

Important Issues Resolved by the Rules for Tax Appeals

I. Important Issues Resolved in Chapter 4

Chapter 4 resolved two important issues that arose during the interested parties process. Staff believed that appeals from the FTB would benefit from the addition of appeals conferences which would allow the Appeals Division to meet with the parties, complete the appeal file, and narrow or resolve issues prior to appellants' Board hearings. However, the interested parties and the FTB indicated that they did not think appeals conferences were necessary or useful in every appeal, and that holding appeals conferences in every case would needlessly expend appellants', the FTB's, and the Appeals Divisions' resources. After thorough discussion of various alternatives, the interested parties, the FTB, and Board staff agreed to add less formal, discretionary pre-hearing conference procedures, which permit the FTB and appellants to request pre-hearing conferences when they would be helpful, and allow the Appeals Division and the Board to grant such requests or otherwise schedule pre-hearing conferences when they determine that appeals would benefit.

The FTB also raised a concern that the Board's current process allows too many appeals to be fully briefed and heard by the Board when there is a serious question about the Board's jurisdiction or a short investigation would reveal that the Board lacks jurisdiction. The FTB suggested requiring cases with jurisdictional issues to go through a two step briefing and hearing process. The appellant and the FTB would brief the jurisdictional issue, and the Board would hold a hearing solely on the jurisdictional issue. If the Board decided that it had jurisdiction to hear the appeal, the normal briefing and hearing process would begin with regard to the substantive issues in the appeal. Board staff reviewed the proposal and determined that the FTB's concerns were warranted. However, staff also determined that the suggested remedy was inefficient since it would require some taxpayers to go through two briefing and hearing processes to obtain a decision on the substantive issues raised in their appeals. Therefore, Board staff added new procedures that require the Chief of Board Proceedings to refer appeals with jurisdictional issues to the Chief Counsel for a short investigation. If the Chief Counsel determines that there is a genuine material issue regarding jurisdiction, the briefing and hearing process will proceed with regard to all the issues raised by the appeal, including jurisdiction. The FTB agreed to work with the Board to implement these proposed procedures.

II. Important Issues Resolved in Chapter 5

Chapter 5 resolves important issues regarding the Board's disclosure policies, and codifies the Board's long standing, policy permitting all interested persons to communicate with the Board Members at any time.

On Disclosure, chapter 5 generally clarifies the Board's existing disclosure policies with regard to appeals from the FTB, property tax appeals, and business taxes and fees appeals, and then adds some new provisions to help ensure that persons attending oral

hearings can more easily follow the proceedings. The new provisions permit documents relating to a property tax appeal (i.e., petition, briefs, hearing summary, etc.) that would currently be disclosed after a taxpayer's oral hearing to be disclosed to the public 10-days before the taxpayer's oral hearing, and permit the Board to disclose hearing summaries prepared for business taxes and fees appeals 10-days prior to the oral hearings to which they relate. Chapter 5 also addresses a long-standing issue of contention with the interested parties by establishing procedures to protect trade secrets and other sensitive business information from disclosure in most property tax appeals and business taxes and fees appeals. These procedures allow taxpayers to request that the Board hear such information in closed session, and permit the Board to do so under the same circumstances that a court could issue a protective order. In addition, chapter 5 adds provisions to help protect taxpayers from identity theft.

On communications with Board Members staff codified the Board's long standing policy in order to give the public notice, and ensure that all taxpayers, constituents, other governmental agencies, and other interested persons have equal opportunities to speak directly with the Board Members. Government Code sections 11410.40, 15609.5, and 15610, exempt the Board from the provisions of the Administrative Procedure Act applicable to administrative adjudication, including Government Code section 11430.10's prohibitions on certain communications. As a result, staff continues to recommend that the Board codify its long standing policy regarding communications with Board Members in order to give the public notice, and ensure that all taxpayers, constituents, other governmental agencies, and other interested persons have equal opportunities to speak directly with the Board Members.