

**Final Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and
5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for
Oral Hearings***

Update of Information in the Initial Statement of Reasons

The specific purpose, factual basis, and rational for the original text of the proposed amendments to Regulations 5237 and 5266 are the same as provided in the Initial Statement of Reasons. On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds of taxes and fees authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The specific purpose of the original text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5237 is to clarify that, as a result of the May 27, 2009, vote, the Board has delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny the specified refunds, without further approval from the Board Members. The specific purpose of the original text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5266 is to clarify that, as a result of the May 27, 2009, vote, the Board has also delegated authority to Appeals Division staff to grant or deny petitions, claims for refund, and requests for relief, and cancel previously issued assessments, unless the amount granted exceeds \$100,000. The Board has determined that the original text of the proposed amendments to Regulations 5237 and 5266 are reasonably necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny the specified refunds.

The Board discussed the original text of the proposed amendments to Regulations 5237 and 5266 during a public hearing on August 31, 2009.¹ No interested parties asked to speak at the public hearing or submitted written comments regarding the proposed amendments.

However, the original text of the proposed amendments authorized Board staff to approve refunds and cancellations over \$50,000. Revenue and Taxation Code sections 6901, 6981, 8126, 8191, 9151, 9196, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 46501, 46551, 50139, 50151,

¹ During the public hearing, the Board also discussed a memorandum dated August 28, 2009, with Board staff, which responded to questions the Board Members raised during the May 27, 2009, Board meeting regarding: (1) the types of records Board staff reviews and the types of procedures Board staff follows in approving refunds; (2) the statutes requiring public records of the Board's decisions to grant refunds and cancellations; (3) the type of public record Board staff would use for the newly delegated refunds and cancellations; and (4) the confidential taxpayer information that may be disclosed in the public records. The memorandum did not have a direct bearing on the original text of the proposed amendments to Regulations 5237 or 5266.

55221, 55281, 60521, and 60581 require the Board to make a public record of decisions to grant refunds, credits, and cancellations over \$50,000 available for at least 10 days before the decisions are effective. Also, Revenue and Taxation Code section 45801 requires the Board to make a public record of decisions to cancel amounts over \$15,000, which were determined under the Integrated Waste Management Fee Law, available for at least 10 days before the decisions are effective.

Therefore, the Board did not adopt the original text of the proposed amendments at the August 31, 2009, public hearing. Instead, the Board determined that sufficiently related changes were reasonably necessary to ensure that Board staff complies with the statutory public record requirements. The Board also referred the original text of the proposed amendments to Regulations 5237 and 5266 to the 15-day file and directed staff to add language for the specific purpose of incorporating the public record requirements.

Board staff made sufficiently related changes to the original text of the proposed amendments to Regulations 5237 and 5266, which incorporated the statutory public record requirements, and issued a new notice of action regarding the sufficiently related changes on September 18, 2009. Then, the Board accepted comments regarding the sufficiently related changes from September 18, 2009, through the end of the second public hearing on October 6, 2009.

Finally, the Board considered and voted to adopt the original text of the proposed amendments to Regulation 5237 and 5277 with the sufficiently related changes during the October 6, 2009, public hearing.² No interested parties asked to speak at the public hearing on October 6, 2009, or submitted written comments regarding the sufficiently related changes to the original text of the proposed amendments.

The Board has determined that the proposed amendments, including the sufficiently related changes, to Regulations 5237 and 5266 will not have a significant adverse economic impact on business.

No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Regulations 5237 and 5266, including the sufficiently related changes, do not impose a mandate on local agencies or school districts.

² During the second public hearing, the Board also discussed a flowchart and a September 21, 2009, memorandum, with Board staff. The memorandum contained background information regarding the enactment and scope of the statutory public record requirements, and a recommendation for Board staff's future compliance with the public record requirements for the newly delegated refunds, including a draft public record; and the flowchart showed the levels of managerial approval required for refunds. The September 21, 2009, memorandum and the flow chart are available at http://www.boe.ca.gov/meetings/pdf/Item_J1_100609.pdf. The memorandum and flowchart did not have a direct bearing on the original text of the proposed amendments to Regulations 5237 or 5266 or the sufficiently related changes.

Response to Public Comment

On August 31, 2009, the Board held a public hearing on the original text of the proposed amendments to Regulations 5237 and 5266. On October 6, 2009, the Board held a second public hearing on the sufficiently related changes to the original text of the proposed amendments. No interested parties asked to speak at either public hearing and no written comments were received.

Alternatives Considered

By its motion, the Board determined that no alternative to the proposed amendments to Regulations 5237 and 5266 with the sufficiently related changes would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

No Federal Mandate

The adoption of the proposed amendments, including the sufficiently related changes, was not mandated by federal statutes or regulations and there is no federal regulation that is similar to Regulation 5237 or 5266.