

## Part 2, Review of Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

### Article 6: Appeals Conferences

#### 2104. Conducting the Appeals Conference.

- (a) Conference Holder. The appeals conference will be held by an attorney or auditor assigned to the Appeals Division who has not had any prior involvement in the matter being discussed at the appeals conference. It is the responsibility of the conference holder to take a fresh look at the law and the facts and make his or her own objective recommendation.
- (b) Audit Representative. Generally, a representative from the Board's audit staff will be present at the appeals conference to provide the audit staff's reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted. Where appropriate, a representative of the Board's collection staff will be present at the appeals conference instead of a representative from the Board's audit staff.
- (c) Other Agency ~~Department of Insurance or Department of Toxic Substances Control~~ Representatives. A representative from a state agency other than the Board the Department of Insurance or Department of Toxic Substances Control may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency ~~department~~. Such a representative will provide its ~~department's~~ agency's reasons for determining that the tax or fee at issue is due or should not be refunded.
- (d) Nature of Appeals Conference. The appeals conference is not an adversary proceeding, it is an informal discussion of the relevant facts and applicable laws. As such, it is important that all relevant information be presented to the conference holder.
  - (1) A party may submit additional documentation to the Appeals Division at any time before or during the appeals conference.
  - (2) If any party requests permission to submit additional documentation at the appeals conference, the conference holder may grant that party 15 days after the appeals conference to submit additional documentation. If there is sufficient justification, the conference holder may also grant an additional 15 days to submit additional documentation. No further extensions of time to submit additional documentation will be granted without the approval of the Assistant Chief Counsel for the Appeals Division or his or her designees.

- (3) If a party submits additional documentation after the appeals conference, the other party will be granted 15 days to respond to such documentation.
- (e) Failure to Appear. If a petitioner, claimant, or person requesting relief, or their authorized representative fails to appear at an appeals conference, the conference holder will still hold the appeals conference as scheduled.
- (f) Once the appeals conference is concluded, the conference holder will take the petition, claim for refund, or request for relief under consideration.

2106. Conference Holder Recommendations.

- (a) The conference holder may make the following recommendations in the Decision and Recommendation:
  - (1) Deny the petition, claim, or request for relief in its entirety.
  - (2) Grant the petition, claim, or request for relief in its entirety.
  - (3) Grant the petition, claim, or request for relief in part.
  - (4) ~~Order That~~ the appropriate audit department to re-audit the issues raised in the petition, claim, or request for relief to obtain additional information as specified in the Decision and Recommendation.
- (b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:
  - (1) File a written request for the Appeals Division to reconsider the petition, claim, or request for relief no later than 30-days after the Decision and Recommendation was issued. ~~The Appeals Division will generally reconsider a petition, claim, or request for relief if the request for reconsideration provides a basis for modifying the Decision and Recommendation.~~
  - (2) Disagree and file a written request for an oral hearing before the Board no later than 30-days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

- (A) ~~If an oral hearing is or was requested, the Board Proceedings Division will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if an oral hearing is not required by statute and the Board declines to grant such person a discretionary oral hearing. For example, the Board has discretion to grant or deny an oral hearing on a late protest, or application for administrative hearing.~~
- (B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or Supplemental Decision and Recommendation) Board staff shall:
- (i) Contact the petitioner, claimant, or person requesting relief to inquiry as to the existence of such disagreement; and
  - (ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.
- (3) Agree with the Decision and Recommendation.
- (c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Board's audit department and any state agency represented at the appeals conference may:
- (1) File a written request for the Appeals Division to reconsider the petition, claim, or request for relief within 30-days after the Decision and Recommendation was issued.
  - (2) Agree with the Decision and Recommendation.
- ~~the recommendation to grant such petition, claim, or request will be sent to the Board for approval.~~
- (d) Notwithstanding subdivision (c) of this section, if the Decision and Recommendation conference holder recommends that a petition, claim for refund, or request for relief ~~filed under the Tax on Insurers Law~~ be granted in whole or in part, any state agency represented at the appeals conference pursuant to section 2104, subdivision (c), the Department of Insurance may file a written request for an oral hearing before the Board no later than 30-days after the Decision and Recommendation was issued. If an oral hearing is requested, the Board Proceedings Division will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing

will not be provided if an oral hearing is not required by statute and the Board declines to grant such agency a discretionary oral hearing.

- (e) If the Appeals Division receives a request for reconsideration, the Appeals Division ~~conference holder~~ will prepare a Supplemental Decision and Recommendation to address any new information provided with or arguments made in the request for reconsideration. The Appeals Division may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation shall satisfy all the requirements of section 2105, subdivision (c).
- (f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds \$50,000, the recommendation to grant such petition, claim, or request will be sent to the Board for approval.

## **Article 7: Optional Briefs for Oral Hearings Before the Board**

### 2110. Briefing Schedule (Alternative 1)

- (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.
- (b) Briefs.
  - (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief of Board Proceedings in accordance with section 2111.
  - (2) Filing.
    - (A) In General. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the address provided in section 2102, subdivision (a), or deposited personally at the headquarters office of the Board in Sacramento.
    - (B) Electronic Filing. In lieu of mailing or personal delivery, briefs and other related appeals correspondence may be transmitted to the Board via facsimile, electronic mail, or other electronic means. However, briefs and other related appeals correspondence may only be filed pursuant to this paragraph if they are transmitted to

the Board and received by the Chief of Board Proceedings in accordance with instructions provided by the Chief of Board Proceedings.

(C) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department.

(3) Formant. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch (CPI), or the equivalent, excluding exhibits. The Chief of Board Proceedings may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

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

(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief that raises new issues or arguments that were not previously raised by the party filing the reply brief. A response to a reply brief shall identify and only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing.

(f) Additional Briefing.

- (1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.
- (2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 15 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.
- (3) Additional briefing. In extraordinary situations, the Board or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division.
- (g) Briefs Filed by Unrepresented Taxpayers. Notwithstanding subdivisions (c), (d), and (e) of this section, a taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.

2110. Briefing Schedule (Alternative 2)

- (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.
- (b) Briefs.
  - (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief of Board Proceedings in accordance with section 2111.

(2) Filing.

- (D) In General. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the address provided in section 2102, subdivision (a), or deposited personally at the headquarters office of the Board in Sacramento.
- (E) Electronic Filing. In lieu of mailing or personal delivery, briefs and other related appeals correspondence may be transmitted to the Board via facsimile, electronic mail, or other electronic means. However, briefs and other related appeals correspondence may only be filed pursuant to this paragraph if they are transmitted to the Board and received by the Chief of Board Proceedings in accordance with instructions provided by the Chief of Board Proceedings.
- (F) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department.

(3) Formant. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch (CPI), or the equivalent, excluding exhibits. The Chief of Board Proceedings may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 30 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.

(d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that is filed by a party to a Board hearing in response to an opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 60 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.

(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief that raises new issues or arguments that were not previously raised by the party filing the reply brief. A response to a reply brief shall identify and only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 75 days after the Appeals Division issues its Decision and Recommendation or Supplemental Decision and Recommendation.

(f) Additional Briefing.

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

(2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 15 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

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

(g) Briefs Filed by Unrepresented Taxpayers. Notwithstanding subdivisions (c), (d), and (e) of this section, a taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.

The Chief of Board Proceedings may grant a party a reasonable extension of time for the filing of any brief, upon a showing of reasonable cause. The request for an extension of time shall be submitted in writing before the scheduled due date of any brief.