

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 1: APPLICATION OF CHAPTER 2

5200. APPLICATION OF CHAPTER 2.

This chapter applies to appeals filed with the Board under the:

- (a) Sales and Use Tax Law (pt. 1 of div. 2 of the Rev. & Tax. Code).
- (b) Motor Vehicle Fuel Tax Law (pt. 2 of div. 2 of the Rev. & Tax. Code).
- (c) Use Fuel Tax Law (pt. 3 of div. 2 of the Rev. & Tax. Code).
- (d) Tax on Insurers Law (pt. 7 of div. 2 of the Rev. & Tax. Code).
- (e) Cigarette and Tobacco Products Tax Law (pt. 13 of div. 2 of the Rev. & Tax. Code).
- (f) Alcoholic Beverage Tax Law (pt. 14 of div. 2 of the Rev. & Tax. Code).
- (g) Timber Yield Tax Law (pt. 18.5 of div. 2 of the Rev. & Tax. Code).
- (h) Energy Resources Surcharge Law (pt. 19 of div. 2 of the Rev. & Tax. Code).
- (i) Emergency Telephone Users Surcharge Law (pt. 20 of div. 2 of the Rev. & Tax. Code).
- (j) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee (pt. 22 of div. 2 of the Rev. & Tax. Code).
- (k) Integrated Waste Management Fee Law (pt. 23 of div. 2 of the Rev. & Tax. Code).
- (l) Oil Spill Response, Prevention, and Administration Fees Law (pt. 24 of div. 2 of the Rev. & Tax. Code).
- (m) Underground Storage Tank Maintenance Fee Law (pt. 26 of div. 2 of the Rev. & Tax. Code).
- (n) Fee Collection Procedures Law (pt. 30 of div. 2 of the Rev. & Tax. Code).
- (o) Diesel Fuel Tax Law (pt. 31 of div. 2 of the Rev. & Tax. Code).

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted “and Definitions” from the title of the regulation; replaced “petitions for redetermination, administrative protests, applications for administrative hearings, claims for refund, and requests for relief” with “appeals” at the beginning of the regulation’s text; replaced the citations to the laws referred to in subdivisions (a) through (o) with parenthetical citations to the same laws; and deleted the sentences at the end of the regulation, which provided that “The definitions in sections 5511 and 5512 of this division apply to this chapter. Where section 5511 conflicts with this chapter, this chapter controls.”

5201. APPLICATION OF THE INTERNATIONAL FUEL TAX AGREEMENT.

To the extent that sections in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893.

Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522.

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

5202. NOTICE REQUIREMENTS.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103, 60333.

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

ARTICLE 2A: PETITIONING NOTICES OF DETERMINATION AND NOTICES OF DEFICIENCY ASSESSMENT

5210. PERSONS WHO MAY FILE PETITIONS FOR REDETERMINATION.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against whom a notice of determination or notice of deficiency assessment is issued, or a representative who requested a notice of determination pursuant to Revenue and Taxation Code sections 7675.1, 8782.1, or 60316, that disagrees with any item included in the notice of determination or notice of deficiency assessment (except an item described in section 5215.6) may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.

(b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued under one of the following sections of the Revenue and Taxation Code:

- (1) Sales and Use Tax Law. Sections 6481 or 6511.
- (2) Alcoholic Beverage Tax Law. Sections 32271 or 32291.
- (3) Timber Yield Tax Law. Sections 38416 and 38425.
- (4) Hazardous Substances Tax Law. Section 43201.
- (5) Integrated Waste Management Fee Law. Section 45201.
- (6) Oil Spill Response, Prevention, and Administration Fees Law. Sections 46201 or 46251.
- (7) Underground Storage Tank Maintenance Fee Law. Section 50113.
- (8) Fee Collection Procedures Law. Section 55061.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation under Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:

Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

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

5210.5. SUCCESSOR'S PETITION FOR RECONSIDERATION.

A successor served with a notice of successor liability under Revenue and Taxation Code sections 6814, 9024, 38564, 46454, or 60474 may file a petition for reconsideration of successor liability in the manner provided in this article for petitioning any other liability imposed under the Sales and Use Tax Law, Use Fuel Tax Law, Timber Yield Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, or Diesel Fuel Tax Law, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6814, 9024, 38564, 46454, 60474.

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

5211. LIMITATION PERIOD FOR FILING PETITIONS AND STAY OF COLLECTION ACTIVITIES.

(a) A petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against which the notice was issued.

(b) Notwithstanding subdivision (a), petitions for redetermination of determinations issued under Revenue and Taxation Code section 30173 (Cigarette and Tobacco Products Tax Law) must be filed within 10 days from the date that the notice of determination was mailed to the distributor.

(c) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a) and (b).

(d) A petition for redetermination is premature and not valid if it is filed before a notice of determination, notice of deficiency assessment, or notice of successor liability is issued. However, a premature petition for redetermination may be treated as an administrative protest under section 5220.

(e) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

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

5212. CONTENTS OF A PETITION FOR REDETERMINATION.

(a) A petition for redetermination must:

(1) Be in writing.

(2) Identify the amounts the taxpayer wishes to contest (the taxpayer may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

(4) Be signed by the taxpayer or the taxpayer's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference, a request for a Board hearing, or both. If a petition for redetermination only includes a request for an appeals conference, a Board hearing may still be requested in accordance with section 5266.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A taxpayer may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Section 15606, Government Code; Sections 7051, 8251, 9251, 13170, 30451, 32451, 38442, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments changed the title from "Contents of Petitions for Redetermination, and Supporting Arguments and Evidence" to "Contents of a Petition for Redetermination"; replaced "Every" with "A" at the beginning of subdivision (a); replaced "petitioner" with "taxpayer" in subdivisions (a)(2) and (4) and (d); replaced "petitioners" with "the taxpayer" at the beginning of the parenthetical text in subdivision (a)(2); replaced "petitioner's" with "taxpayer's" in subdivision (a)(4); deleted "conducted under article 6 of this chapter" from after the word "conference" in the first sentence in subdivision (b); and changed "an oral hearing before the Board" to "a Board hearing" in the first and second sentences in subdivision (b).

5212.5. AMENDMENTS TO PETITIONS FOR REDETERMINATION.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Government Code section 15606, Government Code; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351.

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

5213. ACCRUAL OF INTEREST.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606, Government; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

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

5214. ADDITIONAL COPY OF PETITIONS FOR REDETERMINATION FILED UNDER THE TAX ON INSURERS LAW.

An insurer or surplus line broker filing a petition for redetermination of a deficiency assessment issued under the Tax on Insurers Law must file a copy of its petition with the Commissioner of Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination in accordance with section 5216.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code section 12428.

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

5215. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER HAZARDOUS SUBSTANCES TAX LAW.

(a) Hazardous or Extremely Hazardous Waste. A petition for redetermination filed under Revenue and Taxation Code section 43301 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A petition for redetermination based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and may not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) A petition for redetermination of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(A) The taxpayer's industry did not contribute in any manner to environmental lead contamination;

(B) The taxpayer's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(C) The amount of the fee assessed does not reflect the taxpayer's market share or is incorrectly computed.

(2) A petition founded upon grounds described in subparagraphs (A), (B), or (C) of paragraph (1) will not be acted upon until after the California Department of Public Health has acted upon the taxpayer's application for exemption from or reassessment of the fee. Applications for exemption must be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment must be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33050.

Note: Authority cited: Section 15606, Government Code; and Section 43501, Revenue and Taxation Code.
Reference: Section 43301, Revenue and Taxation Code; and Section 105310, Health and Safety Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments changed "All petitions" to "A petition" at the beginning of the first sentence in subdivision (a); inserted "the California Department of" before both references to "Toxic Substances Control" in subdivision (a); replaced "petitioner's" with "taxpayer's" in subdivision (b)(1)(A), (B), and (C), and (2); replaced "State Director of Health Services" with "California Department of Public Health" and deleted "the fee" from between "from" and "or" in the first sentence in subdivision (b)(2); replaced "should" with "must" in the second and third sentences in subdivision (b)(2); replaced "State Department of Health Care Services" with "California Department of Public Health" in the second sentence in subdivision (b)(2); replaced "State Department of Health Services" with "California Department of Public Health" in the third sentence in subdivision (b)(2); and deleted citations to Revenue and Taxation Code sections that are not in the Hazardous Substances Tax Law from the regulation's authority note.

5215.4. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER COVERED ELECTRONIC WASTE RECYCLING FEE.

A petition for redetermination of the Covered Electronic Waste Recycling Fee filed in accordance with section 5216 will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. A petition for redetermination based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

Note: Authority cited: Section 15606, Government Code; and Section 55301, Revenue and Taxation Code.
Reference: Section 42464.6, Public Resources Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "All petitions" with "A petition" at the beginning of the first sentence; inserted "California" before "Department"; and deleted citations to Revenue and Taxation Code sections that are not in the Fee Collection Procedures Law from the regulation's authority note.

5215.6. SCOPE OF PETITION FOR REDETERMINATION FILED UNDER WATER RIGHTS FEE LAW.

A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code and is not subject to review by the Board as part of a petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Section 55301, Revenue and Taxation Code.
Reference: Section 1537, Water Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced the text before "determination" with "A"; added all the text after "such fee"; and deleted citations to Revenue and Taxation Code sections that are not in the Fee Collection Procedures Law from the regulation's authority note.

5216. FILING PETITIONS FOR REDETERMINATION.

(a) A petition or related document may be electronically transmitted (e.g., facsimile, e-mail, etc.) to the Board if an electronic copy of such document is transmitted to the fax number or email address specified for the appropriate section or branch (collectively section) identified in subdivision (b) for the tax or fee law at issue. A petition or related document may also be electronically transmitted to the Board in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) A petition for redetermination and related documents may be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California or mailed to the address provided below for the particular tax or fee law at issue:

(1) Sales and Use Tax Law.

Petitions Section, MIC: 38
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0038
sutdpet@boe.ca.gov
916-324-0678

(2) Hazardous Substances Tax Law, Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee, Marine Invasive Species Fee Collection Law, Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, Natural Gas Surcharge, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Appeals and Data Analysis Branch, MIC: 33
State Board of Equalization
P.O. BOX 942879
Sacramento, CA 94279-0033
adab@boe.ca.gov
916-323-9497

(3) Timber Yield Tax Law.

Timber Tax Section, MIC: 60
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0060
MeetingInfo@boe.ca.gov
(916) 324-3984

Note: Authority cited: Section 15606, Government Code; Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561, 6814, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081 and 60350, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. In subdivision (b)(2), changed a period to a comma after word fee in Integrated Waste Management Fee. Adopted 5-28-08; Effective 7-16-08.
3. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted the first sentence in subdivision (a), which encouraged the use of electronic means for the filing of petitions; deleted "filed" from before and replaced "under this section" with "transmitted (e.g., facsimile, e-mail, etc.) to the Board" after "electronically," inserted "the fax number or email address specified for," and replaced "group" with "branch (collectively section)" in subdivision (a); divided the second sentence in subdivision

(a) into two sentences by inserting a period after “issue” and adding “A petition or related document may also be electronically transmitted to the Board” in front of the text following the period; replaced “Petitions” with “A petition” and deleted “also” from between “may” and “be” in subdivision (b); updated the format of the Petitions Section’s mailing address in and added the Petitions Section’s email address and fax number to subdivision (b)(1); deleted “(Except Childhood Lead Poisoning Prevention Fee)” from after “Hazardous Substances Tax Law,” deleted “and” from before “Marine,” and added the text following “Marine Invasive Species Fee Collection Law” in subdivision (b)(2); added the Appeals and Data Analysis Branch’s mailing address, email address, and fax number to and deleted the Environmental Fees Division’s mailing address from subdivision (b)(2); deleted subdivisions (b)(3) and (4), and (c); renumbered subdivision (b)(5) as subdivision (b)(3); and replaced the Timber Yield Tax Section’s mailing address with the Timber Tax Section’s mailing address, email address, and fax number in renumbered subdivision (b)(3).

5217. ACKNOWLEDGMENT OF PETITIONS FOR REDETERMINATION.

(a) After receipt of a petition for redetermination, the assigned section will promptly send the taxpayer a letter acknowledging receipt of the petition for redetermination and containing the assigned section’s contact information.

(b) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted “Assignment and” from the beginning of the regulation’s title; combined the text in subdivisions (a) and (b) into a single sentence in subdivision (a) by deleting the comma after “receipt,” inserting “of” after “receipt,” inserting a comma after “redetermination,” deleting the text, including the period, after “redetermination” in subdivision (a), and deleting the text, including the subdivision designation, before “the assigned section” in subdivision (b); deleted “or group” from after “the assigned section,” replaced “petitioner” with “taxpayer,” replaced “, which will contain the” with “and containing the assigned section’s,” and deleted “for the assigned section or group” from after “information” in the combined text of subdivision (a); and renumbered subdivision (c) as subdivision (b).

5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

(a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer’s requests for updates regarding such progress.

(c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.

(e) All Findings are in Taxpayer’s Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer’s favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section’s findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some

matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

(1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Deputy Director approval.

(2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer's Favor.

(1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director approval if applicable, unless, within 30 days of the date of that letter, the taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Deputy Director approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director approval if applicable.

(g) Deputy Director Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be resolved in accordance with the Deputy Director's findings.

(h) If the assigned section's findings are not subject to Deputy Director approval, but the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's appeal will be resolved in accordance with the change.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "Board Staff from the" with "The" at the beginnings of subdivisions (a), (b), and (c); replaced "to District Office or Board Section" with "of Petition" in the title of subdivision (b); deleted "Board Staff in" from between "to" and "the," replaced "Section" with "section" after "Board," and added the text after "comment" to the first sentence in subdivision (b); add the second sentence to subdivision (b); added "Notice of" to the title of subdivision (d); deleted "Board Staff from" from after the comma, replaced "present" with "advise the taxpayer of," and replaced "to the petitioner" with "in writing" in subdivision (d); replaced subdivisions (e) and (f); and added new subdivisions (g) and (h).
3. Amendments adopted December 16, 2015, effective March 1, 2016. The amendments replaced the references to "Board" with references to "Deputy Director" in subdivisions (e), (e)(1), (f)(1), (f)(2)(B) and (C); added new subdivision (g) and renumbered old subdivision (g) as subdivision (h); added "the assigned section's findings are not subject to Deputy Director approval, but" to the beginning of renumbered subdivision (h); deleted "the earlier of the date the Board approves the findings, if applicable, or" from after "prior to" in renumbered subdivision (h); replaced "petition" with "appeal" in renumbered subdivision (h); deleted ", subject to Board approval if applicable" from the end of renumbered subdivision (h); and deleted old subdivision (h).

5219. PREPARATION AND MAILING OF THE SUMMARY ANALYSIS.

Before the assigned section forwards an appeal to the Board Proceedings Division for the scheduling of an appeals conference, it will first prepare a summary analysis which sets forth the taxpayer's contentions regarding the notice of determination or notice of deficiency assessment, the position of the Department that issued the notice, and the reasons the assigned section believes that the Department's position should be sustained in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and forward the petition file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments inserted "Preparation and" before and "of" after "Mailing" in and deleted "and Scheduling the Appeals Conference"

from the end of the title of the regulation; added a new first sentence to the regulation; replaced "Once the summary analysis is completed, Board Staff from the" with "The" at the beginning of the second sentence in the regulation; deleted "or group" from after "section," and inserted "then mail a copy of the summary analysis to the taxpayer and" before "forward" in the second sentence of the regulation; combined the second and third sentences in the regulation by deleting "and mail a copy of the summary analysis to the petitioner." from the end of the second sentence and replacing "An" with "for the scheduling of an" at the beginning of the third sentence; and deleted "will then be scheduled" from after "conference" in the combined second sentence.

ARTICLE 2B: TREATMENT OF PREMATURE OR UNTIMELY PETITION AS AN ADMINISTRATIVE PROTEST

5220. PREMATURE OR UNTIMELY PETITION MAY BE TREATED AS AN ADMINISTRATIVE PROTEST.

(a) If an appeal is filed as a petition for redetermination prior to or after the expiration of the applicable time periods provided for in section 5211, the appeal does not qualify as a valid petition for redetermination. However, such an appeal may be treated as an administrative protest if the Deputy Director of the Department that issued the notice being disputed by the taxpayer determines, in his or her discretion, that there is a reasonable basis to believe that there may be an error in the taxpayer's notice.

(b) If a premature or untimely appeal is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination, except that requests for an appeals conference or Board hearing may be denied, although such requests will be liberally granted.

(c) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6981, 8191, 9196, 12951, 30421, 32440, 38631, 40121, 41107, 43491, 45801, 46551, 50151, 55281 and 60581, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments inserted "an appeal is filed as" after "If" and deleted "is filed" from before "prior" in the first sentence of subdivision (a) and replaced all of the text after "section 5211, the" in subdivision (a); replaced "petition" with "appeal" and added all of the text after "petition for redetermination" in subdivision (b); deleted subdivision (c); and renumbered subdivision (d) as subdivision (c).

5220.4. ACCRUAL OF INTEREST.

The treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

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

5220.6. NO STAY OF COLLECTION ACTIVITIES.

In general, the treatment of a premature or untimely petition for redetermination as an administrative protest does not stay efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

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

ARTICLE 2C: CONTESTING A JEOPARDY DETERMINATION

5221. NOTICE OF JEOPARDY DETERMINATION.

(a) If the collection of any tax or fee or any amount of tax or fee required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, a notice of jeopardy determination may be issued.

(b) The notice of jeopardy determination shall state the tax or fee, or amount of tax or fee required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6536, 7698, 8826, 30241, 32311, 38431, 43350, 45351, 46301, 50120.1, 55101, 60330.

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

5222. FILING A PETITION FOR REDETERMINATION OF A JEOPARDY DETERMINATION.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) A petition for redetermination of a jeopardy determination or related document may be filed as specified in section 5216. Such documents may also be mailed or electronically transmitted to the Board at the mailing address, fax number, or email address provided on the Notice of Jeopardy Determination.

(c) The provisions of section 5215.6 apply to a jeopardy determination issued under the Water Rights Fee Law.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "Persons Who May File" with "Filing" in the title of the regulation; deleted the first sentence in subdivision (b), which encouraged the use of electronic means for the filing of petitions; replaced all the text after "filed" with "as specified in section 5216" at the end of the remaining sentence in subdivision (b), and added a new second sentence to subdivision (b); and replaced subdivision (c).

5222.4. CONTENTS OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

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

5222.6. LIMITATION PERIOD FOR PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:

Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

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

5223. SECURITY REQUIREMENT FOR PETITION.

A petition for redetermination of a jeopardy determination will not be accepted unless the petitioner deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5222.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

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

5224. REVIEW OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination may raise any objections the taxpayer has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

(c) The scope of the Board's review of a petition for redetermination of a jeopardy determination issued under the Hazardous Substances Tax Law, Covered Electronic Waste Recycling Fee, or Water Rights Fee Law is limited as provided in sections 5215, 5215.4, and 5215.6, respectively.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "petitioner" with "taxpayer" in subdivision (a); replaced "A" with "The scope of the Board's review of a" at the beginning of subdivision (c); deleted "or" and inserted a comma after "Hazardous Substances Tax Law" in subdivision (c); replaced "will be reviewed in accordance with" with ", or Water Rights Fee Law is limited as provided in" in subdivision (c); deleted "and" and inserted a comma after "5215" and inserted "and 5215.6," after "5215.4," in subdivision (c).

5225. PERSONS WHO MAY FILE AN APPLICATION FOR ADMINISTRATIVE HEARING; MANNER OF FILING; AND CONSOLIDATION WITH PETITION.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

- (1) To establish that the jeopardy determination is excessive.
- (2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (3) To request the release of all or part of the property to the person.
- (4) To request a stay of collection activities.
- (5) To request administrative review of any other issue raised by the jeopardy determination.

(b) An application for an administrative hearing or related document may be filed in the manner specified in section 5222 for the filing of a petition for redetermination of a jeopardy determination.

(c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46601, 50120.3, 50152, 55103, 55301, 60333 and 60601, Revenue and Taxation Code. Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted the first sentence in subdivision (b), which encouraged the use of electronic means for the filing of applications; replaced all of the text after "filed" in the second sentence in subdivision (b); deleted the third and fourth sentences in subdivision (b); and deleted subdivision (d).

5226. LIMITATION PERIOD FOR FILING APPLICATION FOR ADMINISTRATIVE HEARING.

(a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

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

5227. CONTENTS OF APPLICATION FOR ADMINISTRATIVE HEARING.

Every application for administrative hearing must:

- (a) Be in writing.
- (b) Identify the purpose for which the person has applied for an administrative hearing.
- (c) State the specific factual or legal grounds upon which the application is founded.
- (d) Be signed by the person or the person's authorized representative.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

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

5228. OPTION TO POST SECURITY WITH APPLICATION FOR ADMINISTRATIVE HEARING.

(a) A person is not required to post security to obtain an administrative hearing.

(b) Property seized under a notice of jeopardy determination or jeopardy assessment may not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense. Storage expenses may be waived, credited, or refunded.

(c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5223.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

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

5229. ASSIGNMENT OF APPLICATION FOR ADMINISTRATIVE HEARING TO APPEALS DIVISION FOR APPEALS CONFERENCE.

(a) Upon receipt of an application for administrative hearing, Board Staff shall promptly:

- (1) Acknowledge its receipt;
- (2) Assign the application to the Appeals Division for an appeals conference;
- (3) Schedule an appeals conference; and
- (4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, Appeals Staff will promptly issue a determination as to each issue raised in the application and provide notice of the determination to the applicant in a Decision and Recommendation. Appeals Staff may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the Decision and Recommendation in whole or in part, the applicant may request an oral hearing before the Board. A request for an oral hearing may be denied on an application for administrative hearing. If an oral hearing is granted, the matter shall be scheduled for hearing as soon as practicable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

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

ARTICLE 3: CLAIMS FOR REFUND

5230. PERSONS WHO MAY FILE A CLAIM FOR REFUND; LIMITATIONS ON CERTAIN CLAIMS.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer who believes that it has overpaid a tax or fee, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such a person's behalf.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon the following grounds must be filed with the Controller and is not governed by this chapter:

- (1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.
- (2) The motor vehicle fuel was exported for use outside of California.
- (3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.
- (4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.
- (5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).

(6) The claimant is a supplier that:

(A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and

(B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.

(7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.

(8) The claimant provides public transportation services and used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.

(9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

(1) All claims for refund filed under Revenue and Taxation Code section 43452 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452.

(2) A claim for refund required to be forwarded to the Director of the California Department of Toxic Substances Control under paragraph (1) will not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) All claims for refund of the Childhood Lead Poisoning Prevention Fee will be acknowledged. A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(i) The taxpayer's industry did not contribute in any manner to environmental lead contamination;

(ii) The taxpayer's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(iii) The amount of the fee assessed does not reflect the taxpayer's market share or is incorrectly computed.

(B) A claim for refund described in clauses (i), (ii), or (iii) of subparagraph (A) will not be acted upon until after the California Department of Public Health has acted upon the taxpayer's application for exemption from the fee or reassessment of the fee. Applications for exemption shall be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment shall be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. However, the Board will accept a claim for refund based upon such grounds if the determination referred to in the claim for refund has already been set aside by the State Water Resources Control Board or a court reviewing the determination. A determination by the

State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code; and Section 1537, Water Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "persons" with "a person's" at the end of subdivision (a); replaced "should" with "must" in subdivision (b); inserted "provides public transportation services and" after "claimant" in subdivision (b)(8); inserted "the California Department of" in the third sentence in subdivision (c)(1) and two places in subdivision (c)(2); replaced "petitioner's" with "taxpayer's" in subdivision (c)(3)(A)(i), (ii), and (iii); replaced "State Director of Health Services" with "California Department of Public Health" and replaced "claimant's" with "taxpayer's" in the first sentence in subdivision (c)(3)(B); replaced "should" with "shall" and replaced "State Department of Health Care Services" with "California Department of Public Health" in the second sentence in subdivision (c)(3)(B); replaced "should" with "shall" and replaced "State Department of Health Services" with "California Department of Public Health" in the third sentence in subdivision (c)(3)(B); inserted "California" in subdivision (d); deleted the second sentence from subdivision (e); replaced "This prohibition does not apply" with "However, the Board will accept a claim for refund based upon such grounds " at the beginning of and inserted "referred to in the claim for refund" in the third sentence in subdivision (e); added a new last sentence to subdivision (e); and added a citation to Water Code section 1537 to the regulation's reference note.

5231. LIMITATION PERIOD FOR CLAIM FOR REFUND.

(a) A refund requested in a claim for refund cannot be approved, unless the claim for refund is filed within the time periods provided in this section.

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made under the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Alcoholic Beverage Tax Law. In lieu thereof, any such claim for refund is timely if filed within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Cigarette and Tobacco Products Tax Law.

(1) Stamps and Meter Register Settings. Subdivision (b)(1) does not apply to claims for refund for overpayments made with regard to purchases of stamps or meter register settings. In lieu thereof, a claim for refund for an overpayment made with regard to a purchase of stamps or meter register settings is timely if filed within three years from the due date for the payment of the purchase for which the overpayment was made.

(2) Other Claims for Refund. Subdivision (b)(1) does not apply to claims for refund filed under the Cigarette and Tobacco Products Tax Law, which are not described in paragraph (1) of this subdivision. In lieu thereof, a claim for refund described in this paragraph (2) is timely if filed within three years from the 25th day after the close of the monthly period for which the overpayment being claimed was made.

(3) Exported Tobacco Products. Notwithstanding subdivision (b) and paragraphs (1) and (2) of this subdivision, claims for refund based upon the grounds that the tobacco products upon which the tax was paid were exported, must be filed within three months after the close of the calendar month in which the tobacco products were exported.

(e) Tax on Insurers Law. Subdivision (b)(1) does not apply to claims for refund filed under the Tax on Insurers Law. In lieu thereof, any such claim for refund is timely if filed within four years after April 1st of the year following the year for which the overpayment was made. A claim for refund filed under the Tax on Insurers Law may be filed in accordance with section 5233 or may be filed with the Commissioner of Insurance.

(f) Emergency Telephone Users Surcharge Law. Subdivision (b)(1) does not apply to claims for refund filed under the Emergency Telephone Users Surcharge Law. In lieu thereof, any such claim is timely if filed within three years after the last day of the second month following the close of the month for which the overpayment being claimed was made.

(g) Hazardous Substances Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Hazardous Substances Tax Law. In lieu thereof, any such claim is timely if filed within three years after the date taxes were due and payable for the period for which the overpayment was made.

(h) Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. Subdivision (b)(1) does not apply to claims for refund filed under the Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. In lieu thereof, any such claim is timely if filed within three years after the due date of the payment for the period for which the overpayment was made.

(i) Diesel Fuel Tax Law. Subdivision (b) does not apply to claims for refund filed under Revenue and Taxation Code section 60501 (diesel fuel lost sold or removed) or 60502 (ultimate vendor claims). In lieu thereof, any such claim for refund is timely if filed within three years from the date of the purchase of the diesel fuel to which the claim relates, or, if the tax was not invoiced at the time of the purchase of the diesel fuel, six months after the receipt of an invoice for the tax, whichever period expires later.

(j) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed under the Tax on Insurers Law or the Emergency Telephone Users Surcharge Law, or claims described in subdivision (i) of this section.

(k) Financially Disabled Individuals.

(1) The periods described in subdivisions (b), (c), (d)(2), (f), (g), and (h) of this section are suspended during any period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to claims for refund filed under the Tax on Insurers Law or claims for refund of overpayments made with respect to purchases of stamps or meter register settings filed under the Cigarette and Tobacco Products Tax Law.

(l) Levies and Liens. A claim for refund for an overpayment of a sales or use tax collected by means of levy, through the use of liens, or by other enforcement procedures is timely if filed within three years of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6902, 6902.3, 6902.4, 8128, 8128.1, 9152, 9152.1, 12978, 30178, 30178.1, 30362, 30362.1, 32402, 32402.1, 32407, 38602, 38602.5, 40112, 40112.1, 41101, 41101.1, 43452, 43452.1, 45652, 45652.1, 50140, 50140.1, 55222, 55222.1, 60507, 60522, 60522.1.

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

5231.5. FAILURE TO FILE TIMELY CLAIM FOR REFUND.

A claim for refund must be reviewed to determine whether it is timely. The claimant's 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.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:

Revenue and Taxation Code sections 6905, 8128, 9152, 12980, 30178, 30178.1, 30364, 32403, 38604, 40114, 41103, 43453, 45653, 46504, 50141, 55223, 60507, 60522.

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

5232. GENERAL CONTENTS OF CLAIMS FOR REFUND.

(a) All Claims. Every claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

- (1) The specific grounds or reasons upon which the claim is founded.
- (2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.
- (3) The amount of the refund being claimed, if known.
- (4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Sales and Use Tax Claims. Claims for refund filed under the Sales and Use Tax Law may also break down the claimed refund into state, local, and district tax amounts.

(c) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and (b) for the periods of the claim.

(d) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(e) Forms. The use of a completed form provided by the Board for use as a claim for refund will satisfy the requirements of this section (other than subdivision (d)). However, this subdivision does not require taxpayers to use a form.

(f) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6904, 8129, 9153, 12979, 30176, 30176.1, 30176.2, 30177, 30363, 32402, 32402.1, 32407, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, 60501, 60502, 60505, 60505.5, 60523.

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

5232.4. CONTENTS OF CLAIMS FOR REFUND UNDER DIESEL FUEL TAX LAW.

Notwithstanding section 5232, claims for refund of payments made with respect to the Diesel Fuel Tax Law must be prepared and filed in the following manner:

(a) Diesel Fuel that is Lost, Sold, or Removed.

(1) A claim for refund must satisfy the requirements of paragraph (2) if it is based upon the grounds that:

(A) Tax was imposed on the diesel fuel to which the claim relates; and

(B) The claimant bought or produced the diesel fuel to which the claim relates and the same diesel fuel was:

(i) Used for purposes other than operating motor vehicles upon the public highways of California;

(ii) Exported for use outside of California;

(iii) Used in construction equipment that is exempt from registration under the Vehicle Code;

(iv) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture;

(v) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency;

(vi) Sold by a supplier to any consulate office or consulate employee;

(vii) Lost in the ordinary course of handling, transportation, or storage;

- (viii) Sold to the United States, its agencies, or instrumentalities;
 - (ix) Sold to a train operator for use in a diesel-powered train or other off-highway use; or
 - (x) Removed from an approved terminal at the terminal rack.
- (2) A claim for refund based upon the grounds described in paragraph (1) must:
- (A) Be prepared and filed on a form prescribed by the Board.
 - (B) Be accompanied by the original invoice showing the purchase, or, if no original invoice was created, an electronic invoice and the original bill of lading or fuel manifest.
 - (C) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.
 - (D) Include the claimant's statement that the diesel fuel covered by the claim did not contain visible evidence of dye.
 - (E) Include a statement by the person who sold the diesel fuel to the claimant that the diesel fuel did not contain visible evidence of dye.
 - (F) Identify the total amount of diesel fuel covered by the claim.
 - (G) Describe the use made of the diesel fuel.
 - (H) Be accompanied by proof that the diesel fuel was exported, if the claim is based upon the grounds that the diesel fuel was exported.
- (3) Claims for refund based upon the grounds provided for in paragraph (1) must be filed on a calendar year basis, except that claims for refund of more than \$750 may be filed for a quarter of a calendar year.
- (b) Ultimate Vendors of Diesel Fuel. A claim for refund based upon the grounds that the claimant was an ultimate vendor that sold tax-paid diesel fuel to an ultimate purchaser for use on a farm for farming purposes, or use in an exempt bus operation may not be filed for an amount less than \$200 or a period shorter than one week and must:
- (1) Be prepared and filed on a form prescribed by the Board.
 - (2) Contain the claimant's permit number.
 - (3) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.
 - (4) Include the name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons of diesel fuel the claimant sold to each.
 - (5) Include the claimant's statement that the diesel fuel covered by the claim did not contain evidence of visible dye.
 - (6) Identify the total amount of diesel fuel covered by the claim.
 - (7) Include the claimant's statement that it has an unexpired exemption certificate described in Revenue and Taxation Code section 60503 and has no reason to believe the certificate is false.
 - (8) Include the claimant's statement that the amounts claimed have not been refunded to the claimant previously.
- (c) Persons filing claims for refund under this section must use the proper form prescribed by the Board and should contact the Fuel Taxes Division for the appropriate form.
- (d) Other Claims. Claims for refund under the Diesel Fuel Tax Law that are not described in subdivision (a) or (b) may be filed in the manner provided for in section 5232.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 60601. Reference: Revenue and Taxation Code sections 60501, 60502, 60505, 60505.5, 60523.

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

5232.6. REQUIREMENTS FOR CLAIMS FOR REFUND REGARDING LOST, UNMARKETABLE OR CONDEMNED ALCOHOLIC BEVERAGES.

A claim for refund based upon the grounds provided for in Revenue and Taxation Code section 32407 must satisfy the requirements of California Code of Regulations, title 18, section 2553.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 32451. Reference: Revenue and Taxation Code section 32407.

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

5232.8. ADDITIONAL REQUIREMENTS FOR CLAIMS FOR REFUND FILED UNDER THE CIGARETTE AND TOBACCO PRODUCTS TAX LAW.

In addition to the requirements of section 5232, claims for refund of amounts paid with regard to purchases of stamps or meter register settings must satisfy the requirements of and be prepared and filed on any form required by California Code of Regulations, title 18, sections 4061 through 4065. All other claims for refund filed under the Cigarette and Tobacco Products Tax Law are not required to comply with this additional requirement. Contact the Excise Taxes and Fees Division for the appropriate form.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 30451. Reference: Revenue and Taxation Code sections 30176, 30176.1, 30176.2, 30177, 30363.

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

5233. FILING CLAIMS FOR REFUND.

A claim for refund or related document may be filed as specified in section 5216 for the filing of a petition for redetermination. However, a claim for refund or related document filed under the Sales and Use Tax Law must be directed to the section listed below, and, if mailed or electronically transmitted (via email or facsimile), must be mailed or transmitted to the:

Audit Determination and Refund Section, MIC: 39
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039
ADRS@boe.ca.gov
(916) 445-2202

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6902, 8128, 9152, 12978, 30178, 30178.1, 30362, 32402, 32402.1, 32407, 38602, 40112, 41101, 43452, 45652, 46502, 50140, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted the first sentence in subdivision (a), which encouraged the use of electronic means for the filing of claims; replaced all of the text following "filed" in the second sentence in subdivision (a); replaced "Claims" with "However, a claim" at the beginning of subdivision (b); replaced "and" with "or" after "refund" and changed "documents" to "document" in subdivision (b); replaced "may also" with "must be directed to the section listed below, and, if mailed or electronically transmitted (via email or facsimile), must" in subdivision (b); inserted "or transmitted" between "mailed" and "to" in subdivision (b); inserted "State" before "Board of Equalization" in and added the email address and fax number to the Audit Determination and Refund Section's contact information in subdivision (b); combined subdivisions (a) and (b) by deleting the subdivision designations "(a)" and "(b)"; and deleted subdivisions (c), (d), and (e).

5234. ASSIGNMENT AND ACKNOWLEDGMENT OF CLAIM FOR REFUND.

Once a claim for refund is received, it will be assigned to the appropriate section or group listed in section 5233 based upon the type of tax or fee at issue, and Board Staff from the assigned section will promptly send the claimant a letter acknowledging the claim, which will contain the contact information for the assigned section or group.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:

Revenue and Taxation Code sections 6901, 6902, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 32401, 32402, 32402.1, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

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

5234.5. REVIEW PROCESS FOR CLAIMS FOR REFUND AND REQUESTS FOR ADDITIONAL INFORMATION.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, Board Staff from the assigned section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60506, 60507, 60521, 60522.

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

5235. ACTION ON THE CLAIM FOR REFUND.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

- (1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director approval requirements of section 5237, if applicable); and
- (2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director approval pursuant to section 5237, if applicable.

- (1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted "Board Staff from" from before "the assigned section" in subdivision (a); deleted "Board Staff in" from before and "or group" from after "the assigned section" in subdivision (b); replaced "Board Staff" with "it" before "will" in subdivision (b) and the first sentence in subdivision (c); replaced "claimant" with "taxpayer" in subdivision (b)(1) and (2), and the first sentence in subdivision (c); inserted "Board approval" and ", if applicable" in subdivision (b)(1); deleted "Board Staff in" from before "the assigned section" and inserted "in whole or in part" in the first sentence in subdivision (c); added the second sentence to subdivision (c); added paragraphs (1) and (2) to subdivision (c); and deleted subdivision (d).

3. Amendments adopted December 16, 2015, effective March 1, 2016. The amendments replaced the references to "Board" with references to "Deputy Director" in subdivisions (b)(1), (c), and (c)(2).

5236. DISCRETION TO GRANT OR DENY APPEALS CONFERENCES AND ORAL HEARINGS ON CLAIMS FOR REFUND.

A request for an appeals conference conducted under article 6 of this chapter or oral hearing before the Board may be denied on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, 60522.

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

5237. DEPUTY DIRECTOR APPROVAL REQUIRED FOR REFUNDS OVER \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department for approval except where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Deputy Director, the Deputy Director may approve the assigned section's recommendation or exercise discretion to make the Deputy Director's own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

(c) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the taxpayer has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Deputy Director of the assigned section's Department for approval as provided in subdivision (b). If the Deputy Director approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(d) If the assigned section or the Deputy Director of the assigned section's Department determines that a refund in excess of \$50,000 should be granted, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

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

- History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted October 6, 2009, effective February 19, 2010. Replaced \$50,000 with \$100,000 in title and subdivisions (a), (d), and (f), and added new subdivision (g).
3. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted "Board Staff in" from before and deleted "or group" after "the assigned section" and added the text after "Board" in subdivision (a); replaced "a refund is warranted and in what amount" with "the claim for refund should be granted, denied, or granted in part and denied in part and replaced "will" with "may" in the first sentence in subdivision (b); added the second sentence to subdivision (b); deleted "Board Staff in" from before "the assigned section" in subdivision (d); deleted subdivision (e); renumbered subdivisions (f) and (g) as subdivisions (e) and (f), respectively; deleted "Board Staff in" from before "the assigned section," replaced "disagreed with such determination by requesting" with "requested," replaced "oral" with "Board" before and deleted "before the Board" after "hearing," and deleted "as provided in subdivision (a)" from after "approval" in the first sentence in renumbered subdivision (e); added the second sentence to renumbered subdivision (e); and replaced "Board Staff" with "the assign section" in renumbered subdivision (f).
4. Amendments adopted December 16, 2015, effective March 1, 2016. The amendments replaced "Board" with "Deputy Director" in the regulation's title; replaced "Board" with "Deputy Director of the Assigned Section's Department" and deleted "where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program," from after "except" in subdivision (a); replaced "Board" with "Deputy Director," replaced "Board has" with "Deputy Director may approve the assigned section's recommendation or exercise," replaced "its" with "the Deputy Director's," and replaced "claimant" with

“taxpayer” in the first sentence in subdivision (b); reformatted the second sentence in subdivision (b) as subdivision (b)(1) and added a new subdivision (b)(2); replaced “Where the Board approves” with “If the Deputy Director approves the assigned section’s recommendation to grant” at the beginning of subdivision (b)(1); deleted subdivisions (c) and (d) and renumbered subdivisions (e) and (f) as (c) and (d), respectively; replaced “claimant” with “taxpayer,” replaced “Board” with “Deputy Director of the assigned section’s Department,” and added “as provided in subdivision (b)” after “approval” in the first sentence in renumbered subdivision (c); replaced “Board” with “Deputy Director” in the second sentence in renumbered subdivision (c); added “or the Deputy Director of the assigned section’s Department” to renumbered subdivision (d); and deleted “and the determination is not required to be submitted to the Board” from after “granted” in renumbered subdivision (d).

5238. CREDITS AND OFFSETS MAY REDUCE REFUNDS.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant’s refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant.

(c) Diesel Fuel Tax Law. Credits claimed on a return in lieu of claiming a refund under Revenue and Taxation Code sections 60501 and 60502 are not subject to the requirements of this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6483, 6512, 6901, 8126, 8778, 8802, 9151, 12426, 12977, 30176, 30176.1, 30176.2, 30177, 30203, 30222, 30361, 38413, 38422, 38601, 40073, 40082, 40111, 41072, 41081, 41100, 43201, 43451, 45201, 45651, 46201, 46252, 46501, 50113, 50139, 55001, 55221, 60521.

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

5239. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS.

(a) This section only applies to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class must establish:

(1) It is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and fact that are or are not common to all class members, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative’s written authority to act as representative for each class member, which authority must authorize Board Staff to release to the representative any confidential information in the Board’s files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) The representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative’s claim and any differences between the representative’s status as a class member and that of any other class member shall be described.

(6) The representative can fairly and adequately protect the interests of each member of the class and the representative’s interests are not antagonistic to members of the class.

(7) When requested by Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If Board Staff finds that the claim is a proper combined claim it will, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If Board Staff finds that the claim is not a proper combined claim, it will act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund is limited to the amount of tax overpayment by that member under the tax law under which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish or make available to Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to Board Staff, the representative or member, will be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law under which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply to persons who have not previously been notified of the claim, or who have notified Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Government Code section 15606(a); Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262 and 7270. Reference: Revenue and Taxation Code sections 6814, 6904 and 6932.

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

**ARTICLE 4A: REQUESTS FOR INNOCENT SPOUSE RELIEF
UNDER THE SALES AND USE TAX LAW**

5240. PERSONS WHO MAY FILE, CONTENTS OF, AND MANNER OF FILING REQUESTS FOR INNOCENT SPOUSE RELIEF.

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

(1) In writing.

(2) Signed and dated by the individual requesting relief.

(3) Specifically request innocent spouse relief.

(4) Identify the tax or fee from which relief is sought.

(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1 or section 4903.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

Offer in Compromise Section, MIC: 52
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted "(Sales and Use Tax, Including State-Administered Local Sales, Transactions, and Use Taxes)" from the end of the title of the regulation; deleted "that has a sales or use tax liability and meets the requirements of California Code of Regulations, title 18, section 1705.1, subdivision (a)," from before "may," and added the text following "Board" in subdivision (a) to make the regulation applicable to requests for innocent spouse relief regarding all the taxes and fees imposed under the laws listed in subdivision (a); deleted "tax" from before "relief" in subdivision (b)(3); inserted "or fee" after "tax" in subdivision (b)(4); deleted "tax" from before "liability" in subdivision (b)(5); inserted "applicable" and " , or section 4903, subdivision (e)" in subdivision (d); deleted the first sentence in subdivision (e), which encouraged the use of electronic means for the filing of requests for relief; inserted " , or submitted to a collector that is already assigned to the account at issue" in the second to last sentence in subdivision (e), and deleted the last sentences in subdivision (e); added citations to Revenue and Taxation Code sections 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, and 55301 to the regulation's authority note; and added citations to Revenue and Taxation Code sections 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, and 55045.1 to the regulation's reference note.

3. Amendments adopted September 16, 2015, effective January 1, 2016. The amendments deleted the specific references to "subdivision (e)" from the ends of the cross-references to Regulations 1705.1 and 4903 in subdivision (d); added a reference to Revenue and Taxation Code section 60601 to the regulation's authority note; and added a reference to Revenue and Taxation Code section 60210.5 to the regulation's reference note.

5241. ACKNOWLEDGEMENT AND REVIEW OF REQUESTS FOR INNOCENT SPOUSE RELIEF.

(a) Acknowledgment. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted "Assignment and" from the beginning of the title of subdivision (a); replaced "Once received, a request for innocent spouse relief will be assigned to Board staff in" with "When" at the beginning of subdivision (a); inserted "receives a request for innocent spouse relief," after "Section" and replaced "who" with "it" in subdivision (a); changed "acknowledge" to "acknowledgement" in subdivision (a)(1); deleted "Board "Staff in" from before "the Offer in Compromise Section" in subdivisions (b), (c), and (c)(2), and the first sentence in subdivision (d); replaced "Board Staff" with "it" in subdivisions (b) and (c); inserted "or section 4903, subdivision (h)," in subdivision (c)(2) and inserted ", or section 4903, subdivision (h)" in the first sentence in subdivision (d); replaced "Board Staff" with the "Offer in Compromise Section" in the second sentence in subdivision (d); added citations to Revenue and Taxation Code sections 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, and 55301 to the regulation's authority note; and added citations to Revenue and Taxation Code sections 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, and 55045.1 to the regulation's reference note.
3. Amendments adopted September 16, 2015, effective January 1, 2016. The amendments changed the title of subdivision (a) from "Review" to "Acknowledgement"; added ", and include a questionnaire and financial statement for the individual requesting relief to complete and return" to the end of subdivision (a)(1); deleted subdivision (a)(3) and (4); deleted subdivisions (b), (c), and (d); added new subdivisions (b) and (c); added a reference to Revenue and Taxation Code section 60601 to the regulation's authority note; and added a reference to Revenue and Taxation Code section 60210.5 to the regulation's reference note.

5242. REQUESTS FOR RECONSIDERATION BY THE BOARD.

(a) If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. A request for a Board hearing may be denied on a request for reconsideration, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the letter described in section 5241, subdivision (c).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "an oral" with "a Board" before "hearing" in the first and second sentences and inserted ", or section 4903, subdivision (h)" in the first sentence in subdivision (a); replaced "An oral" with "A Board" and replaced "on" with "in" in subdivision (b); replaced "an oral" with "a Board" before the first reference to "hearing" and replaced "oral" with "Board" before the second reference to "hearing" in subdivision (c); added citations to Revenue and Taxation Code sections 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, and 55301 to the regulation's authority note; and added citations to Revenue and Taxation Code sections 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, and 55045.1 to the regulation's reference note.
3. Amendments adopted September 16, 2015, effective January 1, 2016. The amendments replaced "a request for" with "the Offer in Compromise Section denies both innocent spouse relief and," replaced "is denied" with "as to any liability included in a request for innocent spouse relief," changed "denial" to "denials," deleted the specific references to "subdivision (h)" from the ends of the cross-references to

Regulations 1705.1 and 4903, and replaced “other equitable relief” with “reconsideration” in subdivision (a); deleted “denial” from before “letter” and replaced the reference to Regulation 5241, “subdivision (d)” with a reference to “subdivision (c)” in subdivision (b); added a reference to Revenue and Taxation Code section 60601 to the regulation’s authority note; and added a reference to Revenue and Taxation Code section 60210.5 to the regulation’s reference note.

ARTICLE 4B: SUCCESSOR’S REQUEST FOR RELIEF OF PENALTY UNDER THE SALES AND USE TAX LAW

5243. SUCCESSOR’S REQUEST FOR RELIEF.

A successor requesting relief from penalties as provided in California Code of Regulations, title 18, section 1702, subdivision (d)(2), may include its request for relief in its petition for reconsideration or amend its previously filed petition to include such request. If the successor has not filed a petition for reconsideration and does not intend to do so, the successor may file a request for relief from penalties without filing a petition for reconsideration. Every successor’s request for relief filed under this section must include a written statement signed under penalty of perjury stating the facts upon which the claim for relief is based, regardless of whether the request is included in a petition for reconsideration. Such request for relief must be filed in accordance with the procedures in article 2A of this chapter for filing a petition for redetermination under the Sales and Use Tax Law.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 7051. Reference: Revenue and Taxation Code section 6814.

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

ARTICLE 4C: OTHER REQUESTS FOR 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.

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. A request for an oral hearing on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or petition for reconsideration, or claim for refund, the procedures applicable to such petitions or claims apply to the request for relief. A request for relief included in a petition for redetermination or petition for reconsideration, or claim for refund must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination, petition for reconsideration, or claim for refund filed by the same person and covering the same periods as the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

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

5245. AUTHORITY TO GRANT RELIEF FOR REASONABLE CAUSE AND CONTENTS OF REQUESTS FOR RELIEF FOR REASONABLE CAUSE.

(a) Authority to Grant Relief. If a person’s failure to make a timely return, report, payment, or prepayment, or failure to comply with a written notice issued under Revenue and Taxation Code section 6074, subdivision (a) is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

(1) Sales and Use Tax Law. Revenue and Taxation Code sections 6074, 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, 7713, 7726, and 7727.

- (3) Use Fuel Tax Law. Revenue and Taxation Code sections 8760, 8801, 8854, and 8876.
- (4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12282, 12287, 12631, 12632, and 12633.
- (5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30171, 30190, 30221, 30264, and 30281.
- (6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.
- (7) Timber Yield Tax Law. Revenue and Taxation Code sections 38421 and 38451.
- (8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40067, 40081, 40096, and 40101.
- (9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41060, 41080, 41090, and 41095.
- (10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43155, 43170, and 43306.
- (11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45153, 45160, and 45306.
- (12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46154, 46154.1, 46160, 46251, and 46356.
- (13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50112, 50112.7, and 50119.
- (14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55042, 55050, and 55086.
- (15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60250, 60301, 60338, 60355, 60361, and 60361.5.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.

(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 7657, 8877, 12636, 30282, 32255, 38452, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, 60209.

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

5246. AUTHORITY TO GRANT RELIEF DUE TO UNREASONABLE ERROR OR DELAY AND CONTENTS OF REQUESTS FOR RELIEF DUE TO UNREASONABLE ERROR OR DELAY.

(a) A person may be relieved of interest imposed under the tax and fee laws described in subdivision (b), if the person was charged interest due to:

(1) Unreasonable error or delay:

(A) By Board Staff acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(2) An error by an employee of the Department of Motor Vehicles in calculating the use tax due on a vehicle or vessel registered with the Department of Motor Vehicles.

(b) This section applies to interest imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section must:

(1) Be in writing;

- (2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;
- (3) Specifically identify the period for which interest relief is sought; and
- (4) Be signed by the person requesting relief under penalty of perjury.

(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6593.5, 7658.1, 8878.5, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, 60212.

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

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.

(a) A person may be relieved from liability for the payment of a tax or fee imposed under the tax and fee laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure is found to be due to reasonable reliance on:

- (1) Written advice given under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (b) or section 4902, subdivision (b);
- (2) Written advice given in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (c) or section 4902, subdivision (c);
- (3) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (d) or 4902, subdivision (d); or
- (4) Written advice requested by a trade or industry association or franchisor, on the person's behalf, under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (e) or section 4902, subdivision (e).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

- (1) Be in writing;
- (2) Include the specific facts upon which the request for relief is based;
- (3) Be signed by the person requesting relief under penalty of perjury; and
- (4) Include an attached copy of the person's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

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

2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted "or" from the ends of subdivision (a)(1) and (2); replaced "in the form of an annotation or legal ruling of counsel" with "given in a prior audit of that person" in subdivision (a)(2); replaced "given in a prior audit of that person" with "in the form of an annotation or legal ruling of counsel" in subdivision (a)(3); inserted "; or" after subdivision (a)(3); and added new subdivision (a)(4).

5248. AUTHORITY TO GRANT RELIEF DUE TO DISASTER AND CONTENTS OF REQUESTS FOR RELIEF DUE TO DISASTER.

(a) If a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under:

- (1) Sales and Use Tax Law. Revenue and Taxation Code sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.
- (2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7656, 7659.9, 7661, and 7706.
- (3) Use Fuel Tax Law. Revenue and Taxation Code sections 8754, 8760, 8803, and 8876.
- (4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.
- (5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30815, 30190, 30223, and 30281.
- (6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.
- (7) Timber Yield Tax Law. Revenue and Taxation Code sections 38405, 38423, and 38451.
- (8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40065, 40067, 40083, and 40101.
- (9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41054, 41060, 41082, and 41095.
- (10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43154, 43155, 43170, and 43201.
- (11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45152, 45153, 45160, and 45201.
- (12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46153, 46154, 46160, and 46253.
- (13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50111, 50112, and 50112.7.
- (14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55041, 55042, 55050, and 55061.
- (15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60208, 60250, 60302, and 60339.

(b) A request for relief of interest due to a disaster must:

- (1) Be in writing;
- (2) Identify the disaster due to which relief is sought;
- (3) Identify the period for which relief is sought; and
- (4) Be signed by the person requesting such relief under penalty of perjury.

(c) Form BOE-27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6593, 7658, 8878, 12637, 30283, 32256, 38453, 40103, 41097, 43158, 45156, 46157, 50112.3, 55046.5, 60211.

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

5249. FILING REQUESTS FOR RELIEF.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5216 for the filing of a petition for redetermination concerning the same tax or fee law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5233 for the filing of a claim for refund concerning the same tax or fee law at issue in the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

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

5249.4. ASSIGNMENT AND ACKNOWLEDGEMENT OF REQUESTS FOR RELIEF.

(a) Sales and Use Tax Law.

(1) Generally, a request for relief of an unpaid amount filed under the Sales and Use Tax Law will be assigned to and reviewed by Board Staff in the Petitions Section. However, a request for relief of an amount included in a return, will be assigned to and reviewed by Board Staff in the Return Analysis Section regardless of whether the amount is paid.

(2) A request for relief of a previously paid amount filed under the Sales and Use Tax Law may be treated as a claim for refund, and assigned to and reviewed by Board Staff in the Audit Determination and Refund Section under the procedures contained in article 3 of this chapter.

(b) Special Taxes.

(1) A request for relief filed under any tax or fee law governed by this chapter (other than the Sales and Use Tax Law), will be assigned to and reviewed by Board Staff in the appropriate section responsible for the particular tax or fee law concerned.

(2) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and assigned to and reviewed by Board Staff in the appropriate section under the procedures contained in article 3 of this chapter.

(c) Once the request for relief is assigned, the assigned Board Staff will promptly send the person requesting relief an acknowledgement letter containing the contact information for the assigned section, which may include a request for additional information.

(d) This section does not apply to requests for relief included in a petition for redetermination, petition for reconsideration, or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

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

5249.6. REVIEWING REQUESTS FOR RELIEF.

(a) The assigned Board Staff will review a request for relief to:

- (1) Determine if the request satisfies the requirements of this article 4C; and
- (2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned Board Staff may request additional information from the person requesting relief.

(c) Once the review is completed, the assigned Board Staff may determine that:

- (1) No relief is warranted;
- (2) Partial relief is warranted; or

(3) Full relief is warranted.

(d) Once the determination in subdivision (c) is made, the assigned Board Staff shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned Board Staff's decision, the person requesting relief may request reconsideration of the decision by the Deputy Director of the Sales and Use Tax or Special Taxes Department, as appropriate. Thereafter, the Deputy Director responsible for the tax or fee law concerned will prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e), the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, a request for an oral hearing on a request for relief may be granted. If a request for an oral hearing is granted, the Board may require that the person requesting relief participate in an appeals conference conducted under article 6 of this chapter prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

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

ARTICLE 5: PETITIONS FOR REALLOCATION OF LOCAL AND DISTRICT TAXES

5250. PETITIONS FOR REALLOCATION OF LOCAL AND DISTRICT TAXES.

A petition for reallocation of local or district tax must be filed and shall be reviewed in accordance with the procedures contained in California Code of Regulations, title 18, section 1807 or 1828.

Note: Authority cited: Section 15606, Government Code; and Sections 7202, 7203, 7261, 7262, 7270, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments changed the regulation's title from "Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes" to "Petitions for Reallocation of Local and District Taxes"; deleted subdivisions (a) and (b); replaced "claim or inquiry will be acknowledged" with "petition for reallocation of local or district tax must be filed" and inserted "shall be" in subdivision (c); and deleted the designation "(c)" from before the text previously denoted as subdivision (c).

ARTICLE 5.5: CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT APPEALS AND PETITIONS FOR RECOVERY OF SEIZED CIGARETTE AND TOBACCO PRODUCTS.

5255. CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT APPEALS.

Petitions for redetermination regarding the denial of licenses to sell cigarette and tobacco products and appeals of Warning Notices and Notices of Violation issued under the Cigarette and Tobacco Products Licensing Act of 2003 must be filed in accordance with chapter 9.5 (commencing with section 4500) of division 2 of title 18 of the California Code of Regulations and shall be reviewed as provided therein.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22974.7, 22977.2, 22978.7, 22979 and 22979.7, Business and Professions Code.

History: 1. Adopted November 19, 2013, effective April 1, 2014. The new regulation requires specified petitions and appeals to be filed and reviewed in accordance with the Board's Cigarette and Tobacco Products Licensing Act regulations.

5256. PETITIONS FOR RECOVERY OF SEIZED CIGARETTE AND TOBACCO PRODUCTS.

Petitions to request the recovery of cigarette and tobacco products seized pursuant to the Cigarette and Tobacco Products Tax Law (Rev. & Tax. Code, § 30001 et seq.) or the Cigarette and Tobacco Products Licensing Act of 2003 (Bus. & Prof. Code, § 22970 et seq.) must be filed in accordance with chapter 9.5 (commencing with section 4500) of division 2 of title 18 of the California Code of Regulations and shall be reviewed as provided therein.

Note: Authority cited: Section 22971.2, Business and Professions Code; and Section 30451, Revenue and Taxation Code. Reference: Sections 22974.3, 22978.2 and 22980.2, Business and Professions Code; and Section 30438, Revenue and Taxation Code.

History: 1. Adopted November 19, 2013, effective April 1, 2014. The new regulation requires specified petitions to be filed and reviewed in accordance with the Board's Cigarette and Tobacco Products Licensing Act regulations.

ARTICLE 6: APPEALS CONFERENCES

5260. REFERRAL TO APPEALS DIVISION FOR APPEALS CONFERENCE; PREFERRED LOCATION FOR APPEALS CONFERENCE.

(a) If a petition for redetermination, petition for reconsideration, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals Division for an appeals conference, Board Staff will contact the petitioner, claimant, or person requesting relief:

- (1) To verify and update the person's contact information; and
- (2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.

(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

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

5261. NOTICE OF APPEALS CONFERENCE: RESPONSE TO NOTICE OF APPEALS CONFERENCE; SUBMISSION OF ADDITIONAL ARGUMENTS AND EVIDENCE; RECORDING APPEALS CONFERENCES.

(a) Board Proceedings Staff will prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which must include the date, time, and location of the appeals conference.

(b) Board Proceedings Staff will include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete and return the Response to Notice of Conference within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5264 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals Division within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(d) Appeals conferences are not recorded. If the petitioner, claimant or person requesting relief would like to record the appeals conference the person must check the appropriate box on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals Division upon request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 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.

5262. REQUESTS TO RESCHEDULE OR POSTPONE APPEALS CONFERENCES.

(a) A request to postpone or reschedule an appeals conference may be submitted to the Board Proceedings Division at the fax number or email address below or in accordance with instructions provided for the return of the Response to Notice of Appeals Conference form or instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097
ConfereceInfo@boe.ca.gov
(916) 324-3984

(b) Rescheduling. An appeals conference will be rescheduled only to a date within 30 days of the previously scheduled conference date, and only for a video or telephone conference or an in-person conference either at the Board's headquarters or at an office in southern California designated by the Board Proceedings Division. A party's initial written request to reschedule an appeals conference will be granted. A party's subsequent written request to reschedule an appeals conference will only be granted if the Chief of Board Proceedings determines that there is reasonable cause.

(c) Postponement. An appeals conference will not be rescheduled to a date more than 30 days after the previously scheduled conference date, but may, instead, be postponed. When an appeals conference is postponed, the appeal is placed back into the inventory of unassigned cases and reassigned to a conference holder at a later date. When that appeal is thereafter scheduled for an appeals conference, the Board Proceedings Division will notify the taxpayer as specified in section 5261. If a party files a written request for a postponement of an appeals conference by the return date specified in the Response to Notice of Appeals Conference form, the request will be granted if the Chief of Board Proceedings determines that there is reasonable cause. If a party requests a postponement of the appeals conference after the return date specified in the Response to Notice of Appeals Conference form, or files a second or subsequent request for a postponement, the request will be granted only if the Chief of Board Proceedings determines that there is reasonable cause and that the postponement will not unduly delay the appeal.

(d) The Board Proceedings Division may also reschedule or postpone an appeals conference at the request of the Appeals Division for reasonable cause, including unavailability of the scheduled conference holder due to illness or because of the departure of the scheduled conference holder from the Appeals Division.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631,

40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

- History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted the first sentence in subdivision (a), which encouraged the use of electronic means for the filing of requests; replaced "filed electronically under this section if it is transmitted" with "submitted," inserted "at the fax number or email address below or," and inserted "for the return of the Response to Notice of Appeals Conference form or instructions provided" in the second sentence in subdivision (a); added the email address and fax number to the Board Proceedings Division's contact information in subdivision (a); deleted the last sentence in subdivision (a) (after the contact information); replaced all of the text, except the title, in subdivision (b); replaced the first sentence in subdivision (c); replaced "A postponement results in the case being" with "When an appeals conference is postponed, the appeal is" at the beginning of the second sentence in subdivision (c); inserted "to a conference holder at a later date" at the end of the second sentence in subdivision (c); added a new third sentence to subdivision (c); revised the fourth sentence in subdivision (c), which previously provided that "If a party requests a postponement of an appeals conference to be held at a district office within 15 days after the date of the Notice of Appeals Conference sent by Board Proceedings Staff and has sufficient justification for requesting the postponement, the Chief of Board Proceedings may allow the postponement"; deleted "later than 15 days" from before "after," inserted "return," replaced "of" with "specified in," inserted "Response to," inserted "form," and replaced all of the text following the comma after "Appeals Conference" in the fifth sentence in subdivision (c); deleted the last sentence from subdivision (c); and added a new subdivision (d).

5263. WAYS TO EXPEDITE AN APPEALS CONFERENCE.

(a) Board Proceedings Staff will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

- (1) Attend an appeals conference at the Board's headquarter located at 450 N Street, Sacramento, California;
- (2) Attend a video conference at one of the Board's district offices with the necessary equipment; or
- (3) Participate in a telephone conference (Board Staff will place the call).

(b) Subdivision (a) only applies to written notices sent to the Board Proceedings Division at or before the due date of the Response to Notice of Conference. Such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) has expired, Board Proceedings Staff will attempt to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief notifies the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

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

5264. CONDUCTING THE APPEALS CONFERENCE; PARTIES TO THE APPEALS CONFERENCE; NATURE OF THE APPEALS CONFERENCE; ADDITIONAL SUBMISSIONS.

(a) The appeals conference will be held by an Appeals Division conference holder who has not had any prior involvement in the appeal being discussed at the appeals conference. It is the responsibility of the Appeals Division to take a fresh look at the law and the facts and make the Appeals Division's own objective recommendation.

(b) Generally, one or more representatives from the appropriate Department will be present at the appeals conference to provide the Department's position in the appeal. Where appropriate, other Board Staff may be present at the appeals conference.

(c) A representative from another state agency may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency. Such a representative will provide his or her agency's position in the appeal.

(d) The appeals conference is not an adversarial proceeding; it is an informal discussion of the relevant facts and applicable laws. It is important that all relevant information be presented to the Appeals Division. A party may submit additional written arguments and documentary evidence to the Appeals Division at any time before or during the appeals conference, but may do so after the conference only with the consent of the Appeals Division.

(1) If any party requests permission to submit additional written arguments, documentary evidence, or both after the appeals conference and the conference holder concludes that the additional submission should be accepted, he or she will grant that party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, to submit such arguments and evidence from the date the request is made. The conference holder will also grant the other party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, to respond after that submission.

(2) The Appeals Division may, at any time before the appeal is final, request additional written argument, analysis, or documentation from any party, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "Failure to Appear" with "Additional Submissions" in the title of the regulation; deleted the titles from subdivisions (a) through (d); replaced "Appeals Staff that" with "an Appeals Division conference holder who," replaced "matter" with "appeal," replaced "Appeals Staff" with "the Appeals Division," and replaced "Appeals Staff's" with "the Appeals Division's" in subdivision (a); replaced "Board Staff" with "one or more representatives" and replaced "reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted" with "Department's position in the appeal" in subdivision (b); replaced "reasons for determining that the tax or fee at issue is due or should not be refunded" with "position in the appeal" in subdivision (c); replaced "As such, it" with "It" and replaced "Appeals Staff" with "the Appeals Division" in subdivision (d); replaced "Appeals Staff" with "the Appeals Division" and added the text after "appeals conference" in the first sentence in subdivision (d)(1); deleted the designation "(1)" and deleted the second sentence from the text previously designated as subdivision

(d)(1); revised the first sentence in subdivision (d)(2), which previously provided that "If any party requests permission to submit additional written arguments and documentary evidence at the appeals conference, Appeals Staff may grant that party 15 days after the appeals conference to submit such arguments and evidence"; replaced the second sentence and deleted the third sentence in subdivision (d)(2); renumbered subdivision (d)(2) as subdivision (d)(1); added a new subdivision (d)(2); and deleted subdivisions (d)(3), (e) and (f).

5265. ISSUANCE AND CONTENTS OF A DECISION AND RECOMMENDATION.

(a) Within 90 days after the submission of any additional documents as authorized in section 5264, subdivision (d), Appeals Staff must issue a written report containing Appeals Staff's findings, called a Decision and Recommendation, copies of which must be sent to all parties. The Chief Counsel may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time must be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation must include all of the following:

(1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;

(2) The position of Board Staff in the appropriate Department on each issue raised by the petitioner, claimant, or person requesting relief;

(3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;

(4) A clear application of the relevant law to all the relevant information presented to Appeals Staff;

(5) Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information; and

(6) A summary of any additional information or documentation that was not presented to Appeals Staff, which might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error should contact Appeals Staff immediately. Appeals Staff may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

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

5266. APPEALS DIVISION RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR BOARD HEARINGS; SUPPLEMENTAL DECISION AND RECOMMENDATION.

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

(1) Deny the appeal in its entirety.

(2) Grant the appeal in its entirety.

(3) Grant the appeal in part.

(4) That the appropriate Department perform a reaudit as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the appeal in whole or in part or a reaudit, the taxpayer may submit, within 30 days after the issuance of the Decision and Recommendation or the issuance of the letter from the Appeals Division explaining the results of the reaudit:

(1) A written request for reconsideration to the Appeals Division. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the taxpayer disagrees with the Decision and Recommendation, the results of the reaudit, or both; or

(2) A written request for a Board hearing to the Board Proceedings Division if the taxpayer has not previously done so.

(A) If a Board hearing has been requested, but the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or it is unclear whether the taxpayer disagrees with any portion of its Decision and Recommendation, the Appeals Division may ask the taxpayer to confirm the request for Board hearing.

(B) If a Board hearing is requested and, if applicable, confirmed, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(c) If the Decision and Recommendation recommends that the appeal be granted in whole or in part or a reaudit:

(1) The Department and any state agency represented at the appeals conference may submit a written request for reconsideration to the Appeals Division within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the Department or other state agency disagrees with the Decision and Recommendation, the results of the reaudit, or both.

(2) Any state agency represented at the appeals conference may submit a written request for a Board hearing to the Board Proceedings Division, within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. If a Board hearing is requested, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(d) If a party submits a timely request for reconsideration, as provided in subdivisions (b) and (c)(1) of this section, the Appeals Division will prepare a Supplemental Decision and Recommendation to respond to the request for reconsideration and address any other matter the Appeals Division deems warranted. The Appeals Division may also issue a Supplemental Decision and Recommendation when it deems it appropriate to do so, including where no party has filed a timely request for reconsideration. For example, while the Appeals Division is not required to do so, it may issue a Supplemental Decision and Recommendation to respond to a request for reconsideration submitted in response to a Supplemental Decision and Recommendation or otherwise filed more than 30 days after the issuance of the Decision and Recommendation or the letter explaining the results of a reaudit.

(1) When the Appeals Division receives a request for reconsideration, it will send a letter to acknowledge receipt of the request and, if the request had not been submitted within the period specified in subdivisions (b) and (c)(1) of this section, to advise the parties whether the Appeals Division will issue a Supplemental Decision and Recommendation in response to the request. Where the Appeals Division will issue a Supplemental Decision and Recommendation, the letter will offer the other party the opportunity to respond to the request for reconsideration. Where the Appeals Division decides to issue a Supplemental Decision and Recommendation where no party has submitted a request for reconsideration, it will promptly send a letter to the parties to notify them of the forthcoming Supplemental Decision and Recommendation.

(2) The Appeals Division may request additional written argument, analysis, or documentation from any party if it determines that the information may be relevant to the preparation of a Supplemental Decision and Recommendation, and when it does so, will determine how long to provide the party to respond and will so

inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

(3) The Appeals Division must issue a Supplemental Decision and Recommendation within 90 days after the submission of any additional documents requested under paragraph (2), a copy of which will be sent to each party. The Chief Counsel may allow additional time beyond the 90 days to prepare a Supplemental Decision and Recommendation; however, both the request for additional time and the granting of additional time must be in writing and copies provided to each party to the appeal.

(4) A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c), as relates to the issues addressed in the Supplemental Decision and Recommendation, and may make the recommendations listed in subdivision (a) above.

(5) The provisions for requesting a Board hearing following the issuance of a Decision and Recommendation set forth in subdivisions (b) and (c)(2) of this section are applicable to the issuance of a Supplemental Decision and Recommendation.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted October 6, 2009, effective February 19, 2010. Replaced \$50,000 with \$100,000 in subdivision (f), and added new subdivision (g).
3. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "Staff" with "Division," replaced "Oral" with "Board," and inserted "; Supplemental Decision and Recommendation" in the title of the regulation; inserted "The" and replaced "Staff" with "Division" in subdivision (a); replaced "petition, claim, or request for relief" with "appeal" in subdivisions (a)(1), (2), and (3) and (b); deleted "Board Staff in" from after "That" and replaced "re-audit the issues raised in the petition, claim, or request for relief" with "perform a reaudit" in subdivision (a)(4); inserted "or a reaudit," replaced "petitioner, claimant, or person requesting relief" with "taxpayer," and inserted the text after "may" in subdivision (b); replaced "File a" with "A" and replaced "Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued" with "reconsideration to the Appeals Division" in the first sentence in subdivision (b)(1); add the second sentence to subdivision (b)(1); replaced "Disagree and file a" with "A," replaced "an oral" with "a Board," and replaced "before the Board no later than 30 days after the Decision and Recommendation was issued" with "to the Board Proceedings Division if the taxpayer has not previously done so" in the first sentence in subdivision (b)(2); deleted the second sentence in subdivision (b)(2) and deleted subdivision (b)(2)(A); replaced "an oral" with "a Board," inserted "the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or," replaced "petitioner, claimant, or person requesting relief" with "taxpayer," and replaced "(or supplemental Decision and Recommendation) Board Staff will:" with ", the Appeals Division may ask the taxpayer to confirm the request for Board hearing." in subdivision (b)(2)(B); deleted subdivision (b)(2)(B)(i) and (ii); renumbered subdivision (b)(2)(B) as subdivision (b)(2)(A) and added a new subdivision (b)(2)(B); deleted subdivision (b)(3); replaced "a petition, claim, or request for relief" with "the appeal" and replaced ", the Department represented at the appeals conference, and any state agency represented at the appeals conference, may" with "or a reaudit" in subdivision (c); replaced "File" with "The Department and any state agency represented at the appeals conference may submit," replaced "for Appeals Staff to reconsider the petition, claim, or request for relief" with "for reconsideration to the Appeals Division," inserted "issuance of the," and replaced "was issued" with "or letter from the Appeals Division explaining the results of the reaudit" in the first sentence in subdivision (c)(1); added a

new second sentence to subdivision (c)(1); deleted subdivision (c)(2); replaced "Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any" with "Any," replaced "file" with "submit," replaced "an oral" with "a Board," replaced "before the Board no later than" with "to the Board Proceedings Division, within," inserted "issuance of the," and replaced "was issued" with "or letter from the Appeals Division explaining the results of the reaudit" in the first sentence in subdivision (d); replaced "an oral" with "a Board" twice, inserted "the" before "Board Proceedings," replaced "Staff" with "Division," and deleted "before the Board" from after the second reference to "hearing" in the second sentence in subdivision (d); replaced "an oral" with "a Board" and replaced "oral" with "Board" in the third sentence in subdivision (d); renumbered subdivision (d) as subdivision (c)(2); replaced "If Appeals Staff receive a" with "If a party submits a timely," replaced "Appeals Staff" with "as provided in subdivision (b) and (c)(1) of this section, the Appeals Division," replaced "addressing any new information provided in" with "to respond to," and replaced ", copies of which will be sent to all parties" with "and address any other matter the Appeals Division deems warranted" in the first sentence in subdivision (e); replaced "Appeals Staff" with "The Appeals Division" and replaced all the text following "Recommendation" in second sentence in subdivision (e); added a new third sentence to subdivision (e); reformatted the last sentence in subdivision (e) as subdivision (e)(4) and added the text following "subdivision (c)" to subdivision (e)(4); added subdivisions (e)(1), (2), (3), and (5) and renumbered subdivision (e) as subdivision (d); and deleted subdivisions (f) and (g).

5267. ISSUANCE OF POST APPEALS CONFERENCE NOTICES; BOARD APPROVAL.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

- (1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;
- (2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and
- (3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax for approval, at which time:

- (1) The Deputy Director may approve the recommendation.
- (2) The Deputy Director may exercise discretion to make the Deputy Director's own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

(d) If the Appeals Division or a Deputy Director recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 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 and 60581, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments added “; Board Approval” to the title of the regulation and replaced all of the prior text of the regulation with new text.
3. Amendments adopted December 16, 2015, effective March 1, 2016. The amendments replaced “Board” with “Deputy Director of the Board’s Department responsible for administering the tax” and deleted “as a nonappearance item” from after “approval” in subdivision (c); replaced “Board” with “Deputy Director” at the beginning of subdivision (c)(1) and (2); deleted “its” after “exercise,” replaced “its” with “the Deputy Director’s,” and inserted “and may do so” before “without” in the first sentence in subdivision (c)(2); deleted “, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division” from the end of the first sentence in subdivision (c)(2); added the second, third, and fourth sentences to subdivision (c)(2) and added subdivision (c)(2)(A) and (B); deleted subdivision (c)(3); replaced “a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation,” with “the Appeals Division or a Deputy Director” in subdivision (d); and deleted “, and the recommendation does not require Board approval” from before “the proposed action” in subdivision (d).

5268. PROCEDURES FOR CONDUCTING BOARD HEARINGS.

Board hearings will be conducted under the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522.

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

ARTICLE 7: OPTIONAL BRIEFS FOR BOARD HEARINGS

5270. REQUIREMENTS FOR BRIEFS; BRIEFING SCHEDULE; NON-PARTY BRIEFS; ADDITIONAL BRIEFING.

(a) Optional Briefing. The parties to a Board hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed under this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.

(b) Requirements for Briefs.

(1) Timeliness. All briefs must be filed within the time periods provided in this section unless an extension is granted by the Chief Counsel in accordance with section 5271.

(2) Filing. All briefs permitted or required to be filed by this section shall be filed in accordance with section 5570 of this division. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Department represented at the appeals conference.

(3) Format. Briefs may not exceed:

(A) 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced;

(B) 8 1/2" by 11" pages;

(C) Printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent;

(D) Excluding exhibits.

(4) The Chief Counsel may extend the page limit in paragraph (3) prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event a brief does not conform to the form and page limits specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party will be given 10 days to comply with the form and page limits, and failure to do so within the 10-day period constitutes a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing under section 5266 may file an opening brief. An opening brief must contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs must be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

(d) Reply Briefs. Any party to a Board hearing may file a reply brief in response to any opening brief. A reply brief must contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs must be filed with the Chief of Board Proceedings no later than 35 days before the Board hearing.

(e) Response to Reply Brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief may only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief must be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing. The Chief of Board Proceedings must reject a response to a reply brief that exceeds the scope permitted by this subdivision.

(f) Additional Briefing.

(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions are permitted only by order of the Board, on the subject matter specified, and within the time limits prescribed by the Board.

(2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 10 days before the hearing. The

response by any party may address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief must conform to the general requirements set forth in subdivision (b). A non-party brief or letter must contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(3) Additional briefing. In extraordinary situations, the Board or Appeals Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing must be filed within the time specified by the Board or Appeals Staff.

(g) Untimely Briefs. Notwithstanding subdivisions (c), (d), and (e), a party may, at the discretion of the Board, submit a brief on the day of the party's Board hearing. Although the Board may permit a party to submit a brief at the party's Board hearing, the Board is not required to delay or postpone the party's Board hearing in order to consider the brief at the hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "If a party to an Appeals Conference or person requesting relief is granted a hearing before the Board, the" with "The" and replaced "such" with "a Board" in the first sentence in subdivision (a); added the sentence after the title in subdivision (b)(2); deleted subdivision (b)(2)(A), (B), and (C), and deleted the designation "(D)" and title from subdivision (b)(2)(D) so that the text of subdivision (b)(2)(D) is now the second sentence in subdivision (b)(2); deleted "under section 5264, subdivision (b)" from the end of the text that was previously in subdivision (b)(2)(D); changed the title of subdivision (g) from "Briefs Filed by Unrepresented Parties" to "Untimely Briefs"; deleted "who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief," from after "party" and inserted "party's Board" in the first sentence in subdivision (g); and replaced the second sentence in subdivision (g).

5271. EXTENSIONS OF TIME FOR FILING BRIEFS.

The Chief Counsel may grant a reasonable extension of time for the filing of any brief, upon a showing of reasonable cause. The request for an extension of time must be submitted in writing before the scheduled due date of any brief. If an extension of time is granted for the filing of any brief, the Chief Counsel will also grant an appropriate extension of time for filing a response to such brief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2,

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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.

