

M e m o r a n d u m

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: May 21, 2008

From: Kristine Cazadd
Chief Counsel



Subject: **Discussion of the Rules for Tax Appeals Provisions Regarding the Adoption and Publication of Formal and Memorandum Opinions and the Submission and Publication of Concurring and Dissenting Opinions**
Recommendations for Implementing the Provisions – Item Number M1

This memorandum and attached flowcharts respond to questions regarding the Board's adoption of Formal and Memorandum Opinions and publication of Dissenting and Concurring Opinions under the new Rules for Tax Appeals (RTA), and sets forth the alternative motions and voting options available to the Board Members when implementing the RTA provisions. All of the alternative motions and voting procedures are set forth in the attached flowcharts and address: (1) the Board's decision and vote to decide an appeal; (2) the Board's decision and vote to direct staff to prepare a Formal or Memorandum Opinion for an appeal; and (3) the Board's decision and vote to adopt a Formal or Memorandum Opinion for an appeal.

If adopted, these procedures will also be incorporated into the Board Meeting Reference as follows:

Motion and Voting Options for Deciding Appeals and Adopting Formal and Memorandum Opinions after Oral Hearings

Appeals from the Franchise Tax Board

When an appeal from the Franchise Tax Board is brought before the Board for decision at a hearing, the Board has all of the following alternatives:

Alternative 1 – Continue the Hearing

Motion to continue the hearing until a later date; and if that motion passes the hearing will be continued at another Board meeting.

Alternative 2 – Decide the Appeal

- **Motion** to decide the appeal; and if that motion passes;
- **Motion** to order preparation of Formal Opinion:
 - “Yes” vote means Member agrees with directing Appeals staff to draft a Formal Opinion, even though Member may disagree with result, or agree with result, but have different rationale.
 - “No” vote means Member disagrees with directing Appeals staff to draft a Formal Opinion.

If the motion passes, then a Formal Opinion will be submitted to the Board for consideration and potential adoption at a subsequent Board meeting as part of the Board’s non-appearance calendar (CCR, tit. 18, section 5452, subd. (d)).

If the motion fails, then the date the Board decided the appeal is the date of the Board’s decision.

At Subsequent Meeting:

- **Motion** to adopt the Formal Opinion:
 - “Yes” vote means Member agrees with result and will sign the Formal Opinion.
 - “No” vote means Member disagrees with result reached in Formal Opinion and/or does not want the Formal Opinion adopted.

If the motion passes:

- Dissenting and Concurring Opinions are attached to the Formal Opinion and published as supplements. No vote is required on Dissents or Concurrences. (CCR, tit. 18, section 5551, subd. (b).)
- Dissenting Opinions contain the rationale for a Board Member’s disagreement with the Formal Opinion. (CCR, tit. 18, section 5551, subd. (b)(1)(A).)
- Concurring Opinions contain a Board Member’s rationale for agreeing with the result reached in the Formal Opinion, if the Board Member’s rationale is different than the

rationale contained in the Formal Opinion. (CCR, tit. 18, section 5551, subd. (b)(1)(B).)

- If that motion fails, Board votes to decide appeal without Formal Opinion.

The date the Board voted to adopt the Formal Opinion or votes to decide the appeal without adopting a Formal Opinion is the date of the Board's decision. (CCR, tit. 18, section 5452, subd. (d).)

Option

Any Board Member has the authority to state on, or submit into the transcript/record the Member's position or rationale with regard to any matter during an oral hearing, during the Board's discussion of an appeal that has been taken under submission, while the Board is considering whether to direct Appeals staff to prepare a Formal Opinion, and while the Board is considering whether to adopt a Formal Opinion. (BOE Rules of Order, Section F. Debate.) No vote is required.

Alternative 3 - Order Preparation of a Formal Opinion without Deciding the Appeal

Motion to take matter under submission AND order preparation of Formal Opinion:

- "Yes" vote means Member agrees with directing Appeals staff to draft a Formal Opinion, even though Member may disagree with result, or agree with result, but have different rationale.
- "No" vote means Member disagrees with directing Appeals staff to draft a Formal Opinion.

If the motion passes, then a Formal Opinion will be submitted to the Board for consideration and potential adoption at a subsequent Board meeting as part of the Board's non-appearance calendar (CCR, tit. 18, section 5452, subd. (d)).

At Subsequent Meeting:

- **Same as Alternative 2.**

Option

- **Same as Alternative 2.**

Business Tax and Property Tax Appeals

When a business or property tax appeal is brought before the Board for decision at a hearing, the Board has all of the following alternatives:

Alternative 1 – Continue the Hearing

Motion to continue the hearing until a later date; and if that motion passes the hearing will be continued at another Board meeting.

Alternative 2 – Decide the Appeal

- **Motion** to decide the appeal; and if the motion passes:

Business Tax Appeals: The Board's decision will become final 30 days after notice is mailed to the taxpayer, unless a petition for rehearing is filed within that 30-day period or the Board Chair orders the decision to be held in abeyance (CCR, tit. 18, section 5560, subd. (b)).

Property Tax Appeals: The Board's decision is final once the motion passes and can only be modified to correct a clerical error (CCR, tit. 18, section 5345, subd. (a)).

- **Motion** to order preparation of Memorandum Opinion:
 - “Yes” vote means Member agrees with directing Appeals staff to draft a Memorandum Opinion, even though Member may disagree with result, or agree with result, but have different rationale.
 - “No” vote means Member disagrees with directing Appeals staff to draft a Memorandum Opinion.

If the motion passes, then a Memorandum Opinion will be submitted to the Board for consideration and potential adoption at a subsequent Board meeting as part of the Board's non-appearance calendar. (CCR, tit. 18, section 5551, subd. (a).)

At Subsequent Meeting:

- **Motion** to adopt Memorandum Opinion:
 - “Yes” vote means Member agrees with result and will sign the Memorandum Opinion.
 - “No” vote means Member disagrees with result reached in Memorandum Opinion and/or does not want the Memorandum Opinion adopted.
- If the motion passes:
 - Dissenting and Concurring Opinions are attached to the Memorandum Opinion and published as supplements. No vote is required on Dissents or Concurrences. (CCR, tit. 18, section 5551, subd. (b).)

- Dissenting Opinions contain the rationale for Board Member's disagreement with the Memorandum Opinion. (CCR, tit. 18, section 5551, subd. (b)(1)(A).)
- Concurring Opinions contain a Board Member's rationale for agreeing with the result reached in the Memorandum Opinion, if the Board Member's rationale is different than the rationale contained in the Memorandum Opinion. (CCR, tit. 18, section 5551, subd. (b)(1)(B).)

Option

Any Board Member has the authority to state on, or submit into the transcript/record the Member's position or rationale with regard to any matter during an oral hearing, during the Board's discussion of an appeal that has been taken under submission, while the Board is considering whether to direct Appeals staff to prepare a Memorandum Opinion, and while the Board is considering whether to adopt a Memorandum Opinion. (BOE Rules of Order, Section F. Debate.) No vote is required.

Alternative 3 - Order Preparation of a Memorandum Opinion without Deciding the Appeal

- **Motion** to take matter under submission AND order preparation of Memorandum Opinion
 - "Yes" vote means Member agrees with directing Appeals staff to draft a Memorandum Opinion, even though Member may disagree with result, or agree with result, but have different rationale.
 - "No" vote means Member disagrees with directing Appeals staff to draft a Memorandum Opinion.

If the motion passes, then a Memorandum Opinion will be submitted to the Board for consideration and potential adoption at a subsequent Board meeting as part of the Board's non-appearance calendar (CCR, tit. 18, section 5551, subd. (a)).

At Subsequent Meeting:

- **Same as Alternative 2** with two exceptions:

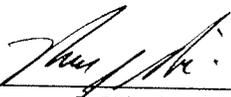
If the Board adopts the Memorandum Opinion, then the Memorandum Opinion will be the Board's decision on the appeal.

If the Board does not adopt the Memorandum Opinion, then the Board will still need to decide the appeal.

Option

- **Same as Alternative 2.**

These procedures ensure that the Board Members are properly informed regarding the issues before them during Board meetings and clearly understand the effect of submitting Concurring and Dissenting Opinions and voting for or against the adoption of Formal and Memorandum Opinions. If you have any questions regarding this memorandum please contact Deborah Cooke, Tax Counsel III, (Specialist, Lead) or Bradley Heller, Tax Counsel III (Specialist).

Approved: 
Ramon J. Hirsig
Executive Director

KC:BH:DC

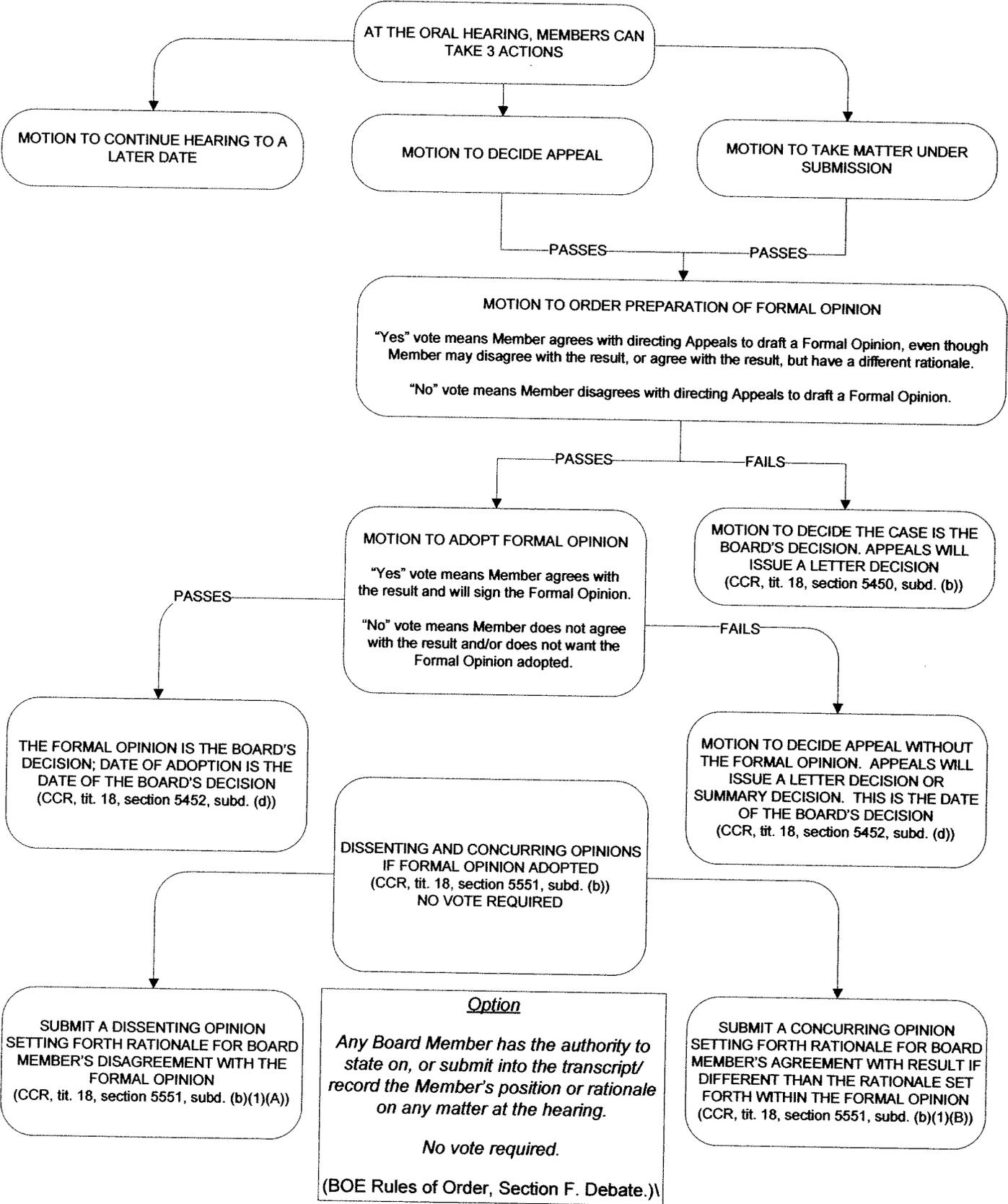
Attachments: Memorandum Opinion Flowchart and Formal Opinion Flowchart, and (5) Regulations

ChiefCounsel/Finals/RulesforTaxAppealsProvisionsMI

(w/ Attachment)

cc: Mr. Ramon Hirsig MIC:73
Mr. Robert Lambert MIC:82
Mr. Jeff Vest MIC:85
Ms. Jean Ogrod MIC:82
Mr. Randy Ferris MIC:82
Ms. Amy Kelly MIC:85
Mr. David Levine MIC:85

**FRANCHISE AND INCOME TAX APPEALS
FORMAL OPINIONS AT ORAL HEARINGS**



**BUSINESS TAX APPEALS
AT ORAL HEARINGS**

AT THE ORAL HEARING, MEMBERS CAN
TAKE 3 ACTIONS

MOTION TO CONTINUE HEARING TO A
LATER DATE

MOTION TO TAKE MATTER UNDER
SUBMISSION

MOTION TO DECIDE APPEAL

MOTION TO ORDER PREPARATION OF MEMORANDUM OPINION
 "Yes" vote means Member agrees with directing Appeals to draft an opinion, even though Member may disagree with the result, or agree with the result, but have a different rationale.
 "No" vote means Member disagrees with directing Appeals to draft an opinion.

DECISION IS FINAL 30 DAYS AFTER
NOTICE IS MAILED TO THE TAXPAYER,
UNLESS A PETITION FOR REHEARING IS
FILED WITHIN THAT PERIOD OR BOARD
CHAIR HOLDS DECISION IN ABEYANCE.
(CCR, tit. 18, section 5560, subd (b))

MOTION TO ADOPT MEMORANDUM OPINION
 "Yes" vote means Member agrees with
the result and will sign the Memorandum Opinion.
 "No" vote means Member does not agree with the
result and/or does not want the Memorandum
Opinion adopted.

THE VOTE TO DECIDE THE CASE IS THE BOARD'S
DECISION.
(CCR, tit. 18, section 5551, subd. (a))

THE MEMORANDUM OPINION
CONTAINS THE RATIONALE FOR THE
BOARD'S DECISION
(CCR, tit. 18, section 5551, subd. (a))

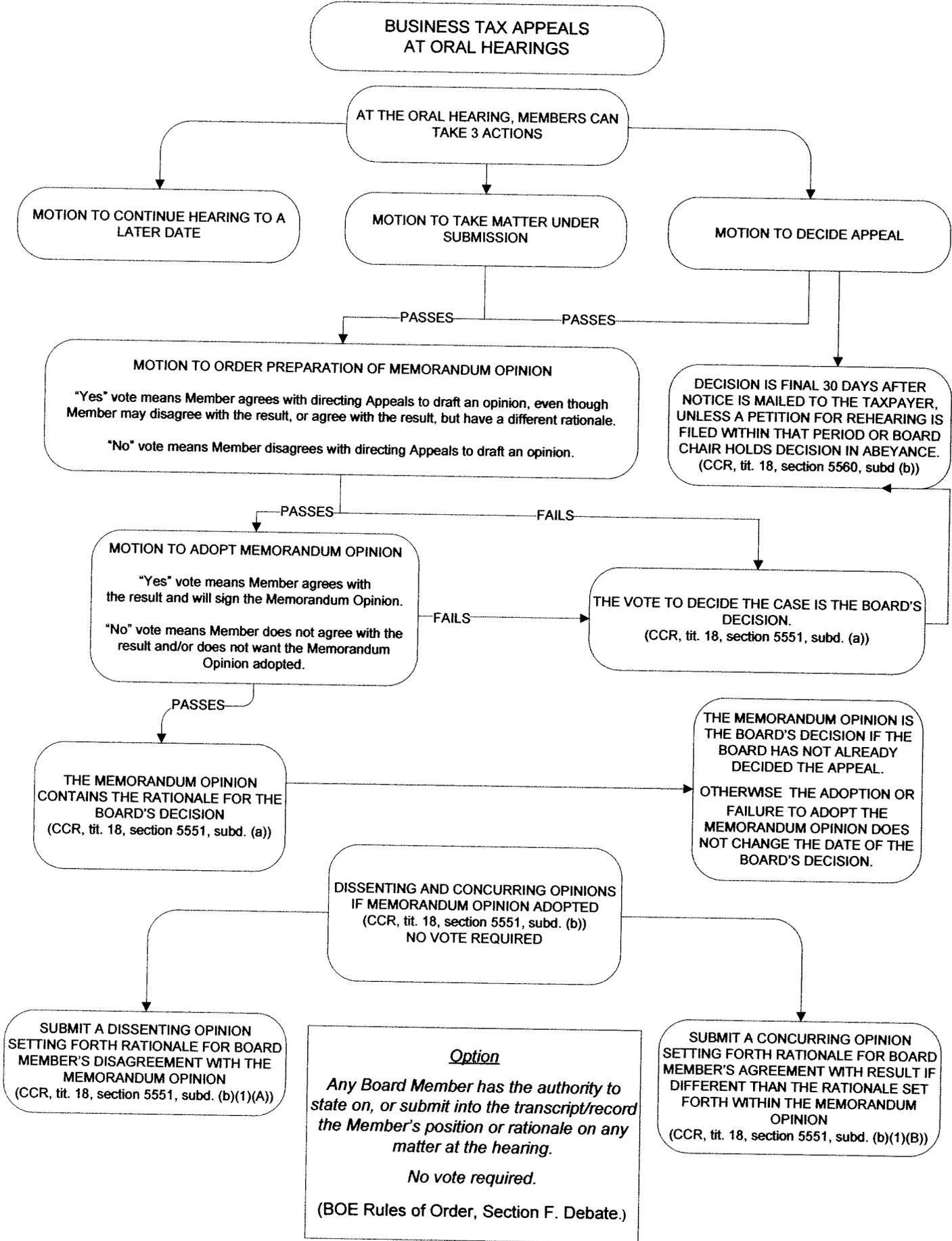
THE MEMORANDUM OPINION IS
THE BOARD'S DECISION IF THE
BOARD HAS NOT ALREADY
DECIDED THE APPEAL.
OTHERWISE THE ADOPTION OR
FAILURE TO ADOPT THE
MEMORANDUM OPINION DOES
NOT CHANGE THE DATE OF THE
BOARD'S DECISION.

DISSENTING AND CONCURRING OPINIONS
IF MEMORANDUM OPINION ADOPTED
(CCR, tit. 18, section 5551, subd. (b))
NO VOTE REQUIRED

SUBMIT A DISSENTING OPINION
SETTING FORTH RATIONALE FOR BOARD
MEMBER'S DISAGREEMENT WITH THE
MEMORANDUM OPINION
(CCR, tit. 18, section 5551, subd. (b)(1)(A))

Option
 Any Board Member has the authority to
state on, or submit into the transcript/record
the Member's position or rationale on any
matter at the hearing.
 No vote required.
 (BOE Rules of Order, Section F. Debate.)

SUBMIT A CONCURRING OPINION
SETTING FORTH RATIONALE FOR BOARD
MEMBER'S AGREEMENT WITH RESULT IF
DIFFERENT THAN THE RATIONALE SET
FORTH WITHIN THE MEMORANDUM
OPINION
(CCR, tit. 18, section 5551, subd. (b)(1)(B))



5345. FINALITY OF BOARD ACTION; WRITTEN FINDINGS AND DECISION.

(a) The following provisions apply to all petitions filed under this chapter:

- (1) The decision of the Board upon a property tax petition is final.
- (2) The Board may not reconsider or rehear a petition.
- (3) The Board may modify a decision on a petition to correct a clerical error.

(b) If requested by the petitioner at any point before the commencement of the oral hearing or the commencement of the meeting at which the petition is scheduled for Board action, the Board will prepare and send to the petitioner a Written Findings and Decision according to the following procedure:

(1) After the Board has decided the petition, the Appeals Division will draft the Written Findings and Decision.

(2) The Chief of Board Proceedings will schedule the Written Findings and Decision for Board consideration.

(3) Once the Board adopts the Written Findings and Decision, the Chief of Board Proceedings will promptly mail a copy of the Written Findings and Decision to petitioner.

The petitioner may waive its right to its requested Written Findings and Decision any time before Board approval of the petitioner's Written Findings and Decision.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5450. LETTER DECISIONS.

- (a) Definition. A "Letter Decision" is a written decision that contains a short explanation of the reasons for the Board's decision on an appeal.
- (b) Preparing the Letter Decision. Whenever the Board decides an appeal without adopting, or directing the preparation of, a Summary Decision or Formal Opinion, the Appeals Division will prepare a Letter Decision. The Appeals Division will provide one copy of a Letter Decision to each party not later than three business days from the date of the Board's decision.
- (c) Date of Decision. The date on which the Board votes to decide the appeal is the date of the decision for purposes of this chapter.
- (d) Citation prohibited. Letter Decisions may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5452. FORMAL OPINIONS.

(a) Definition. A "Formal Opinion" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is intended to set precedent. The Formal Opinion does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion when an appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate, or when the Board orders the preparation of a Formal Opinion. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:

(1) A brief explanation of any Board action taken on the appeal, including any decision on the outcome of the appeal and the order to prepare a Formal Opinion;

(2) A statement that the time period for filing a Petition for Rehearing will not begin until the Board adopts the Formal Opinion, or until the Board otherwise decides the appeal without adopting the Formal Opinion; and

(3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.

(d) Adoption; Date of Decision. When the Appeals Division prepares a Formal Opinion, the Opinion will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, is the date of the Board's decision for purposes of this chapter.

(e) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

(f) Citation permitted. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board, unless the Opinion has been depublished, overruled, or superseded.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5551. VOTING AND DECISIONS.

(a) At the conclusion of an oral hearing, the Board may vote to decide the matter, take it under submission and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date. The Board may also adopt a Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.

(b) Dissenting and Concurring Opinions.

(1) If a Memorandum Opinion or Formal Opinion is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion or Formal Opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the decision, if different than the rationale set forth in the Memorandum Opinion or Formal Opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the Memorandum Opinion or Formal Opinion to which it relates is adopted, and is publishable as a supplement to the Memorandum Opinion or Formal Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 17; Government Code sections 7.9, 11122.5, 11125, 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5560. NOTICE OF BOARD DECISION.

(a) Generally. All parties to a proceeding will be notified in writing of the Board's decision. The notice will contain the determined value, tax, fee, penalty or interest owed.

(1) Business Taxes: In general, notice of the Board's decision will be mailed to all parties within 45 days from the date of the Board's decision. Notice of a decision denying a claim for refund will be mailed to all parties within 30 days from the date of the Board decision.

(2) Appeals from actions of the Franchise Tax Board: In general, a copy of the decision or opinion prepared pursuant to article 5 of chapter 4 will be mailed to all parties within 3 business days from the date of the Board's decision.

(3) Property Tax: In general, a Notice of Decision will be mailed within 30 days from the date of the Board's decision.

(b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to chapter 2 of this division shall become final 30 days after the date notice of the Board's decision is mailed to the taxpayer unless, within that 30-day period, one of the following occurs:

(1) A party to the petition or appeal files a Petition for Rehearing.

(2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.

(c) Finality of Property Tax Decisions. Chapter 3 of this division applies to the finality of decisions on property tax petitions.

(d) Appeals from the Franchise Tax Board. Chapter 4 of this division applies to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 744, 749, 1842, 5148, 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.