

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

NOTICE IS HEREBY GIVEN TO INTERESTED PARTIES THAT:

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

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

In 2005, the Board began a thorough review of the Rules of Practice and invited all the interested

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

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

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

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

- Chapter 1, *Title*
- Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*
- Chapter 3, *Property Taxes*
- Chapter 4, *Appeals from Actions of the Franchise Tax Board*
- Chapter 5, *General Board Hearing Procedures*

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

Chapter 1: Title of Division

5000 Statement of Intent; Title for Division

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

the relationship between taxpayers and the Board.

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

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

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

Article 1: Application of Chapter 2 and Definitions

5200 Application of Chapter 2 and Definitions.

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

5201 Application of the International Fuel Tax Agreement.

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

5202 Notice Requirements.

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

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

5210 Persons Who May File Petitions for Redetermination.

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

5210.5 Successor's Petition for Reconsideration.

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

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

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

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

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

5212.5 Amendments to Petitions for Redetermination.

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

5213 Accrual of Interest.

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

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

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

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

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

Department of Health Services' roles in the Board's appeals process.

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

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

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

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

5216 Filing Petitions for Redetermination.

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

5217 Assignment and Acknowledgment of Petitions for Redetermination.

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

5218 Review of the Petition by the Assigned Section.

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

5219 Mailing the Summary Analysis and Scheduling the Appeals Conference.

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

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

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

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

5220.4 Accrual of Interest.

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

5220.6 No Stay of Collection Activities.

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

Article 2C: Contesting a Jeopardy Determination

5221 Notice of Jeopardy Determination.

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

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

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

5222.4 Contents and of Petition for Redetermination of Jeopardy Determination.

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

5222.6 Limitation Period for Petition for Redetermination of Jeopardy Determination.

This section carries over from the existing Rules of Practice the time limits within which a

petition for redetermination of a jeopardy determination must be filed and adds a clarifying provision explaining that the time limits provided for filing other petitions for redetermination are inapplicable to petitions for redetermination of jeopardy determinations.

5223 Security Requirement for Petition.

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

5224 Review of Petition for Redetermination of Jeopardy Determination.

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

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

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

5226 Limitation Period for Filing Application for Administrative Hearing.

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

5227 Contents of Application for Administrative Hearing.

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

5228 Option to Post Security with Application for Administrative Hearing.

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

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

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

Article 3: Claims for Refund

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

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

5231 Limitation Period for Claim for Refund.

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

5231.5 Failure to File Timely Claim for Refund.

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

5232 General Contents of Claims for Refund.

This section describes the requirements for a valid claim for refund. This section gives taxpayers the ability to use a Board-provided form to file their claims, to provide a breakdown of their sales

and use tax claims for refund into state, local, and district taxes to expedite processing, to include more than one reporting period in each claim, and to submit their documentary evidence together with their claims for refund. This section also provides notice of existing law that prohibits taxpayers from claiming a refund by deducting past overpayments from future tax and fee liabilities.

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

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

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

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

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

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

5233 Filing Claims for Refund.

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

5234 Assignment and Acknowledgment of Claim for Refund.

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

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

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

provide the requested information.

5235 Action on the Claim for Refund.

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

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

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

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

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

5238 Credits and Offsets May Reduce Refunds.

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

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

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

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

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

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

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

5241 Acknowledgement and Review of Requests for Innocent Spouse Relief.

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

5242 Requests for Reconsideration by the Board.

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

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

5243 Successor's Request for Relief.

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

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

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

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

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

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

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

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

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

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

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

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

The Revenue and Taxation Code grants the Board authority to relieve interest due to disaster, however, the authority does not extend to all forms of interest imposed under all of the Board's tax and fee programs. This section lists all of the types of interest the Board can relieve due to a

disaster in each of the Board's tax and fee programs, describes the requirements for a complete request for relief under this section, and also gives taxpayers the option to use a Board-provided form.

5249 Filing Requests for Relief.

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

5249.4 Assignment and Acknowledgement of Requests for Relief.

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

5249.6 Reviewing Requests for Relief.

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

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

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

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

Article 6: Appeals Conferences

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

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

Conference.

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

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

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

5262 Requests to Reschedule or Postpone Appeals Conferences.

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

5263 Ways to Expedite an Appeals Conference.

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

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

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

5265 Issuance and Contents of a Decision and Recommendation.

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

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

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

5267 Issuance of Post Appeals Conference Notices.

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

exception to subdivision (a) that prevents Appeals Division staff's recommendations to grant certain petitions and claims for refund from becoming final so that the matters can be consolidated with related appeals scheduled for oral Board hearing.

5268 Procedures for Conducting Board Hearings.

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

Article 7: Optional Briefs for Board Hearings

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

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

5271 Extensions of Time for Filing Briefs.

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

Chapter 3: Property Taxes

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

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

Article 1: Application of Chapter and Definitions

5310 Application of Chapter.

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

5311 Definitions.

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

5312 Application of Articles 2, 3, and 4.

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

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

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

Subchapter 1: Application of Article

5321 Application of Article.

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

Subchapter 2: Assessments and Assessment Factor Hearings

5322 Information Available to Assesseees; Assessment Factor Hearings.

This section identifies the types of data and reports that state assesseees may request regarding the valuation of their unitary and non-unitary property; notifies state assesseees and private railroad car taxpayers about the Board's Assessment Factor Hearings and the procedures for making oral

presentations to the Board at such hearings; and notifies states assessees and private railroad car taxpayers about their opportunity to make an oral or written presentation to the Board regarding the value of their property.

5322.5 Validity of Assessment.

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

Subchapter 3: Contents of Petitions and Filing Deadlines

5323 Time for Filing of Petitions

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

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

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

5323.4 Contents of the Petition.

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

5323.6 Submission of Petition.

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

5323.8 Duplicate Petitions.

Petitioners may only file one petition regarding an assessment. This section provides procedures for determining which petition was authorized by the petitioner in cases where the Board

receives two or more petitions from the same petitioner for the same assessment, and creates a presumption in favor of the first petition received by the Board.

Subchapter 4: Timeliness, Acceptance, and Dismissal of Petitions

5324 Timeliness of Petition.

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

5324.2 Extensions of Time.

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

5324.4 Accepting or Rejecting a Petition.

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

5324.6 Submission of Additional Supporting Documents by Petitioner.

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

5324.8 Dismissal of Petition.

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

Subchapter 5: Prehearing Meetings and Review of Petitions

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

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

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

5325.4 Petitions Resolved Before Appeals Division Review.

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

5325.6 Prehearing Review of All Other Petitions.

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

Subchapter 6: Briefing Schedules and Appeals Conferences

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

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

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

5326.2 Briefing Schedule If No Appeals Conference Is Scheduled.

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

5326.4 General Appeals Conference Procedures.

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

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

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

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

5327 Appeals Division Hearing Summary or Summary Decision.

This section requires the Appeals Division to prepare a Hearing Summary or Summary Decision and submit it to the Board Proceedings Division at least 10 days prior to scheduled Board action on a state-assessee appeal. This section requires the Appeals Division to promptly submit a Revised Hearing Summary or Summary Decision to the Board Proceedings Division. This section also authorizes the Chief Counsel to grant the Appeals Division extensions of time to prepare and submit a Hearing Summary or Summary Decision when there is reasonable cause, including when an appeals conference is scheduled within 30-days of scheduled Board action.

5327.4 Oral Hearings – Scheduling of Hearings.

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

5327.6 Distribution of Documents.

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

Subchapter 8: Consolidation and Withdrawal of Petitions

5328 Consolidation of Petitions into a Single Hearing.

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

5328.5 Withdrawal of a Petition.

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

Article 3: Other Property Tax Petitions

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

Subchapter 1: Application of Article

5331 Application of Article.

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

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

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

5332 Time of Filing of Application.

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

5332.4 Contents of Application.

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

5332.6 Submission of Application and Board-Appraised Property.

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

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

This subchapter contains procedures that only apply to petitions appealing Board staff's findings

of ineligibility for the welfare exemption or veterans' organization exemption.

5333 Time for Filing of Petitions.

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

5333.4 Contents of Petition.

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

5333.6 Submission of Petition.

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

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

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

5334 Time for Filing of Petitions.

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

5334.4 Contents of the Petition.

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

petitions, and requires county assessors to submit their supporting evidence with their petitions.

5334.6 Submission of Petition.

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

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

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

5335 Submission of Petitions, Briefs, and Related Documents.

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

5335.4 Timely Performance; Mailing Date.

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

5335.6 Distribution of Documents.

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

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

5336 Accepting or Rejecting a Petition.

This section describes the procedures by which petitions will be reviewed to determine whether they are valid, complete, and timely. It requires the Chief of Board Proceedings to accept and acknowledge valid, complete, and timely petitions, and forward petitions that raise an issue regarding their validity, completeness, or timeliness to the Chief Counsel. If the Chief Counsel decides that a petition is valid, complete, and timely, or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the petition, and any remaining issues regarding validity, completeness, or timeliness will be decided by the

Board. If the Chief Counsel and the Chief of Board Proceedings agree that a petition is not valid, complete, or timely the Chief of Board Proceedings is required to reject the petition.

5336.5 Perfecting a Petition.

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

Subchapter 7: Prehearing Meetings and Briefing Schedules

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

5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner

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

5337.4 Briefing: General Requirements

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

5337.6 General Briefing Schedule.

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

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

5338 Appeals Division Review.

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

5338.4 Appeals Conference.

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

5338.6 Preparing and Revising Hearing Summaries.

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

Article 4: General Board Hearing and Notice Procedures

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

5340 Relation to General Board Hearing Procedures.

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

5341 Additional Briefing.

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

5342 Notice of Hearing

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

5343 Submission for Decision Without Oral Hearing.

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

5344 Notice of Board Decisions.

This section requires to Board to notify all the parties to a property tax petition of the Board's decision in writing in accordance with the procedures in chapter 5 of the proposed Rules.

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

5345 Finality of Board Action; Written Findings and Decision.

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

Chapter 4: Appeals from Actions of the Franchise Tax Board

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

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

5410 Application of Chapter 4.

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

5411 Definitions.

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

5412 Jurisdiction.

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

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

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

5420 Appeal Filing Requirements.

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

5421 Methods for Delivery of Written Documents and Correspondence.

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

5422 Time for Filing an Appeal.

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

5423 Accepting or Rejecting an Appeal.

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

5424 Perfecting an Appeal.

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

Article 3: Briefing Schedules and Procedures

5430 General Requirements.

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

of this section prescribes the procedures for the filing of non-party (amicus) briefs in appeals from the actions of the FTB.

5431 General Briefing Schedule.

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

5432 Briefing Schedule for Innocent Spouse Appeals.

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

5435 Additional Briefing.

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

Article 4: Requesting and Scheduling Oral Hearings

5440 Right to Request an Oral Hearing.

Subdivision (a) of this section provides notice to appellants regarding their right to an oral Board hearing upon written request and describes the procedures for requesting an oral Board hearing,

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

5441 Submission for Decision Without Oral Hearing.

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

5442 Appeals Review; Scheduling the Oral Hearing

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

5443 Pre-hearing Conference.

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

5444 Hearing Summary.

Subdivision (a) of this section defines the term "Hearing Summary" and prescribes the contents

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

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

5450 Letter Decisions.

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

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

5451 Summary Decisions.

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

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

5452 Formal Opinions.

The Appeals Division will prepare a “Formal Opinion” containing the findings of fact and conclusions of law that form the basis of the Board’s decision on an appeal from the actions of the FTB, which is intended to set a precedent, whenever an appeal is submitted for decision

without an oral Board hearing under section 5441 of the proposed Rules and the Appeals Division determines that a Formal Opinion might be appropriate or the Board directs the Appeals Division to prepare a Formal Opinion. Like Summary Decisions, Formal Opinions remain confidential until adopted by the Board, but, once adopted, they may be cited as precedent and reflect the Board's decision on an appeal.

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

5454 Frivolous Appeal Penalty.

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

Article 6: Petitions for Rehearing and Rehearings

5460 Finality of Decision.

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

5461 Petitions for Rehearing.

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

5462 Briefing on Petition for Rehearing.

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

5463 Decisions on Petitions for Rehearing.

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

5464 Briefing on Rehearing.

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

5465 Decision on Rehearing.

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

Chapter 5: General Board Hearing Procedures

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

disclosure of information relevant to an oral Board hearing.

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

Article 1: Application of Chapter and Definitions

5510 General Application of Chapter 5.

This section provides that chapter 5 of the proposed Rules applies to Board hearings conducted under all of the Board's appeals processes by providing cross references to all the tax and fee laws under which the appeals processes are conducted. This section states that chapter 5 provides rules of general application and that where more specific rules or rules from other chapters of the proposed Rules apply they will be provided or cross referenced. This section provides a clear statement that chapter 4 of the proposed Rules supersedes the provision of chapter 5 whenever there is a conflict between the two chapters. This section also specifies that the International Fuel Tax Agreement (IFTA) supersedes the provisions of chapter 5 of the proposed Rules wherever there is a conflict between the IFTA and chapter 5.

5511 Definitions.

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

5512 Construction.

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

Article 2: Requirements for Scheduling Board Meetings and Hearings

Subchapter 1. Meeting Calendars

5521 Monthly Board Meetings.

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

5521.5 Adoption of Board Meeting Calendar.

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

Subchapter 2. Requesting and Scheduling an Oral Hearing

5522 Right to Request an Oral Hearing.

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

5522.2 Acknowledgement of Request for Oral Hearing.

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

5522.4 Consolidation for Hearing or Decision.

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

5522.6 Notice of Board Hearing and Response.

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

5522.8 Dismissal, Deferral, and Postponement.

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

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

5523 Representation at Hearings.

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

5523.1 Power of Attorney.

This section provides Board staff with the authority to require taxpayers to execute power of attorney forms jointly adopted by the Board and FTB authorizing their representatives to act on their behalf. This section prescribes the contents of the power of attorney forms, and requires

staff to accept a substitute from containing substantially all of the required contents of the Board adopted form, including a statutory form power of attorney. This section also gives the Chief Counsel the authority to conclusively resolve any issues regarding the authority granted to a representative under a power of attorney form or other document.

5523.2 Contribution Disclosure Forms.

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

5523.3 Hearing Summary.

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

5523.4 Additional Briefing.

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

5523.5 Preparation for Board Hearing and Subpoenas.

This section describes the facts and issues that will be discussed during an oral Board hearing and notifies the parties that the Board Members may ask questions regarding these facts and issues during their hearings. This section informs parties that the Board generally reserves 35 minutes for each oral Board hearing, the Chief of Board Proceedings will explain how much of

the 35 minutes is allocated to each party at the beginning of each hearing, additional time to present complex matters may be requested in advance of a hearing, and the Board Chair has discretion to modify the time allocated to a party during an oral hearing. This section also provides notice of the Board's subpoena power and describes the procedures for requesting, issuing, and serving a subpoena.

5523.6 Presentation of Evidence or Exhibits.

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

5523.7 Witnesses.

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

5523.8 Communications with Board Members.

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

Article 3: Public Notification of Board Meeting

5530 Public Agenda Notice.

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

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

5540 Conduct of the Board Meeting.

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

5541 Burden of Proof.

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

Article 5: Voting and Decisions

5550 Quorum.

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

5551 Voting and Decisions.

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

Article 6: Post Hearing Notices and Petitions for Rehearing

5560 Notice of Board Decision.

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

5561 Petition for Rehearing.

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

5562 Recommendation on Petition for Rehearing.

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

5563 Rehearings.

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

Article 7: Correspondence, Public Hearing Records, and Copies

5570 Mailing Address.

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

5571 Timeliness of Documents.

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

5572 Hearing Record.

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

5573 Waiver of Confidentiality.

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

is only discussed during a closed session conducted under the procedures provided in section 5574 of the proposed Rules.

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

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

5575 Privilege.

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

5576 Fees: Filing, Transcripts, and Copies.

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

COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that no direct or indirect cost or savings to any state agency or any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, or other non-discretionary costs or savings to any local agencies, or costs or savings in federal funding to the State of California, will result from the proposed regulatory action.

STATEMENT OF EFFECT ON BUSINESS

The Board has made the initial determination required by Government Code section 11346.5, subdivision (a)(8) that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adoption of the proposed regulatory actions will alter some of Board's internal procedures for hearing appeals, but will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California, nor impact the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT EFFECT ON HOUSING COSTS

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

FEDERAL REGULATIONS

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

AUTHORITY

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

REFERENCE

The proposed regulatory actions will implement, interpret, or make the following laws more specific: Article XIII, sections 11 and 17 of the California Constitution; Civil Code section 1798.33; Code of Civil Procedure section 657; Evidence Code sections 952, 954; Government Code sections 7.9, 6254, 11120-11132, 15606, 15609, 15609.5, 15610, 15613, 15619, 15623, 15625, 15626, 15640, 15645, 81000-91014; Health and Safety Code section 105310; Public Resources Code sections 42464.6, 42475, 42881; Revenue and Taxation Code sections 20, 110, 214, 251, 254.5, 254.6, 270, 721, 721.5, 722, 724, 725, 731, 732, 733, 734, 741, 742, 743, 744, 746, 747, 748, 749, 758, 759, 833, 1840, 1841, 5107, 5148, 6074, 6456, 6482, 6483, 6512, 6513, 6536, 6538, 6538.5, 6561, 6561.5, 6562, 6592, 6593, 6593.5, 6596, 6814, 6832, 6901, 6902, 6902.3, 6902.4, 6904, 6905, 6906, 6981, 7051, 7056, 7081, 7208, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7674, 7661, 7698, 7700, 7700.5, 7710, 7710.5, 7711, 8101, 8101.2, 8101.6,

8101.7, 8102, 8126, 8128, 8128.1, 8129, 8191, 8251, 8255, 8777, 8778, 8802, 8803, 8826, 8828, 8828.5, 8851, 8851.5, 8852, 8877, 8878, 8878.1, 8878.5, 8879, 9024, 9151, 9152, 9152.1, 9153, 9196, 9251, 9255, 11251, 11291, 11292, 11293, 11352, 11338, 11339, 11340, 11341, 11351, 11352, 11353, 11354, 11651, 11651.5, 11655, 12426, 12428, 12429, 12632, 12636, 12637, 12951, 12977, 12978, 12979, 12980, 12981, 13170, 18533, 19006, 19043.5, 19045, 19047, 19048, 19072, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19542, 19545, 19714, 20645, 30171, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30202, 30203, 30222, 30223, 30241, 30243, 30243.5, 30261, 30261.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30362.1, 30363, 30364, 30365, 30421, 30451, 30455, 32255, 32256, 32256.5, 32257, 32271, 32291, 32301, 32301.5, 32302, 32311, 32312, 32313, 32401, 32402, 32402.1, 32403, 32404, 32407, 32440, 32451, 32455, 38412, 38413, 38422, 38423, 38431, 38433, 38434, 38435, 38441, 38442, 38443, 38452, 38453, 38454, 38455, 38564, 38601, 38602, 38602.5, 38603, 38604, 38605, 38631, 38701, 38705, 38706, 40072, 40073, 40082, 40083, 40091, 40092, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40112.1, 40113, 40114, 40115, 40121, 40171, 41071, 41072, 41081, 41082, 41085, 41086, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41102, 41103, 41104, 41107, 41128, 43157, 43158, 43158.5, 43159, 43201, 43301, 43302, 43303, 43350, 43351, 43352, 43451, 43452, 43452.1, 43453, 43454, 43491, 43501, 45155, 45156, 45156.5, 45157, 45201, 45301, 45302, 45303, 45351, 45352, 45353, 45651, 45652, 45652.1, 45653, 45654, 45801, 45851, 46156, 46157, 46157.5, 46158, 46201, 46252, 46253, 46301, 46302, 46303, 46351, 46352, 46353, 46454, 46501, 46502, 46503, 46504, 46505, 46551, 46601, 50112.2, 50112.3, 50112.4, 50112.5, 50113, 50114, 50115, 50116, 50120.1, 50120.2, 50120.3, 50139, 50140, 50140.1, 50141, 50142, 50151, 50152, 55001, 55044, 55045, 55046, 55046.5, 55061, 55081, 55082, 55083, 55101, 55102, 55103, 55221, 55222, 55222.1, 55223, 55224, 55281, 55301, 60209, 60210, 60211, 60212, 60302, 60314, 60330, 60332, 60333, 60350, 60351, 60352, 60474, 60501, 60502, 60505, 60505.5, 60506, 60507, 60521, 60522, 60522.1, 60523, 60581, 60601, 60609; Water Code section 1537; and California Code of Regulations, title 18, sections 1702, 1705.1, 1807, 1828.

CONTACT

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

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

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by the Board, or identified and brought to the Board's attention would be more effective in carrying out the purpose for which this regulatory action is proposed, or be as effective and less burdensome to affected

private persons than the proposed regulatory action. The Board considered alternative provisions for sections 5326.4, 5523.8, and 5574 of the proposed Rules as described in more detail in the Initial Statement of Reasons, and determined that none of the alternatives would be more effective in carrying out the purposes for which the sections were proposed, or be as effective and less burdensome to affected private persons than the proposed sections.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS

The Board has prepared an Initial Statement of Reasons, and underscore and strike-out versions of the Board's current and proposed regulations showing the Board's proposed regulatory actions. These documents and all information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations are available on the Internet at the Board's Web site, <http://www.boe.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

ADDITIONAL COMMENTS

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