



Special Notice

STATE BOARD
OF EQUALIZATION

Revised Process for Reviewing Local Tax Reallocation Inquiries

450 N Street
Sacramento
California 95814

On January 1, 2003, we will begin to follow the local tax reallocation inquiry procedures established in proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries* (see enclosed copy). The regulation includes new procedures for reallocation appeals made to the elected Members of the Board of Equalization. Otherwise it closely follows our existing process (see September 1998 *Notice to City, Town, and County Officials and Consultants*).

Review by the Members of the Board

Under proposed Regulation 1807, a local jurisdiction and its consultants may request a hearing before the elected Members of the Board if our management denies a request for reallocation following earlier review steps. The review, petition filing, and hearing process are detailed in the regulation. Regulation 1807 also describes the review and hearing petition process for jurisdictions that will lose revenue as a result of an approved reallocation request.

While in the past Board hearings were held at the discretion of the Members, the new regulation ensures a Board hearing for all properly filed hearing petitions. All jurisdictions that would be substantially affected if the taxpayer's original local tax allocation is changed will be notified and considered parties to the hearing. (This includes the jurisdictions within the statewide and countywide pools that would gain or lose money solely as a result of a reallocation to or from the affected pools.) The decision made at the Board hearing is final and will exhaust all parties' administrative remedies.

Appeals of reallocation inquiries made under AB 990 (Revenue and Taxation Code section 6606.3) will also follow this process.

Submitting reallocation inquiries

To expedite local tax reallocation inquiry processing, jurisdictions and consultants should submit requests on form BOE-549-L, *Claimed Incorrect Distribution of Local Tax – Long Form*, or form BOE-549-S, *Claimed Incorrect Distribution of Local Tax – Short Form*. You may download fillable PDF copies of these forms at www.boe.ca.gov (see "Forms and Publications").

Please mail or fax the completed form directly to our Allocation Group at the address listed below (please send AB 990 inquiries to your local district office):

Mr. Chuck Gentry, Supervisor
Allocation Group, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039
Fax: 916-322-8834

For more information

If you have any questions regarding this regulation, please contact Mr. Chuck Gentry at the address above or by calling 916-324-1051. You may also e-mail him at chuck.gentry@boe.ca.gov.

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Proposed Regulation 1807 Process for Reviewing Local Tax Reallocation Inquiries

Board adopted August 2002. Pending approval by the Office of Administrative Law.

Regulation 1807. PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES.

Reference: Sections 7209 and 7223, Revenue and Taxation Code.

(a) DEFINITIONS. For inquiries under Revenue and Taxation Code section 6066.3, see subdivision (g) of this regulation.

(1) INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC). “Inquiring Jurisdictions and their Consultants (IJC)” means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.

(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX. Except for submittals under Revenue and Taxation Code section 6066.3, “claim or inquiry” means a written request from an IJC for investigation of suspected improper distribution of local tax. The inquiry must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.

(B) Taxpayer’s permit number or a notation stating “No Permit Number.”

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer’s business activity or activities.

(E) Specific reasons and evidence why the taxpayer’s allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

(F) Name, title, and phone number of the contact person.

(G) The tax reporting periods involved.

(3) DATE OF KNOWLEDGE. “Date of knowledge” shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry documenting IJC efforts to obtain each of the facts required by subdivision (a)(2) of this regulation, the Board will use the date this inquiry is received as the date of knowledge.

(4) BOARD MANAGEMENT. “Board Management” consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

(b) INQUIRIES.

(1) SUBMITTING INQUIRIES. Every inquiry of local tax allocation must be submitted in writing and shall include the information set forth in subdivision (a)(2) of this regulation. Except for submittals under Revenue and Taxation Code section 6066.3, all inquiries are to be sent directly to the Allocation Group in the Refund Section of the Board’s Sales and Use Tax Department.

Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

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(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a date of knowledge under subdivision (a)(2) of this regulation. The Allocation Group will review the inquiry and notify the IJC if the inquiry does not qualify to establish a date of knowledge.

(c) REVIEW PROCESS.

(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion was based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.

(2) REVIEW BY REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor a conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

(4) REVIEW BY BOARD MANAGEMENT. If the D&R's recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.

(5) REVIEW BY BOARD MEMBERS. If Board Management's decision is adverse to the IJC, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.

(A) Petition for Hearing. The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

(B) Persons to be Notified of the Board Hearing. After receiving the IJC's petition for hearing, the Board Proceedings Division will notify the IJC and the following persons of the Board hearing:

1. The taxpayer(s) whose allocations are the subject of the petition.
2. All jurisdictions that would be substantially affected if the Board does not uphold the taxpayer's original allocation (including the jurisdictions within the statewide and countywide pools that would gain or lose money solely as a result of a reallocation to or from the pools in which they participate). For the purpose of this subdivision a jurisdiction is "substantially affected" if its total reallocation would increase or decrease by the amount of 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, as a result of a reallocation of the taxpayer's original allocation.

The notification will state that the claimed misallocation is being placed on the Board's Hearing Calendar to determine the proper allocation and that the IJC and all jurisdictions so notified are considered parties to the hearing.

Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries

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(C) The Hearing and Parties to the Hearing. The petitioning IJC and all jurisdictions notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board will make a final decision at the hearing on the proper allocation. The Board's decision exhausts all parties' administrative remedies on the matter.

(D) Presentation of New Evidence. If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.

(d) TIME LIMITATIONS.

(1) An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.

(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.

(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.

(e) APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION.

(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing jurisdiction" includes a gaining jurisdiction where the original decision in favor of the gaining jurisdiction was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.

(2) If the losing jurisdiction contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed reallocation, the reallocation postponement will be extended pending the final outcome of the petition.

(f) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.

(g) APPLICATION TO SECTION 6066.3 INQUIRIES.

(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.

(2) The terms and procedures set forth in subdivision (c)(2) through (c)(5) of this regulation shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.

(h) The provisions of this regulation shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures

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contained in the "Process for Reviewing Reallocation Inquiries." (June 1996, amended October 1998) incorporated herein by reference in its entirety. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.