the types of appeals from the action of the FTB that can be brought before the Board, as well as the issues that the Board will not consider in such appeals, and to provide notice to taxpayers that other laws may change the Board's jurisdiction before the Board has time to amend this section. This section is necessary to improve administrative efficiency by maximizing the likelihood that only valid appeals from the actions of the FTB raising relevant issues will be filed with the Board. This section is also necessary to improve the Board's relationship with the public by clearly describing the scope of the Board's role in reviewing the actions of the FTB.

#### **Article 2: How to file an appeal from the Franchise Tax Board**

This article restates and amplifies sections 5011, 5012, and 5075.1, subdivision (b)(1) of the existing Rules of Practice. The purposes of this article are to prescribe the requirements for written appeals from the actions of the FTB, the manner of filing such appeals, the Board's process for reviewing such appeals for timeliness and completeness, and to determine whether the Board has jurisdiction. This article is necessary to prescribe the contents and manner of filing appeals from the actions of the FTB, and describe the Board's process for reviewing such petitions for timeliness and completeness, and to determine whether the Board has jurisdiction

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<sup>7</sup> This publication is available on the Board's Web site at: <http://www.boe.ca.gov/info/pdf/pub81.pdf>.

5420 Appeal Filing Requirements.

The purposes of this section are to carry over the provisions of section 5012 of the current Rules of Practice regarding the required contents of written appeals from the actions of the FTB, and codify new less stringent requirements for written appeals from the FTB's denial of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law. This section is necessary to ensure that taxpayers, the FTB, and Board staff have the same understanding as to what constitutes a complete written appeal from the actions of the Franchise Tax Board.

5421 Methods for Delivery of Written Documents and Correspondence.

The purposes of this new section are to codify information previously provided in BOE Publication 81, *Franchise and Income Tax Appeals*, regarding the addresses to mail or deliver written appeals, briefs, and other documents, encourage the use of electronic filing procedures, and explain that the Board will mail or personally deliver required notices, unless instructed to do otherwise by the parties. This section is necessary to ensure that taxpayers, their representatives, and FTB staff know where to file written appeals from the actions of the FTB and related documents, and understand that the Board will mail or personally deliver notices, unless instructed to do otherwise by the parties.

5422 Time for Filing an Appeal.

This section restates section 5011 of the current Rules of Practice regarding the timeliness of written appeals from the actions of the FTB and codifies in regulatory form the statutes of limitations applicable to all the different types of appeals from the actions of the FTB, which the Board has traditionally discussed in BOE Publication 81, *Franchise and Income Tax Appeals*. The purposes of this section are to describe the deadlines in which taxpayers must file appeals from the actions of the FTB, and define the date of filing for purposes of determining whether a written appeal from the actions of the FTB is timely filed. This section is necessary to comprehensively describe the deadlines in which taxpayers must file their written appeals from the actions of the FTB and clearly specify when such appeals are timely filed.

5423 Accepting or Rejecting an Appeal.

The purposes of this new section are to provide consistent and clearly stated procedures for determining whether, in the first instance, the Board has subject matter jurisdiction to hear a written appeal, and if it is determined that the Board has such jurisdiction, whether the appeal must nevertheless be rejected for being untimely. This section is necessary to provide Board staff with the authority to perform a thorough review of written appeals and to conserve administrative resources by rejecting untimely appeals and appeals over which the Board lacks subject matter jurisdiction before substantial resources are expended by Board and FTB staff analyzing the substantive issues raised by such appeals. However, this section requires Board staff to accept written appeals that raise a genuine material issue as to their timeliness or the Board's jurisdiction to ensure that timely petitions for which the Board does have jurisdiction are not inadvertently rejected in favor of conserving administrative resources.

5424 Perfecting an Appeal.

This section carries over and restates the provision of section 5075.1, subdivision (b)(1) of the current Rules of Practice regarding an appellant's right to perfect a timely filed, but incomplete written appeal, but require appeals to be dismissed if they are not perfected within the time provided, whereas the current Rules of Practice merely permit Board staff to dismiss such a petition. The purpose of this section is to provide appellants with an additional opportunity to perfect the contents of their written appeals by submitting information required under section 5420 of the new Rules, but omitted in their initial filings. This section is necessary to ensure that taxpayers' rights to appeal the actions of the FTB are not denied due to technical defects in the contents of their written appeals, which could easily be cured.

### **Article 3: Briefing Schedules and Procedures**

This article sets forth the requirements and deadlines for filing briefs in appeals from the actions of the Franchise Tax Board. At the May 17, 2006, Board meeting, the Board also considered approving an additional, elective, streamlined briefing schedule<sup>8</sup> that would expedite the Board's review of appeals from the actions of the FTB if appellants agreed to waive their oral Board hearings. However, this additional briefing schedule was rejected because the Board Members were uncomfortable asking appellants to waive such an important right.

#### **5430 General Requirements.**

This section restates sections 5075, subdivisions (a) and (b) and section 5075.1, subdivisions (a) and (d) of 5075.1 of the current Rules of Practice, which require submissions to be in the form of briefs, prescribe the format for briefs and grant parties 10 days to cure formatting defects, provide a separate briefing schedule for appeals of jeopardy determinations, provide for the filing of non-party (amicus) briefs, and prescribe the procedures for requesting and granting extensions to file briefs. This section also modifies the provisions of the current Rules of Practice and allows extensions of time to file briefs to be granted for reasonable cause, instead of extreme hardship. The purposes of this section are to require submissions to be in the form of briefs, require the Chief of Board Proceedings to acknowledge perfected appeals and inform the parties regarding the applicable briefing schedule, provide procedures for granting extensions of time to file briefs for reasonable cause, require parties to file one copy of their briefs and supporting exhibits and require the Chief of Board Proceedings to distribute such documents to the opposing party, prescribe the format of briefs, prescribe the consequences for failing to file a brief within the time provided (including extensions), and provide for the filing of non-party (amicus) briefs. This section is necessary to ensure that appellants and FTB staff understand the requirements for their briefs, the applicable briefing schedule for their appeals, the manner in which extensions of time to file briefs may be requested and granted, the consequences of failing to file a brief within the time provided, and are aware that non-parties may file briefs to which the parties may respond.

#### **5431 General Briefing Schedule.**

This section restates section 5075.1, subdivisions (b) and (c) of the current Rules of Practice regarding the generally applicable briefing schedule for appeals from the actions of the FTB. However, this section does not require the FTB to demonstrate that extraordinary circumstances exist to file a reply brief as is the case under section 5075.1, subdivision (c)(2) of the current Rules of Practice. Instead, subdivision (c)(2)(B) of this section provides more specific criteria for determining whether a reply brief is necessary. The purposes of this section are to set forth the generally applicable briefing schedule for appeals from actions of the FTB and provide more specific guidance regarding the criteria for granting the FTB permission to file a reply brief. This section is necessary to ensure that appellants and FTB staff clearly understand the due dates for the filing of their briefs and the requirements for the FTB to obtain permission to file a reply brief.

#### **5432 Briefing Schedule for Innocent Spouse Appeals.**

The FTB has concluded that Revenue and Taxation Code section 18533, subdivision (e)(3)(B), effective January 1, 2004, requires that both spouses be allowed to meaningfully participate in an innocent spouse appeal filed by either spouse. The purpose of this new section is to modify the generally applicable briefing schedule contain in section 5431 of the new Rules so that it allows for the consolidation of innocent spouse appeals where both spouses have requested innocent spouse relief from the FTB and are appealing from denials of such relief, and permits non-appealing spouses to meaningfully participate in their spouses' appeals. This section is necessary to provide a briefing schedule for innocent spouse appeals from the actions of the FTB and to implement the provisions of Revenue and Taxation Code section 18533, subdivision (e)(3)(B) as interpreted by the FTB, which require non-appealing spouses to be given an opportunity to meaningfully participate in their spouses' innocent spouse appeals.

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<sup>8</sup> A memorandum describing the additional, streamlined briefing schedule is available on the Board's Web site at: [http://www.boe.ca.gov/meetings/pdf/ItemJ2\(051706\).pdf](http://www.boe.ca.gov/meetings/pdf/ItemJ2(051706).pdf).

5435 Additional Briefing.

This section carries over the provisions of section 5075.1, subdivision (e) of the current Rules of Practice authorizing the Board and Board Staff to request additional briefing and evidence in appeals from actions of the FTB, and revises those provisions to give each individual Board Member authority to request additional briefing and evidence. The purpose of this new section is to ensure that the Appeals Division and the Board Members can obtain whatever additional briefing and evidence they need to thoroughly consider or decide an appeal from the actions of the FTB. This section also is necessary both to codify the authority of the Assistant Chief Counsel of the Appeals Division and of the individual Board Members to request additional briefing and evidence and to provide notice to appellants and FTB staff who may receive such a request.

**Article 4: Requesting and Scheduling Oral Hearings**

5440 Right to Request an Oral Hearing.

This section is derived from section 5076.1, subdivision (c) of the current Rules of Practice, which provides that appeals from actions of the FTB will be submitted on the written record, unless appellants request an oral Board hearing. The purposes of this section are to affirmatively notify all appellants of their right to request and receive an oral Board hearing, and provide procedures for holding one joint oral Board hearing on innocent spouse appeals from the FTB, unless the Board is prohibited from doing so by a Court order or conducting one joint oral Board hearing would be unsafe, disruptive, or unfair. This section is necessary to provide appellants with clear notice of the requirements for requesting and obtaining an oral Board hearing and explain whether one or more hearings will be conducted for an innocent spouse appeal from the FTB.

5441 Submission for Decision Without Oral Hearing.

This section restates sections 5076, subdivision (f) and 5076.1, subdivision (c) of the current Rules of Practice and codifies existing Board practice. The purpose of this section is to ensure that all appellants understand that their appeals will be submitted to the Board on the basis of the written record on file and without an oral Board hearing unless appellants request an oral Board hearing and properly respond to their Notice of Hearing. This section is necessary to ensure that appellants are not inadvertently deprived of an oral Board hearing due to a failure to submit a request for such a hearing or reply to a Notice of Hearing.

5442 Appeals Review; Scheduling the Oral Hearing

The purposes of this new section are to explain the Appeals Division's role in the Board's pre-hearing review process for appeals from the actions of the FTB, authorize the Appeals Division to request additional information or conduct a pre-hearing conference when necessary to obtain adequate information for the Board to review appeals, and provide for the scheduling of oral Board hearings when the Appeals Division has completed its review. This section is necessary to codify the Board's current policy of having the Appeals Division review all appeals from the actions of the FTB, ensure that the Board has adequate information before scheduling appeals for an oral Board hearing, and provide notice regarding the Appeals Division's authority to request additional briefing and schedule pre-hearing conferences.

5443 Pre-hearing Conference.

The Appeals Division does not have express authority to meet with the parties to an appeal from the actions of the FTB under the current Rules of Practice. This new section would codify new pre-hearing conference procedures for appeals from the actions of the FTB, which provide such express authority. The purpose of this new section is to add new pre-hearing conference procedures to the Board's process for reviewing appeals from the actions of the FTB to ensure that the Board has adequate information to decide such appeals. This section is necessary to authorize the Appeals Division to hold pre-hearing conferences, provide notice to appellants and the FTB regarding the new pre-hearing conference procedures, and explain how appellants and the FTB can request a pre-hearing conference when they feel that a pre-hearing conference would be helpful.

5444 Hearing Summary.

The Board's existing practice is to have the Appeals Division prepare a Hearing Summary for every appeal from the actions of the FTB that is scheduled for an oral Board hearing. The purposes of this new section are to codify the Board's existing practice and provide notice to appellants that the Appeals Division will be preparing Hearing Summaries for their oral Board hearings. This section is necessary to prescribe the contents of Hearing Summaries, provide notice to appellants that the Appeals Division will prepare Hearing Summaries for their oral Board hearings, and clarify that a hearing summary may not be cited as precedent.

**Article 5: Decisions, Opinions, and Frivolous Appeal Penalties**

5450 Letter Decisions.

The purposes of this new section are to codify the Board existing practice of having the Appeals Division prepare a Letter Decision for appeals from the actions of the FTB when the Board decides such appeals and does not direct the preparation of a Summary Decision or Formal Opinion, and to provide additional notice to the public that Letter Decision may not be cited as precedent because they are not adopted by the Board Members. This section is necessary to provide clear guidance to appellants, the FTB, Board staff, and the general public regarding the Board's procedures for preparing Letter Decisions, and to clarify that Letter Decisions may not be cited as precedent.

5451 Summary Decisions.

The purposes of this new section are to codify the Board existing practice of having the Appeals Division prepare a Summary Decision for appeals from the actions of the FTB when appeals are submitted for decision without an oral Board hearing or the Board orders the preparation of a Summary Decision; and to provide additional notice to the public that a Summary Decision does not represent the Board's decision on an appeal until its is adopted by the Board, that Summary Decisions remain confidential until adopted by the Board, and that Summary Decisions may not be cited as precedent. This section is necessary to provide clear guidance to appellants, the FTB, Board staff, and the general public regarding the Board's procedures for preparing and adopting Summary Decisions, and to clarify that Summary Decisions may not be cited as precedent.

5452 Formal Opinions.

The purposes of this section are to carry over the provisions of section 5082.1, subdivision (a) of the current Rules of Practice regarding the Board adoption of Formal Opinions, provide comprehensive procedures for the preparation and adoption of Formal Opinions, codify criteria for the adoption of Formal Opinions derived from Rule 976 of the California Rules of Court (criteria for publication of appellate opinions), and clarify that Formal Opinions may be cited as precedent. A Formal Opinion under chapter 4 is prepared by the Appeals Division when an appeal is submitted for decision without an oral hearing and the Appeals Division determines that a Formal Opinion is appropriate, or when the Board orders the preparation of a Formal Opinion. This section is necessary to provide clear guidance to appellants, the FTB, Board staff, and the general public regarding the Board's procedures for preparing and adopting Formal Opinions, and to clarify that Formal Opinions may be cited as precedent.

5454 Frivolous Appeal Penalty.

The Board may impose a frivolous appeal penalty on appellants appealing from the actions of the FTB under Revenue and Taxation Code section 19714. The purposes of this new section are to provide additional notice of the potential penalty to appellants considering an appeal, and codify the criteria the Board considers in deciding whether to impose a frivolous appeal penalty so that appellants can determine whether the Board is likely determine that their appeals are frivolous. This section is necessary to ensure that appellants are aware of the frivolous appeal penalty and have some ability to determine whether it may be imposed with regard to their appeals.

## **Article 6: Petitions for Rehearing and Rehearings**

### **5460 Finality of Decision.**

This section carries over and codifies into the Board's new procedural rules the provisions of section 5082.1, subdivision (b) of the current Rules of Practice, which provide that the Board's decision in an appeal from the actions of the FTB becomes final 30 days from the date of the Board's decision, unless a petition for rehearing is filed within that time period. This section also codifies the Board's longstanding interpretations of Revenue and Taxation Code section 19048 and 19334 that the finality of a Board decision on an appeal from the actions of the FTB is not affected by the Board's failure to issue a notice of decision. This section also notifies the parties to an appeal that they are all entitled to file one petition for rehearing. The purposes of this section are to provide clear guidance to appellants and the FTB regarding the finality of the Board's decisions and their rights to file petitions for rehearing, and to provide notice of the Board's opinion that the finality of a Board decision on an appeal from the actions of the FTB is not affected by the Board's failure to issue a notice of decision. This section is necessary to ensure that all the parties to an appeal from the actions of the FTB understand when the Board's decision will become final, their rights to file a petition for rehearing, and have notice of the Board's opinion that the finality of a Board decision on an appeal from the actions of the FTB is not affected by the Board's failure to issue a notice of decision.

### **5461 Petitions for Rehearing.**

This section carries over the provisions of section 5082.1, subdivisions (b), (c) and (d) of the current Rules of Practice regarding the time period for filing petitions for rehearing, their required contents, and the Board's policy of allowing petitioners time to perfect timely, but incomplete petitions for rehearing. This section also describes the Board's internal procedures for determining whether a petition for rehearing is timely. The purposes of this section are to prescribe the contents of petitions for rehearing and the time period in which petitions for rehearing must be filed, continue to codify the Board's policy of allowing petitioners to perfect incomplete, but timely filed petitions for rehearing, and codify and provide notice of the Board's procedures for determining whether a petition for rehearing is timely. This section is necessary to ensure that appellants and FTB staff understand the Board's requirements for a complete petition for rehearing, the deadline by which their petitions for rehearing must be filed, the Board's policy of allowing petitioners time to perfect their incomplete, but timely petitions for rehearing, and the Board's procedures for determining whether their petitions for rehearing are timely.

### **5462 Briefing on Petition for Rehearing.**

This section restates the provisions of sections 5075, subdivisions (a), (b), (g), and (h), 5075.1, subdivision (a), and 5082.1, subdivision (e), which provide for the filing of a Reply to Petition for Rehearing, prescribe its required format, contain procedures for granting and requesting extensions of time to file briefs, and allow for the filing of non-party (amicus) briefs. This section also prescribes the procedures for the submission and acknowledgment of such briefs, and the consequences of failing to file a brief. The purposes of this section are to: (1) inform parties to appeals from the actions of the FTB that they can file reply briefs opposing other parties' petitions for rehearing; (2) prescribe the procedures for requesting and granting extensions of time to file such briefs, the submission and acknowledgment of such briefs, the required format of such briefs, and the consequences of failing to file such a brief; and (3) provide notice to all the parties to an appeal that non-party (amicus) briefs may be filed during the petition for rehearing process. This section is necessary to properly inform the parties to appeals from the actions of the FTB and the public about the petition for rehearing process and the briefs that may be filed after a petition for rehearing is filed by a party to an appeal.

### **5463 Decisions on Petitions for Rehearing.**

This section carries over the provisions of section 5082.1, subdivision (b) of the current Rules of Practice, and codifies existing Board practice regarding the manner in which the Board decides petitions for rehearing and the effect of the Board's decision to grant or deny a rehearing on the Board's original decision. This section clearly provides that a Decision on Petition for Rehearing may not be cited as precedent unless the Board adopts a decision as a Formal Opinion.

The purpose of this section is to clearly describe the Board's process for deciding petitions for rehearing and the affect of such decisions. This section is necessary to provide clear guidance to appellants, FTB staff, and the public regarding the Board's process for deciding petitions for rehearing and the affect of such decisions.

5464 Briefing on Rehearing.

The purposes of this new section are to codify the Board's existing practice of permitting the parties to an appeal from the actions of the FTB to file briefs for a rehearing, provide briefing schedules for such briefing, prescribe the required format of such briefs, the procedures for requesting and granting extensions of time to file such briefs, the procedures for the submission and acknowledgment of such briefs, and the consequences of failing to file a brief, and allow for the filing of non-party (amicus) briefs. This section is necessary to provide clear guidance to appellants, the FTB, and the public about the Board's rehearing briefing process for appeals from the actions of the FTB, and the briefs that may be filed after a rehearing is granted.

5465 Decision on Rehearing.

The purpose of this new section is to clarify that rehearings will be conducted under the same procedures the Board uses for conducting other hearings on appeals from the actions of the FTB, except that the parties may not file additional petitions for rehearing after the Board renders its decision. This section is necessary to codify the Board's existing practices with regard to rehearings on appeals from the actions of the FTB, and provide clear notices of those practices to appellants, FTB staff, Board staff, and the public.

**Chapter 5: General Board Hearing Procedures**

The current Board policies and procedures of general application for scheduling Board meetings and oral Board hearings and conducting oral Board hearings under all of its appeals processes are contained in the current Rules of Practice and the Board Meeting Reference. The purpose of chapter 5 is to codify the Board's general hearing procedures applicable to all of the Board's appeals process in one well-organized, comprehensive chapter. Chapter 5 is necessary to provide clear notice both to the public and to all of the different taxpayers, tax professionals, and agencies involved in the Board's appeals processes, of these important procedures so that they may better understand them, and also to enhance their ability to effectively exercise their rights before the Board.

**Article 1: Application of Chapter and Definitions**

5510 General Application of Chapter 5.

This section carries over the provisions of section 5071 of the current Rules of Practice. The purpose of this section is to inform readers that the general Board hearing procedures in chapter 5 of the new Rules apply to Board hearings conducted under all of the Board's appeals process, that provisions specific to one or more appeals process will be provided or cross referenced in chapter 5, and that the provisions of chapter 4 of the new Rules and the provisions of the International Fuel Tax Agreement (IFTA) supersede the provisions of chapter 5 when there is a conflict between chapter 4 or the IFTA and chapter 5. This section is necessary to clearly prescribe the application of chapter 5 of the new Rules and provide readers with the information they need to apply the correct procedures in cases where the provisions of chapter 4 of the new Rules or the provisions of the International Fuel Tax Agreement (IFTA) supersede the provisions of chapter 5.

5511 Definitions.

This section carries over and adds to the provisions of section 5070 of the current Rules of Practice, which provide definitions that generally apply to all of the articles in the Rules of Practice. The purpose of this section is to provide clear, uniform definitions for the meaning of the terms used in the new Rules. This section is necessary to ensure that everyone interested in the Board's appeals processes understands the meaning of terms used in the new Rules and to avoid repeating the same definitions in each chapter.

5512 Construction.

This new section was derived from Rule 1.5, *Construction of rules and standards*, of the recently-adopted 2007 California Rules of Court. The purpose of this new section is to provide clear guidance to everyone interested in the Board's appeals processes regarding the proper construction of common terms used throughout the new Rules and avoid confusion regarding their meaning. This section is necessary to ensure uniform construction of the common terms used throughout the new Rules, which should avoid potential confusion.

**Article 2: Requirements for Scheduling Board Meetings and Hearings**

**Subchapter 1. Meeting Calendars**

5521 Monthly Board Meetings.

The purpose of this new section is to codify the Board's longstanding interpretations of Government Code sections 15606 and 15610, which address the Board's meeting schedule and ability to meet in different locations, and the Board's existing policy regarding the holding of Board meetings via teleconference. This section is necessary to provide everyone interested in attending a Board meeting with notice of the frequency and location of Board meetings and the Board's policy regarding the holding of Board meetings via teleconference.

5521.5 Adoption of Board Meeting Calendar.

The purpose of this new section is to codify the Board's existing policies for adopting its meeting calendars, changing the date or location, or cancelling all or a portion of a previously-scheduled meeting, posting adopted meeting calendars on the Board's Web site, and amending posted meeting calendars promptly after any changes are made. This section is necessary to inform taxpayers, tax professionals, and the public about the procedures the Board follows to adopt and amend its meeting calendars, and ensure that everyone can find the Board's current meeting calendar on the Board's Web site.

**Subchapter 2. Requesting and Scheduling an Oral Hearing**

5522 Right to Request an Oral Hearing.

The purposes of this new section are to provide clear notice to all taxpayers regarding their right to request an oral Board hearing, provide guidance to taxpayers regarding the requirements for making such requests for appeals filed under chapters 2, 3, and 4, codify the Board's policy of liberally granting timely requests for oral Board hearings, and provide notice that the Board has discretion to hold an oral Board hearing whether or not it was timely requested. This section is necessary to ensure that all taxpayers are aware of their right to request an oral Board hearing and understand how and when they need to exercise their right, codify the Board's policy of liberally granting requests for oral Board hearings, and provide notice of the Board's discretion to hold oral Board hearings whether or not they are timely requested.

5522.2 Acknowledgement of Request for Oral Hearing.

The purposes of this new section are to require Board staff to issue an acknowledgement letter in response to each written request for an oral Board hearing indicating whether an oral Board hearing has been granted, and, if so, identifying the location where the oral Board hearing will be held, provide procedures for taxpayers to submit requests to change the location of their oral Board hearings, and provide procedures for the Board to grant or deny such requests. This section is necessary to inform taxpayers about the Board's processes for acknowledging requests for oral Board hearings, providing notice as to whether such hearings have been granted, and, if granted, providing notice of the location where oral Board hearings are scheduled to be held. This section is also necessary to inform taxpayers that they may request a change of location for their oral Board hearings, and provide notice of the Board process for deciding such requests.

#### 5522.4 Consolidation for Hearing or Decision.

This section carries over provisions from section 5074 of the current Rules of Practice regarding consolidation and amplifies those provisions by allowing for consolidation where all the parties agree, permitting parties to file objections to consolidation, and providing standards for deciding competing requests for consolidation and objections to consolidation. The purpose of this section is to provide clear guidance to taxpayers regarding the Board's procedures for consolidating and deconsolidating appeals. This section is necessary to ensure that all taxpayers are aware of their right to request or object to consolidation, and understand how the Board will decide such requests and objections.

#### 5522.6 Notice of Board Hearing and Response.

This section carries over and restates the provisions of section 5076, subdivisions (b), (c), and (f) of the current Rules of Practice regarding the issuance of Notices of Board Hearing and the submission of Responses to Notice of Board Hearing, but modifies those provisions to require a Notice of Board Hearing to be mailed to the parties to a scheduled oral Board hearing (other than parties to a state-assessee petition) at least 75 days in advance of the scheduled hearing date (15 days earlier than in the current Rules of Practice) in order to provide more time for briefing under chapter 2. The purposes of this section are to require Board staff to issue Notices of Board Hearing so that taxpayers know when and where their oral Board hearings will be held and require parties receiving Notices of Board Hearing to return their Responses to Notices of Board Hearing so Board staff can ascertain whether they still desire their scheduled hearings. This section is necessary to ensure that parties receive timely notice of their scheduled oral Board hearings, and to ensure that the Board receives timely notice of the parties' intent to appear at their oral Board hearings or waive their appearances so that the Board can make the most efficient use of its limited meeting time.

#### 5522.8 Dismissal, Deferral, and Postponement.

The purposes of this section are to carry over provisions from sections 5076, subdivisions (d) and (e) and 5076.1, subdivisions (a) and (b) of the current Rules of Practice regarding dismissals, deferrals and postponements, and amplify those provisions by codifying existing Board policies for granting deferrals and postponements with regard to a number of specific factual situations, including the existence of a pending litigation or a pending bankruptcy, and making the provisions applicable to all of the Board's appeals processes. This section is necessary to inform taxpayers, Board staff, assessors, and other agencies' staff about the substantive and procedural requirements for obtaining a deferral, dismissal, or postponement of a scheduled Board hearing.

### **Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing**

#### 5523 Representation at Hearings.

The purposes of this section are to restate section 5073, subdivisions (a) and (b) of the current Rules of Practice, and amplify those provisions by requiring taxpayers to notify the Board regarding the substitution or withdrawal of their representatives and prohibiting representatives who are disbarred from representing taxpayers before the FTB under Revenue and Taxation Code section 19523.5 from representing taxpayers in appeals from the actions of the FTB to the Board. This section is necessary to inform taxpayers about their right to be represented by any person over 18 years of age of their choosing, provide procedures for the Board to recognize such representatives and keep informed regarding the substitution or withdrawal of such representatives, and codify the Board's policy of prohibiting representatives who are disbarred from practicing before the FTB from representing taxpayers before the Board in appeals from the actions of the FTB.

#### 5523.1 Power of Attorney.

The purposes of this section are to restate the provisions of section 5073, subdivisions (c) and (d) of the current Rules of Practice regarding the use of power of attorney forms and their required contents, and amplify those provisions by requiring Board staff to accept substitute forms and giving the Chief Counsel the authority to resolve disputes regarding the authority granted under power of attorney forms. This subdivision is necessary to ensure that taxpayers and Board staff understand when a taxpayer is required to execute a power of attorney form to authorize a

representative to act on the taxpayer's behalf, prescribe the required contents of such forms, and provide a procedure for resolving disputes regarding the effect of documents purporting to be power of attorney forms.

#### 5523.2 Contribution Disclosure Forms.

The Board's existing practice is to mail contribution disclosure forms to all parties, participants, and agents who will be attending scheduled hearings and to require that completed contribution disclosure forms be submitted by the parties, participants, and agents before their scheduled hearings begin. This practice implements the Quentin L. Kopp Conflict of Interest Act of 1990 (Act) (Gov. Code, § 15626) as interpreted by the Board's existing contribution disclosure regulations (Cal. Code Regs, tit. 18, §§ 7001-7011), which require parties, participants, and agents to disclose the information required by California Code of Regulations, title 18, section 7011.

The purpose of this section is to provide additional notice of the Act to persons preparing to participate in a scheduled Board hearing, provide advance notice that the Board will be mailing such persons contribution disclosure forms, which must be completed and returned in accordance with the Act, and explain that the Board cannot conduct a hearing without the required contribution disclosure forms. This section is necessary to ensure that parties, participants, and agents understand all of the information that they are required to provide to the Board before their Board hearings, and understand the importance of completing and returning their contribution disclosure forms.

#### 5523.3 Hearing Summary.

The Board's existing practice is to have the Appeals Division prepare a Hearing Summary for each oral Board hearing and submit the Hearing Summary to the Board Proceedings Division for distribution to the parties, Board staff, and the Board Members in advance of the oral Board hearing. It is also the Board's existing practice to allow the Appeals Division to modify or revise a Hearing Summary after it has been issued whenever modifications or revisions are necessary to properly summarize the matters for the Board's consideration at the oral Board hearing. The purposes of this new section are to codify the Board's existing practices, including requiring Hearing Summaries to be objective, and provide notice to parties to oral Board hearings regarding the dates when they can expect the Appeals Division to complete and the Board Proceedings Division to distribute their Hearing Summaries. This section is necessary to require that all Hearing Summaries be objective, and to ensure that the parties to oral Board hearings understand when they will receive copies of their Hearing Summaries.

#### 5523.4 Additional Briefing.

This section carries over the provisions of section 5075, subdivision (i) of the current Rules of Practice regarding additional briefing, and clarifies that the Board Members and the Assistant Chief Counsel have the authority to request additional briefing in appeals filed under chapter 2 of the new Rules from the date the Hearing Summary is issued until the date of the oral Board hearing. The purpose of this section is to provide specific rules for requesting additional briefing in the last 30-45 days before a scheduled oral Board hearing. This section is necessary to provide clear guidance to taxpayers and Board staff regarding the persons who may request additional briefing during this period, and ensure that issues are thoroughly briefed for oral Board hearings.

#### 5523.5 Preparation for Board Hearing and Subpoenas.

Subdivision (a) of this section restates section 5078, subdivision (a) of the current Rules of Practice regarding the scope and nature of oral Board hearings. Subdivision (b) of this section restates section 5086 of the current Rules of Practice regarding the procedures for requesting, issuing, and serving a Board subpoena. Subdivision (c) of this section carries over provisions from section 5077 of the current Rules of Practice, and makes those provisions more specific by identifying the amount of time that is generally allocated for an oral Board hearing. Subdivisions (d) and (e) of this section codify existing Board policy regarding the Board Chair's discretion to modify the time allocated to a party during a hearing and a recently adopted Board policy permitting parties to request additional hearing time in advance of their oral Board hearings. The purpose of this section is to help the parties prepare for their oral Board hearings by providing relevant information regarding the hearings themselves and the procedures for requesting, issuing, and serving subpoenas to obtain relevant information for hearings. This section is necessary to advise the parties to an oral Board hearing about the nature and general conduct of their hearings, the procedures for requesting, issuing and serving Board subpoenas, and the procedures for requesting additional time to present

complex matters.

#### 5523.6 Presentation of Evidence or Exhibits.

The purposes of subdivisions (a), (b), (c), and (d) of this section are to carry over and restate the provisions of section 5079, subdivisions (d), (f) and (g) of the current Rules of Practice regarding the submission of evidence, stipulations of facts, and official notice. The purpose of subdivision (e) of this section to codify the parties' rights to receive copies of all documentary evidence submitted to the Board for consideration at their oral Board hearings. The new Rules do not carry over the provisions of section 5079, subdivision (e) of the current Rules of Practice regarding the formality of moving exhibits into evidence. This section is necessary to inform the parties to an oral Board hearing that they may submit any relevant evidence, including stipulations of facts, to the Board, and the Board has discretion to require stipulations of facts. This section is also necessary to inform the parties about the Board's procedures for taking official notice of information that can be judicially noticed, and codify the parties' rights to receive copies of all documentary evidence submitted to the Board for consideration.

#### 5523.7 Witnesses.

The purposes of this section are to carry over and restate section 5079, subdivision (c) of the current Rules of Practice regarding the swearing in, presentation, and cross examination of witnesses, and codify notice of the Board's authority to initiate contempt proceedings to compel witnesses to comply with Board issued subpoenas. This section is necessary to provide notice to parties to oral Board hearings regarding the Board's procedures for the presentation and cross examination of witness testimony, and provide notice to witnesses regarding the Board's authority to require them to testify under oath and initiate contempt proceedings to compel their compliance with Board issued subpoenas.

#### 5523.8 Communications with Board Members.

The purpose of this section is to codify and provide notice of the Board's longstanding policy permitting constituents, taxpayers and their representatives, other agencies' staff, and Board staff to contact the Board Members at any time. The Board considered two alternatives for this section suggested by Franchise Tax Board Chief Counsel John Davies and Lenny Goldberg of the California Tax Reform Association<sup>9</sup> at the November 20, 2006, Board meeting and determined that codifying its current policy both was consistent with law and appropriate.<sup>10</sup> Mr. Davies alternative would have prohibited Board Members from communicating with any party to an appeal from the actions of the FTB while such appeal was pending without offering the other party an opportunity to participate in the communication, required summaries of any such communications to be provided to parties that did not participate, and required copies of any written communications to be distributed to all the parties. Mr. Goldberg's alternative would have had the practical effect of prohibiting virtually all non-public communications between Board Members and persons who have pending appeals before the Board. Codifying the Board's longstanding policy is necessary to ensure that the Board Members' constituents, taxpayers and their representatives, other agencies' staff, and Board staff do not unnecessarily refrain from communicating with Board Members.

### **Article 3: Public Notification of Board Meeting**

#### 5530 Public Agenda Notice.

Government Code section 11125 requires the Board to provide a Public Agenda Notice to any person who requests it and post a copy of the notice on the Board's Web site at least ten days prior to each meeting. The purposes of this new section are to codify the Board's procedures for complying with the Public Agenda Notice requirements and provide the public with additional notice as to where and when they may obtain copies of Public Agenda Notices. This section is necessary to ensure that everyone who is interested in hearing the Board's discussion of particular

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<sup>9</sup> Mr. Davies' and Mr. Goldberg's alternatives are set forth on pages 23 through 26 of the November 8, 2006, version of chapter 5 of the new Rules considered by the Board at the November 20, 2006, Board meeting and available on the Board's Web site at: <http://www.boe.ca.gov/regs/pdf/RevChapter5cleanversion110806.pdf>.

<sup>10</sup> The Board is statutorily exempt from the administrative adjudication provisions of the Administrative Procedure Act (Gov. Code, § 11400 et seq.). (See Gov. Code, § 16509.5.)

matters knows where and when they can obtain copies of the Board's Public Agenda Notice for each scheduled Board meeting.

#### **Article 4: Conduct of the Board Meeting and Burden of Proof**

##### 5540 Conduct of the Board Meeting.

The first purpose of this new section is to provide clear notice of four important laws that: require the Board to conduct public meetings; require the Board Members to disclose certain political contributions and financial interests; prohibit the Board Members from participating in certain adjudicatory proceedings; and prohibit Board Members and Board staff from engaging in activities that are incompatible with their duties or participating deciding matters in which they have a financial interest. (See Gov. Code, §§ 15625, 15626 (The Quentin L. Kopp Conflict of Interest Act of 1990), 11129-11132 (Bagley-Keene Open Meeting Act), and 81000 et seq. (The Political Reform Act).) The second purpose of this section is to provide clear notice of the public's right to attend portions of Board meetings that are conducted in open session, subject to the Board Chair's authority to preserve order. This section is necessary to improve the Board's relationship with the public by demonstrating that Board meetings are conducted in accordance with all applicable laws designed to preserve the public nature and impartiality of the Board's proceedings, and providing additional notice of the public's right to attend portions of Board meetings conducted in open session.

##### 5541 Burden of Proof.

This section carries over and restates section 5080 of the current Rules of Practice regarding the burden of proof. The purpose of this section is to ensure that the parties to an appeal understand who has the burden of proof with regard to factual issues and issues of fraud with intent to evade tax. This section is necessary to ensure that taxpayers are not surprised by the fact that they bear the burden of proof as to factual issues other than fraud with intent to evade tax and have an opportunity to take the necessary steps to satisfy their burden.

#### **Article 5: Voting and Decisions**

##### 5550 Quorum.

This section carries over and restates section 5072 of the current Rules of Practice, which contains the Board's quorum requirements. The purposes of this section are to establish the minimum number of Board Members that must be present and participating in a vote in order to render a decision, and provide rules for determining whether there are a sufficient number of Board Members, including a deputy designated by the Controller, present and participating to satisfy the minimum requirement. This section is necessary to ensure that the public, Board staff, and Board Members understand that there must be at least three Board Members, including a deputy designated by the Controller, present and participating at a Board meeting for the Board to take action, and know how to determine whether this requirement is satisfied.

##### 5551 Voting and Decisions.

This section carries over and restates provisions from sections 5081, subdivision (a) and 5082.1, subdivision (a) of the current Rules of Practice regarding the Board's discretion to vote to decide an appeal at the end of an oral Board hearing, take the appeal under submission and decide it later, or continue the hearing later, and adopt Formal Opinions in appeals from the actions of the FTB. This section adds new provisions codifying the Board's policy with regard to the adoption of Memorandum Opinions in appeals filed under chapters 2 and 3 of the new Rules, and the adoption of Summary Decisions in appeals filed under chapter 4 of the new Rules, and provides new procedures for the Board Members to submit their own concurring and dissenting opinions for inclusion in Formal Opinions and Memorandum Opinions adopted by the Board. This section also provides clear statements regarding the precedential value of Formal Opinions, Memorandum Opinions, and Summary Decisions. The purpose of this section is to provide clear notice to the parties and the public regarding the manner in which the Board decides appeals and adopts written opinions and decisions, and the precedential effect of such opinions and decisions. This section is necessary to ensure that parties clearly understand the Board's discretion to vote to decide an appeal at the end of an oral Board hearing, take the appeal under submission and decide it later, or continue the hearing later; the

Board's discretion to adopt Formal Opinions, Memorandum Opinions, and Summary Decisions, and the precedential effect of all three types of opinions and decisions; and the Board Members' discretion to submit their own dissenting and concurring opinions for inclusion in Formal Opinions and Memorandum Opinions adopted by the Board.

## **Article 6: Post Hearing Notices and Petitions for Rehearing**

### **5560 Notice of Board Decision.**

This section carries over and restates the provisions of section 5082, subdivision (a) of the current Rules of Practice regarding the finality of the Board's decisions, and adds provisions describing the Board Chair's discretion to hold decisions in abeyance before they become final. The purposes of this section are to inform the parties to appeals filed under chapter 2 of the new Rules that the Board's decisions on their appeals will become final 30 days after notice is mailed to the taxpayer, unless a petition for rehearing is filed or the Board Chair orders the decisions held in abeyance during that 30-day period; and to direct the parties to appeals filed under chapters 3 and 4 of the new Rules to the more specific rules regarding finality and petitions for rehearing contained in those chapters. This section is necessary to ensure that all the parties to the different types of appeals understand when the Board's decisions become final, and know which petition for rehearing procedures apply to their appeals, if any.

### **5561 Petition for Rehearing.**

This section carries over and restates the provisions of section 5082 of the current Rules of Practice, which prescribe the contents of and deadline for filing petitions for rehearing with regard to appeals filed under chapter 2 of the new Rules, and adds new provisions describing the Board internal process for determining whether petitions for rehearing are timely filed. This section also cross references more specific provisions applicable to the filing of petitions for rehearing with regard to appeals from the actions of the FTB like section 5082 of the current Rules of Practice. The purposes of this section are to prescribe the contents of and filing deadline for petitions for rehearing with regard to appeals filed under chapter 2 of the new Rules; provide notice of the Board's procedures for determining whether petitions for rehearing are timely filed; and provide a cross reference to the more specific provisions of chapter 4 applicable to the filing of petitions for rehearing with regard to appeals from the actions of the FTB. This section is necessary to ensure that the parties to appeals filed under chapter 2 of the new Rules understand the requirements for filing timely petitions for rehearing and the Board's process for determining whether such petitions are in fact timely filed; and ensure that the parties to appeals filed under chapter 4 of the new Rules follow chapter 4's more specific rules for filing petitions for rehearing.

### **5562 Recommendation on Petition for Rehearing.**

This section carries over and restates the provisions of section 5082, subdivision (a) of the current Rules of Practice regarding the effect of the Board's decision to grant or deny a petition for rehearing in an appeal filed under chapter 2 of the new Rules. This section also adds new provisions describing the Board process for deciding petitions for rehearing as non-appearance matters. The purposes of this section are to codify the Board's existing practice of having the Appeals Division submit written recommendations to grant or deny petitions for rehearing regarding appeals filed under chapter 2 of the new Rules to the Board for consideration as non-appearance matters; prescribe the effect of the Board's decisions to grant or deny petitions for rehearing; and provide a cross reference to the more specific provisions of chapter 4 of the new Rules applicable to decisions on petitions for rehearing with regard to appeals from the actions of the FTB. This section is necessary to ensure that the parties to appeals filed under chapter 2 of the new Rules understand the Board's process for deciding petitions for rehearing and the effect of the Board's decision to grant or deny a petition for rehearing. This section is also necessary to ensure that the parties to appeals filed under chapter 4 of the new Rules are directed to chapter 4's more specific procedures for deciding petitions for rehearing with regard to appeals from the actions of the FTB.

### **5563 Rehearings.**

The purposes of this section are to codify the Board's existing policy of allowing the parties to appeals filed under chapter 2 of the new Rules to file briefs in advance of their rehearings and the Board's existing practice of establishing briefing schedules for rehearings that are appropriate under the facts and circumstances of each appeal;

and provide a cross reference to the more specific provisions of chapter 4 of the new Rules applicable to rehearing with regard to appeals from the actions of the FTB. This section is necessary to provide notice of the Board's policy allowing the parties to appeals filed under chapter 2 of the new Rules to file briefs in advance of their rehearings and provide notice of the Board's procedures for establishing briefing schedules for such briefs. This section is also necessary to ensure that the parties to appeals filed under chapter 4 of the new Rules are directed to chapter 4's more specific procedures for rehearings with regard to appeals from the actions of the FTB.

#### **Article 7: Correspondence, Public Hearing Records, and Copies**

##### **5570 Mailing Address.**

The purposes of this new section are to codify the Board's existing policy encouraging the parties to appeals to file their hearing process correspondence via electronic means, direct electronic filers to the Board's Website for specific electronic filing instructions, and provide addresses for non-electronic filers to mail or hand deliver their hearing process correspondence to the Board. This section is necessary to encourage the electronic filing of hearing process correspondence and ensure that the parties to appeals correctly file their hearing process correspondence regardless of the filing method employed.

##### **5571 Timeliness of Documents.**

This section carries over and restates the provisions of section 5074.5 of the current Rules of Practice regarding the circumstances under which hearing process correspondence is considered timely filed and the extension that automatically applies to the deadlines for filing hearing process correspondence when the last day to file falls on a Saturday, Sunday, or holiday. The purposes of this section are to prescribe rules for determining whether hearing process correspondence is timely filed, and provide notice of the extension that automatically applies to the deadlines for filing hearing process correspondence when the last day to file falls on a Saturday, Sunday, or holiday. This section is necessary to ensure that the parties to appeals understand the circumstances under which the Board will consider hearing process correspondence timely filed, and are aware of the extension that automatically applies to the deadlines for filing hearing process correspondence when the last day to file falls on a Saturday, Sunday, or holiday.

##### **5572 Hearing Record.**

This section implements Government Code sections 11124.1, subdivision (b) and 11125.1, subdivision (a), which require the Board to disclose its Public Agenda Notices and minutes of its public meetings in accordance with the Public Records Act (Gov. Code, § 6250 et seq.), and require the disclosure of documents distributed to the Board Members for discussion or consideration at a public meeting, except where prohibited by the confidentiality requirements contained in the Revenue and Taxation Code and other laws.

This section carries over and restates the provisions of sections 5083 and 5085 of the current Rules of Practice providing that Public Agenda Notices, minutes, and transcripts from oral Board hearings are disclosable public records, and providing notice of the fees the Board charges to prepare transcripts. This section adds information regarding the Board's preparation and retention of minutes, recordings, and transcripts of oral Board hearings, and directions for obtaining copies of hearing minutes and transcripts. This section also clarifies the provisions of section 5085 of the current Rules of Practice, which provide for the disclosure of documents distributed to the Board Members for discussion or consideration at a public meeting, unless exempt from disclosure under state or federal law, by incorporating the provisions of section 5573 of the new Rules, which describe the additional documents available to the public with regard to oral Board hearings after applying the exemptions from disclosure provided by California law.<sup>11</sup> The purposes of this section are to provide clear guidance to taxpayers and the public regard the types of disclosable public records the Board prepares and maintains with regard to oral Board hearings, and provide clear directions for obtaining commonly requested minutes and transcripts. This section is necessary to provide

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<sup>11</sup> Section 5573 of the new Rules describes the circumstances under which taxpayers may waive their rights to confidentiality and thereby make certain documents related to their oral Board hearings disclosable public records. (See below for more information.)

taxpayers and the public with notice of the Board's disclosable oral Board hearing records and provide directions for everyone to obtain commonly requested minutes and transcripts.

5573 Waiver of Confidentiality.

In an opinion dated May 27, 1959, Attorney General Stanley Mosk stated that the confidentiality provisions in the Revenue and Taxation Code create a privilege, which can be waived by the taxpayer; that the filing of an appeal from the actions of the FTB with the Board constitutes a waiver of the taxpayer's privilege; and that the waiver applies to the taxpayer's notice of appeal, statement of facts, and briefs filed with the Board, and also permits the public to view such documents before, during, and after the taxpayer's Board hearing. The Board's Legal Department has historically concluded that the rationale in Attorney General Mosk's opinion applies to other types of appeals filed with the Board, but the Board has historically applied disclosure policies that strike a program-specific balance between preserving taxpayer privileges and disclosing the information the public needs to know in order to understand oral Board hearings. Based upon this program specific approach, the Board has historically concluded that taxpayers waive their privilege of confidentiality when they file property tax appeals with the Board, but that the waivers are not effective and may be withdrawn until the taxpayers' oral Board hearings are conducted; and that the waivers apply to all the documents in the taxpayers' property tax appeals files that go to the merits of their appeals. The Board has also historically concluded that taxpayers waive their privilege of confidentiality when they request oral Board hearings with regard to business taxes and fees appeals, but that the waivers are not effective and may be withdrawn until the taxpayers' oral Board hearings are conducted; and that the waivers apply only to information actually discussed during such oral Board hearings.<sup>12</sup>

The purposes of this new section are to codify Attorney General Mosk's opinion regarding the Board's authority to disclose information relevant to appeals from the actions of the FTB; consolidate and codify the Board's policies regarding waiver of the privilege of confidentiality with regard to other types of appeals so that requests for oral Board hearings constitute waivers, but the waivers are not effective until the date when the Board issues its first Public Agenda Notice providing notice of the taxpayers' requested oral Board hearings; provide a list of the specific documents, including hearing summaries, that will be disclosed to the public, and grant the public access to such documents before the oral Board hearings to which they relate; and specifically prohibit the disclosure of taxpayer information that is only discussed during the portion of a taxpayer's oral hearing conducted during a closed session or that may be used for purposes of identity theft. This section is necessary to codify and provide guidance and notice regarding the circumstances under which taxpayers may waive their privilege of confidentiality with regard to information that is relevant to their appeals and provide clear guidance to the public regarding the specific documents the Board may disclose with regard to oral Board hearings and the time when the documents may be disclosed.

5574 Request for Portion of Oral Hearing Conducted During Closed Session.

Government Code section 11126, subdivision (f)(7)(B) contains an exception from the general provisions of the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), which authorizes the Board to hear confidential taxpayer appeals during a closed session when doing so is necessary to avoid disclosing information the Board is prohibited from disclosing by law. However, based upon Attorney General Mosk's opinion discussed above and the provisions of Revenue and Taxation Code section 743, the Board has determined that this authority does not apply to appeals from the actions of the FTB or state-assessee appeals regarding the property tax assessment of unitary or non-unitary property or of an electric generation facility. The purposes of this new section are to provide clear guidance to taxpayers regarding the scope of the Board's authority to hear portions of taxpayers' eligible appeals during closed session to protect their trade secrets and other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment or oppression within the meaning of Code of Civil Procedure section 2031.060; and provide procedures for taxpayers to request that portions of their eligible appeals be conducted during closed session and receive a response from the Board Chair before the waivers described in section 5573 of the new Rules apply. This section is necessary to codify and provide notice to

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<sup>12</sup> The Board provided hearing summaries prepared for special taxes and fees appeals to the public for a short period, which ended in December 1980. Since that time hearing summaries have only been disclosed when they are incorporated into the record of an oral Board hearing pursuant to sections 5079, subdivision (e), and 5085 of the current Rules of Practice.

taxpayers regarding the Board's authority to hear portions of eligible appeals during closed session, and codify procedures for the Board to uniformly process requests for portions of eligible appeals to be heard during closed session.

The Board considered three alternatives for this section at the November 20, 2007, Board meeting and adopted the first alternative recommended by staff.<sup>13</sup> The second alternative (prepared by staff) only permitted the Board to hear a portion of an eligible appeal during a closed session to protect a taxpayer's trade secret privilege (Evid. Code, § 1060) and required all requests to be decided by the entire Board during a closed session. The third alternative (prepared for Lenny Goldberg) had the practical effect of preventing the Board from holding closed sessions to hear any portion of eligible appeals. However, the Board determined that the language in the first alternative recommended by staff and included in section 5574 of the new Rules was consistent with law and more appropriate.

#### 5575 Privilege.

The purpose of this section is to carry over and restate the provisions of section 5085 of the current Rules of Practice regarding the Board's authority to assert the privilege for communications between attorneys and their clients provided by Evidence Code section 952. This section is necessary to provide notice to taxpayers and the public that the Board may assert the attorney-client privilege with regard to communications pertaining to taxpayers' appeals.

#### 5576 Fees: Filing, Transcripts, and Copies.

The purpose of this section is to carry over and restate the provisions of section 5083 of the current Rules of Practice regarding the fees charged by the Board for the filing of documents, preparation of transcripts, and copying of records. This section is necessary to provide notice to taxpayers and the public regarding these fees.

#### **No Mandate Regarding Use of Specific Technologies**

The new Rules do not mandate the use of specific technologies or equipment.

#### **Initial Determination Regarding Alternatives**

The Board does not believe that the new Rules will have any adverse impact on small business, and has made an initial determination that there are no reasonable alternatives to the new Rules, which would lessen any adverse impact on small business.

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<sup>13</sup> Both alternatives 2 and 3 are set forth on pages 40 through 45 of the November 8, 2006, version of chapter 5 of the new Rules considered by the Board at the November 20, 2006, Board meeting and available on the Board's Web site at: <http://www.boe.ca.gov/regs/pdf/RevChapter5cleanversion110806.pdf>.

## **The State Board of Equalization Proposes to Repeal the Rules of Practice and Adopt the Proposed Rules for Tax Appeals**

The State Board of Equalization (Board) proposes to:

- Repeal articles 1 through 8 (§§ 5010-5087) of chapter 9 of division 2 of title 18 of the California Code of Regulations (the Rules of Practice);
- Renumber existing divisions 2.1-2.3 of title 18 of the California Code of Regulations as divisions 2.2-2.4, respectively;
- Promulgate all five chapters of the new Board of Equalization Rules for Tax Appeals (proposed Rules) as sections 5000-5576 of a new division 2.1;
- Renumber article 9, *Taxpayer Bill of Rights Reimbursement Claims* (§§ 5090-5095) of the current Rules of Practice, as chapter 6, sections 5600-5605 of the new division 2.1; and
- Revise the cross references in chapter 6 of new division 2.1 so that they refer to the appropriate sections of chapter 5 of new division 2.1, instead of article 8 of the current Rules of Practice.

A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, CA at 1:30 p.m., or as soon thereafter as the matter may be heard, on September 11, 2007. Any interested person may present statements or arguments relevant to the proposed regulatory action either orally or in writing at the hearing and the Board will consider written statements and arguments received by the time of the public hearing.

The text of the proposed regulations can be viewed on the Board's Web site at:

<http://www.boe.ca.gov/regs/timelineCAtax.htm>

Copies of the proposed text will also be provided upon request. Please submit requests to Diane Olson, Regulation Coordinator, by telephone at 916-322-9569 or via email at [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov).