

January 31, 2006

## **Bill Leonard's Proposed Amendments to the Rules of Practice And Related Comments**

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### 1. Briefing Schedule (Alternative 3)

Reference: Section 5000.2110

Issue: No compelling reason has been presented to change the brief schedule that we currently use (known as "15/15/15" in the charts).

Proposal: Do not change the status quo.

### 2. Electronic Submission of Briefs

Reference: Section 5000.2020 and 5000.2110(b)(2)(B)

Issue: We should encourage the electronic submission of briefs. The Rules of Practice should include all the rules for electronic submission OR include an explicit reference to a website containing the specific rules.

Proposal: The following language is offered as a suggestion:

Electronic Filing. The Board of Equalization encourages the use of electronic means to deliver briefs and other related appeals correspondence, in lieu of mailing and hand delivery. Briefs and other related appeals correspondence filed pursuant to this paragraph must be transmitted to and received by the Chief of Board Proceedings in accordance with instructions provided by the Board. The most recent instructions shall be available on the Board's website:

[www.boe.ca.gov/electronicsubmissionrules.htm](http://www.boe.ca.gov/electronicsubmissionrules.htm)

[This URL is just a suggestion. The key point is that the website must include the electronic submission instructions, including the appropriate e-mail addresses and the acceptable file formats.]

### 3. Application for Administrative Hearing (on Jeopardy Determinations)

Reference: Section 5000.2046

Issue: The proposed regulation lists just four purposes for which a taxpayer can apply for an administrative hearing, then states that no other purposes are permissible. Why should we prevent a taxpayer from requesting an administrative hearing for a reason not listed? What other purposes are being disallowed?

Proposal: Delete the language restricting the application for an administrative hearing to the four purposes listed. Include another category, such as "Other; please specify" and allow taxpayers to make their case for some other purpose.

#### 4. Option to Post Security

Reference: Section 5000.2049

Issue: Taxpayers must pay for the storage fees for property seized by the Board pursuant to a jeopardy determination but there is no remedy to reimburse the taxpayer if the Board seized the property unnecessarily.

Proposal: Add appropriate language to allow for a refund or credit of storage fees paid.

#### 5. Combined Claims for Refund on Behalf of Class of Taxpayers

Reference: Section 5000.2064

Issue: Why is this needed? Has there been some recent change in the statutory authorities?

Proposal: Delete unless convincing justification is presented.

#### 6. Successor's Request for Relief.

Reference: Section 5000.2075

Issue: The term "unrelated" is not defined and it may be overly broad. The key issue is whether the successor knew or should have known about the liability before he or she succeeded to the position.

Proposal: The term "unrelated" should be deleted.

#### 7. Non-Party (Amicus) Briefs

Reference: Section 5000.2110(f)(2)

Issue: Why specify any deadline for non-party (amicus) briefs? Is this needed? As a matter of policy, it would seem beneficial to encourage amicus briefs, even if they are submitted within 30 days of the hearing.

Proposal: Remove deadlines for non-party briefs.

#### 8. Briefs Filed by Unrepresented Taxpayers

Reference: Section 5000.2110(g) (*appears in all three Alternatives*)

Issue: The use of a pro bono representative from any Board-approved program should not remove a taxpayer from the unrepresented category. Such taxpayers might only receive legal assistance a few hours or days before the hearing, so they should be entitled to submit a brief on the day of the hearing, at the discretion of the Board.

Proposal: Add appropriate language to the end of this paragraph, such as:

A taxpayer who is represented through a Board-approved pro bono program shall be considered unrepresented for purposes of submitting a brief on the day of the hearing, at the discretion of the Board.