

Rulemaking File

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RECEIVED

FEB 5 - 2016

Board Proceedings

**State of California
Office of Administrative Law**

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 5218, 5235, 5237, 5267

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2015-1223-02

OAL Matter Type: Regular (S)

This rulemaking action by the Board of Equalization (BOE) amends sections 5218, 5235, 5237, and 5267 of title 18 of the California Code of Regulations to be consistent with the Board's delegation of authority to Board staff to grant or deny taxpayer appeals and refund, credit, or cancel amounts in excess of \$100,000 without Board approval. These amendments provide new procedures for the Board's Deputy Directors to make determinations as to whether to approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/1/2016.

Date: February 3, 2016


Lindsey S. McNeill
Attorney

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: February 3, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2015-1223-02
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding “Board Approval Required for Refunds.”

If this is an approved matter, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5).

Beginning January 1, 2013, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATORY SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

REGULAR

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1007-01	REGULATORY ACTION NUMBER 2015-1223-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2015 DEC 23 A 10:54

OFFICE OF
ADMINISTRATIVE LAW
ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

FEB -3 2016

2:06 PM

NOTICE

REGULATIONS

 AGENCY WITH RULEMAKING AUTHORITY
 State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2015, 43-2	PUBLICATION DATE 10/23/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Board Approval Required for Refunds	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 5218, 5235, 5237, 5267
	REPEAL
TITLE(S) 18	

3. TYPE OF FILING

- Regular Rulemaking (Gov. Code §11346)
 Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
 Emergency (Gov. Code, §11346.1(b))
- Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
 Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- Emergency Readopt (Gov. Code, §11346.1(h))
 File & Print
 Other (Specify) _____
- Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
 Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
 Effective on filing with Secretary of State
 §100 Changes Without Regulatory Effect
 Effective other (Specify) **March 1, 2016**

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- Department of Finance (Form STD. 399) (SAM §6660)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify) _____

7. CONTACT PERSON

Richard E. Bennion

TELEPHONE NUMBER

(916) 445-2130

FAX NUMBER (Optional)

(916) 324-3984

E-MAIL ADDRESS (Optional)

rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Joann Richmond

DATE

December 23, 2015

TYPED NAME AND TITLE OF SIGNATORY

Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 03 2016

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5218**

5218. Review of the Petition by the Assigned Section.

- (a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.
- (b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.
- (c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.
- (d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.
- (e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.
- (1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval.
- (2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.
- (f) Any Finding is Not in Taxpayer's Favor.
- (1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the

taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Deputy Director~~Board~~ approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(g) Deputy Director Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be resolved in accordance with the Deputy Director's findings.

~~(hg) If the assigned section's findings are not subject to Deputy Director approval, but if the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's appeal petition will be resolved in accordance with the change, subject to Board approval if applicable.~~

~~(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:~~

~~(1) The Board may approve the findings.~~

~~(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.~~

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board~~

~~Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5235**

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

- (1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director~~Board~~ approval requirements of section 5237, if applicable); and
- (2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401,

32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

5237. Deputy Director~~Board~~ Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department~~Board~~ for approval ~~except where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program~~, where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Deputy Director~~Board~~, the Deputy Director may approve the assigned section's recommendation or ~~exercise~~Board has discretion to make the Deputy Director's~~sits~~ own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer~~claimant~~.

(1) ~~If~~Where the Deputy Director~~Board~~ approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

~~(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).~~

~~(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 must be submitted to the~~

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

~~Executive Director for approval. If the Executive Director approves, the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.~~

(~~c~~e) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the ~~taxpayer~~claimant has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Deputy Director of the assigned section's Department Board for approval as provided in subdivision (b). If the Deputy Director Board approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(~~d~~f) If the assigned section or the Deputy Director of the assigned section's Department determines that a refund in excess of \$50,000 should be granted ~~and the determination is not required to be submitted to the Board~~, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221 and 60521, Revenue and Taxation Code.

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5267**

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

- (1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;
- (2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and
- (3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax~~Board~~ for approval-as-a-nonappearance item, at which time:

(1) The Deputy Director~~Board~~ may approve the recommendation.

(2) The Deputy Director~~Board~~ may exercise-its discretion to make the Deputy Director'sits own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer; but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for a Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request a Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

~~(d) If the Appeals Division or a Deputy Director a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation, recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, and the recommendation does not require Board approval, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, ~~8878.58878.1~~, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, ~~4655146511~~, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

as effective and less burdensome to affected private persons than the proposed action described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Fire Marshal invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

BUSINESS REPORT

This regulatory proposal does not mandate any new reporting or recordkeeping requirements, but it will reiterate what is already required such as the Annual Inspection, Testing, and Maintenance reports.

CONTACT PERSON(S)

Inquiries concerning the proposed regulatory action, or requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations or other information upon which the rulemaking is based may be directed to:

- Office of the State Fire Marshal:

Diane Arend, Senior Deputy SFM (RA),
Regulations Coordinator
(916) 324-9592 for general inquiries
diane.arend@fire.ca.gov

James Parsegian, Supervising DSFM,
Automatic Extinguishing Systems Program
(916) 445-8415 for substantive or technical questions
James.parsegian@fire.ca.gov

Jeff Schwartz, Senior Deputy SFM,
Automatic Extinguishing Systems Program
(916) 341-4364 for back-up substantive or technical questions
jeffrey.schwartz@fire.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Fire Marshal will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 1131 'S' Street, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the SFM's rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons for the proposed action, all documents incorporated by refer-

ence and an economic impact assessment contained in the initial statement of reasons. Copies may be obtained through the contact(s) at the address or telephone numbers listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons (FSOR) may be obtained by making a written request to the contact person at the above address or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons (ISOR), the text of proposed regulations in underline and strikeout and all documents incorporated by reference may be accessed through the SFM website at: http://osfm.fire.ca.gov/codedevelopment/codedevelopment_title19development.php.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2016-0125-05
AIR RESOURCES BOARD
Conflict-of-Interest Code

This is a Conflict-of-Interest Code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing.

Title 17
AMEND: 95000 REPEAL: 95001, 95002, 95003, 95004, 95005, 95006, 95007
Filed 02/03/2016
Effective 03/04/2016
Agency Contact: Trini Balcazar (916) 445-9564

File# 2015-1223-02
BOARD OF EQUALIZATION
Board Approval Required for Refunds

This rulemaking action by the Board of Equalization (BOE) amends sections 5218, 5235, 5237, and 5267 of title 18 of the California Code of Regulations to be consistent with the Board's delegation of authority to Board staff to grant or deny taxpayer appeals and refund, credit, or cancel amounts in excess of \$100,000 without Board approval. These amendments provide new procedures for the Board's Deputy Directors to make determinations as to whether to approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000.

Title 18
AMEND: 5218, 5235, 5237, 5267
Filed 02/03/2016
Effective 03/01/2016
Agency Contact: Richard Bennion (916)445-2130

File# 2015-1215-01
BOARD OF PHARMACY
Naloxone Hydrochloride

The Board of Pharmacy submitted this timely certificate of compliance action to make permanent the adoption of title 16, California Code of Regulations, section 1746.3 in OAL file nos. 2015-0409-03EFP and 2015-0922-01EE. As authorized by Business and Professions Code section 4052.01, section 1746.3 provides the protocol for pharmacists to furnish naloxone hydrochloride to the public without a prescription. Naloxone hydrochloride is an opioid antagonist that reverses the effects of opioid medications and drugs, including oxycodone, oxymorphone, Vicodin, Percocet, methadone, and heroin. Increasing public access to naloxone hydrochloride will prevent drug overdose deaths, which is currently the leading cause of accidental deaths in California.

Title 16
ADOPT: 1746.3
Filed 01/27/2016
Effective 01/27/2016
Agency Contact: Lori Martinez (916)574-7917

File# 2016-0121-02
CALIFORNIA HEALTH FACILITIES FINANCING
AUTHORITY
Peer Respite Care Grant Program

This emergency rulemaking by the California Health Facilities Financing Authority ("CHFFA") adopts several sections in title 4 of the California Code of Regulations. Stats. 2015, ch. 18, sec. 55 authorizes CHFFA to appropriate up to \$3,000,000 in unencumbered funds to develop peer respite sites. CHFFA is further authorized to award grants to expand local resources for the devel-

opment, capital, equipment, acquisition, and applicable program startup or expansion costs to increase bed capacity for peer respite support services. These emergency regulations will allow counties, counties applying jointly, private non-profit corporations, and public agencies to apply for grant funds specifically for the purpose of providing an additional continuum of care to those experiencing or at risk of experiencing a mental health crisis.

Title 4
ADOPT: 7210, 7213, 7214, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 7225, 7225.1, 7226, 7227, 7228, 7229
Filed 02/01/2016
Effective 02/01/2016
Agency Contact:
Carolyn Aboubechara (916)653-3213

File# 2016-0121-06
COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
Peace Officer Background Investigation — Education
Verification

The Commission on Peace Officer Standards and Training submitted this action pursuant to title 1, California Code of Regulations, section 100 to make changes without regulatory effect to title 11, California Code of Regulations, section 1953(e)(5)(A)2. and 4. The proposed changes give effect to changes in Government Code section 1031(e) that were made in AB 795 (Stats. 2015, ch. 499) and that govern minimum education requirements for peace officers. AB 795 added other high school equivalency tests approved by the State Department of Education that indicates high school graduation level to the existing minimum education requirement of having passed the General Education Development (GED) test. The amendment to title 11, California Code of Regulations, section 1953(e)(5)(A)2. corresponds with this amendment made by AB 795 to Government Code section 1031(e). Two other changes without regulatory effect are proposed for title 11, California Code of Regulations, section 1953(e)(5)(A)4. that reflect changes made to minimum peace officer education requirements by AB 795: adding language stating "required by this subdivision" and changing the name of an accreditation agency from the Commission on International and Trans-Regional Accreditation (CITA) to AdvancED.

Title 11
AMEND: 1953(e)(5)
Filed 01/27/2016
Agency Contact: Patti Kaida (916)227-4847

Rulemaking File Index

Title 18. Public Revenue Rules for Tax Appeals

Regulations 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds over \$100,000*, 5267, *Issuance of Post Appeals Conference Notices; Board Approval*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Sales and Use Tax Deputy Directors Report, Item P3.1, April 29, 2015](#)
 - Formal Issue Paper Number 15-005
 - Exhibit 1 Text Regulation 5218
 - Exhibit 2 Text Regulation 5237
 - Exhibit 2 Text Regulation 5267
 - Exhibit 4 Refunds Claims Requiring Board Approval
 - Exhibit 5 Revenue and Taxation Code Sections Relating to Refunds
4. [Reporter's Transcript Item P3.1, April 29, 2015](#)
5. [Estimate of Cost or Savings, October 15, 2015](#)
6. [Economic and Fiscal Impact Statements, October 7, 2015](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date October 23, 2015
 - Email sent to Interested Parties, October 23, 2015
 - CA Regulatory Notice Register 2015, Volume No. 43-Z
8. [Notice to Interested Parties, October 23, 2015](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 5218, 5235, 5237, 5267
 - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F4, December 16, 2015](#)
11. [Draft Minutes, December 16, 2015, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulation 5218, 5235, 5237, 5267
 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on December 23, 2015, and was reopened on February 2, 2016 for the purpose of amending the Final Statement of Reasons, Updated Informative Digest, Compliance Statement, Final Text Regulation 5267, and Index, and was closed on February 2, 2016 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

February 2, 2016

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Sections 5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000,* and
5267, *Issuance of Post Appeals Conference Notices; Board Approval***

UPDATE OF INFORMATION IN THE INITIAL STATEMENT OF REASONS

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section,* 5235, *Action on the Claim for Refund,* 5237, *Board Approval Required for Refunds Over \$100,000,* and 5267, *Issuance of Post Appeals Conference Notices; Board Approval,* on December 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 without making any changes to the proposed amendments. However, the Board subsequently determined that there were two typographical errors in Regulation 5267's reference note and the Board replaced the references to Revenue and Taxation Code (RTC) sections 8878.1 and 46511 in Regulation 5267's reference note with references to RTC sections 8878.5 and 46551, respectively, to correct the typographical errors pursuant to California Code of Regulations, title 1, section 100. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

The factual basis, specific purposes, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 5218, 5235, 5237, or 5267 or the proposed amendments to Regulation 5218, 5235, 5237, or 5267.

The Board did not rely on any data or technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- 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; and
- Will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 does not impose a mandate on local agencies or school districts.

Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

Determination Regarding Alternatives

By its motion on December 16, 2015, the Board determined that no alternative to the proposed amendments to Regulations 5218, 5235, 5237, and 5267 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of the law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would lessen any adverse impact the proposed amendments may have on small business.

No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective

to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

**Updated Informative Digest for the State Board of Equalization's
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Sections 5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000,* and
5267, *Issuance of Post Appeals Conference Notices; Board Approval***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section,* 5235, *Action on the Claim for Refund,* 5237, *Board Approval Required for Refunds Over \$100,000,* and 5267, *Issuance of Post Appeals Conference Notices; Board Approval,* on December 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 without making any changes to the proposed amendments. However, the Board subsequently determined that there were two typographical errors in Regulation 5267's reference note and the Board replaced the references to Revenue and Taxation Code (RTC) sections 8878.1 and 46511 in Regulation 5267's reference note with references to RTC sections 8878.5 and 46551, respectively, to correct the typographical errors pursuant to California Code of Regulations, title 1, section 100.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable to the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as practical. So, pursuant to Government Code section 11343.4, subdivision (b)(3), the Board requests that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 be effective on March 1, 2016, so that they are effective after the Board's February 23-25, 2016, meeting, but well before the Board's March 29-30, 2016, meeting.

There have not been any changes to the applicable laws or the effect of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited

that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of

\$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general

oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size.

Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments

made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulation's currently requiring that the Board approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000. Regulations 5218 and 5267 are the only state

regulations currently requiring that the Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board's staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulation 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

STATE BOARD OF EQUALIZATION



BOARD APPROVED "Alternative 2"

Issue Paper Number 15-005

At the: April 29, 2015 Board Meeting

Joan Richmond
Joan Richmond, Clerk
Board Proceedings Distribution

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$100,000

I. Issue

Currently, the Board delegates the authority to issue refunds of \$100,000 or less¹ to staff. In addition to refunds², this approval threshold applies to credits, cancellations and denials (hereafter, for ease of expression, collectively referred to as "refunds"). These items appear on the Board Meeting agenda as "Nonappearance Matters, Matters for Consideration" and "Credits, Cancellations and Refund Matters" on either the Consent or Adjudicatory calendar. To accelerate the refund process, should the \$100,000 threshold for Board Member approval of refunds be changed?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board delegate the authority to issue refunds of \$250,000 or less to staff and raise the threshold for Board Member approval of refunds from \$100,000 to \$250,000.³

Staff also recommends that the Board approve the publication of proposed amendments to Board of Equalization (BOE) Rules for Tax Appeals Regulations 5218, *Review of the Petition by the Assigned Section, 5237, Board Approval Required for Refunds over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, to conform these regulations to the new delegation and the increase in the threshold for Board Member approval of refunds from \$100,000 to \$250,000. (See Exhibits 1, 2, and 3.)

Raising the threshold for Board Member approval of refunds from \$100,000 to \$250,000 will reduce the number of cases requiring Board approval by approximately 44% and allow taxpayers to receive their refunds up to three months earlier on approved claims between \$100,001 and \$250,000 (see Exhibit 4). This alternative will also reduce staff hours spent preparing those cases for the Board calendar.

III. Other Alternative(s) Considered

Alternative 2 - Delegate Board Approval Requirement to Staff

¹ The \$100,000 threshold includes credit interest and applies to all tax and fee programs the BOE administers, including the Private Railroad Car Tax. See Exhibit 5 for a list of included programs.

² This includes refunds related to petitions for redetermination being granted.

³ The \$250,000 threshold would include credit interest and apply to all tax and fee programs the BOE administers, including the Private Railroad Car Tax. See Exhibit 5 for a list of included programs.

Alternatively delegate authority to issue all refunds without Board Member approval. This alternative would also require amendments to Rules for Tax Appeals Regulations 5218, 5237, and 5267.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow affected claimants to receive their refunds up to three months earlier on approved claims of any amount. The cases brought before the Board and the related number of staff hours spent preparing those case summaries for the Board calendar would be eliminated.

Staff would continue to retain a public record on those items above \$50,000 by the Board Proceedings Division since various statutes regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.

Alternative 3 – Make No Change

Do not change the current requirement that Board Members approve claims for refund in excess of \$100,000.

IV. Background

Public Record Requirements. As initially introduced, Assembly Bill (AB) 3069 (Stats. 1994, Ch. 726) eliminated the requirement that the Board of Control (now named the Victim Compensation and Government Claims Board) review the BOE's and the Franchise Tax Board's (FTB) settlement agreements and refunds, credits, and cancellations of liabilities over \$50,000. In exchange, the legislation required that such matters be made available as a public record 10 days prior to the effective date of these determinations. However, unlike the BOE, FTB is not required to make any of its refunds a matter of public record. This requirement was deleted from AB 3069 before it was enacted, after the FTB expressed concerns regarding the 10-day public notice requirement.

FTB's analysis of the introduced version of AB 3069, which also imposed the 10-day public record requirement on FTB, questioned the need for a public record and pointed out that neither the Board of Control nor the public can technically prevent the issuance of a refund or obtain any additional information about the refund. Therefore, FTB indicated that both the Board of Control's oversight process, as well as the 10-day public notice required by AB 3069 (as introduced), served little useful purpose and was an improper disclosure of taxpayers' confidential tax information. In response to FTB's analysis, the 10-day notice requirement was deleted as to FTB, but not as to the BOE.

In accordance with AB 3069, Revenue and Taxation Code (RTC) section 6901, which authorizes the BOE to credit and refund overpaid amounts under Sales and Use Tax Law was amended to provide in the final sentence of subdivision (c):

"Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination."

The same public record requirement for cancellations in excess of \$50,000 is also found in RTC section 6981.⁴ Currently, to satisfy the public record requirement, staff's determinations to grant BOE claims for refund in excess of \$50,000 and up to \$100,000 are sent to the Board Proceedings Division at least 10 days prior to the effective date of these determinations. Also, staff's determinations to grant claims for

⁴ The only exception is that the public record requirement applies to cancellations in excess of \$15,000 under RTC section 45801 of the Integrated Waste Management Fee Law.

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refund in excess of \$100,000 are placed on either the BOE's Adjudicatory or Consent calendar for Board Member approval and are made available as a public record when the Public Agenda Notice is distributed 10 days before the meeting.

Delegation of Authority. RTC section 7, provides the Board's authority to delegate duties:

"Whenever a power is granted to, or a duty imposed on, any person or board by any provision of this code, it may be exercised or performed by any deputy or person authorized by the person or board to whom the power is granted or on whom the duty is imposed, unless it is expressly provided that the power or duty shall be exercised or performed only by the person or board to whom the power is granted or on whom the duty is imposed."

With regard to refunds, the Board has previously approved several delegations to staff:

On September 1, 1999, an issue paper was brought before the Board recommending a delegation of authority to the Executive Director for approving all refunds of Electronic Fund Transfer (EFT) overpayments for Sales and Use Tax Department (SUTD) and Special Taxes Programs due to errors or duplicate payments. This delegation was approved by the Board Members.

On June 25, 2003, the Board Chair requested a review of Consumer Use Tax cancellations that reduced the liability to zero. This was to ensure a taxpayer's privacy was protected when a tax was found not to be due. At the same time, staff brought forward a recommendation to reduce the number of Consent Items on the Board Calendar by increasing the current level of delegation from \$50,000 to \$250,000 for all cases brought before the Board. These cases may include refunds, credits, cancellations, redeterminations and relief of penalties. The Board did not approve staff's recommendation to increase the delegation of authority but did adopt staff's recommendation to delegate the authority to cancel (or redetermine to zero) all individual billings on vehicles, vessels and aircraft when tax is found not to be due. Currently, the public notice process includes sending the Board Proceedings Division a copy of the Consumer Use Tax billing cancellations at least 10 days prior to the effective date of these determinations. Board Proceedings maintains these documents in a binder. It is available to the public upon request.

On May 27, 2009, an issue paper was presented to the Board by the SUTD Deputy Director recommending that the threshold for Board Member approval of refunds in excess of \$50,000 be increased to \$100,000. The Board unanimously voted to approve this recommendation and delegated authority to staff to grant or deny refunds up to \$100,000. Additionally, the Board directed staff to amend the Board's regulations to incorporate the delegations for the relevant Revenue and Taxation Code sections. To satisfy the public record requirement for refunds in excess of \$50,000, but \$100,000 or less, which are not placed on the BOE's Adjudicatory or Consent calendar, SUTD and Special Taxes and Fees Department (STFD) staff forward the determination to the Board Proceedings Division at least 10 days in advance of the effective date of the determination.

V. Discussion

Staff is seeking Board approval to amend Regulations 5218, 5237, and 5267 to increase the current level of authority delegated to staff to grant refunds without Board Member approval. This will streamline the BOE's refund procedures by allowing staff to process claims up to three months earlier than with the current process. To be consistent with various statutes, a public record of all refunds over \$50,000 will continue to be maintained in the Board Proceedings Division.⁵ A statutory change would be required to

⁵ Also, a public record of all cancellations in excess of \$15,000 of the Integrated Waste Management Fee will continue to be maintained in the Board Proceedings Division.

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eliminate the public record requirement for claims over \$50,000, or to raise the threshold for that public record requirement.

Claim Processing Procedures. The processing of SUTD claims for refund is coordinated by the staff in the Audit Determination and Refund Section. Claims may be verified by refund staff in Headquarters, or may be referred to a field office for investigation. If the claimant has an audit in process during the period of the claim for refund, SUTD refund staff will refer the claim to the district office. The processing of STFD claims for refund is handled internally by refund staff within the Appeals and Data Analysis Branch. Claims are verified by refund staff within STFD. If the claimant has an audit in process during the period of the claim for refund, the refund request will be included as part of the audit. (In general, this procedure benefits the taxpayer by allowing offsetting interest at the debit rate. The credit interest rate is currently 0% and has been since July 1, 2009.)

The process of preparing a claim for refund in excess of \$100,000 begins in Headquarters up to four months prior to the Board Meeting. SUTD and STFD auditors prepare Board Summaries for recommended refunds that are reviewed and approved for further processing by their respective Refund Section supervisors. A supervisor or designated reviewer personally reviews every refund in excess of \$5,000 (tax and credit interest). This approval is entered in the IRIS refunds subsystem. A refund cannot be released to the State Controller's Office without this approval. The approver is identified within the system. In addition to these controls, the section supervisor or designated reviewer reviews all refunds, credits, cancellations and denials in excess of \$100,000. A credit is a claim item that is granted but offset against another liability. To ensure there is adequate review before the summaries are forwarded to the Board Proceedings Division, summaries are due to the Refund Coordinator approximately two months (for STFD) to three months (for SUTD) prior to the appropriate Board Meeting.

Summaries are subsequently forwarded to the respective department's Petitions staff to combine with the entire Sales and Use Tax or Special Taxes Calendar. The deadline for forwarding the completed summaries to the Petitions staff is approximately ten weeks prior to the Board meeting. The summaries are compiled and forwarded for review and recommended changes to the appropriate Division Chief and the Assistant Chief Counsel of the Tax and Fee Programs Division. The SUTD and STFD summaries are reviewed by the respective Deputy Director. The Petitions Sections deliver the SUTD and STFD portions of the calendar to the Board Proceedings Division forty-five days prior to the scheduled Board meeting. Since the time frame between Board meetings may exceed one month, it is possible that a refund that just missed a prior deadline will wait an additional month before being heard for Board Member approval.

After Board approval of a refund item, the Refund Coordinators in SUTD and STFD send their refund schedule to Accounting, which forwards the schedule to the State Controller's Office. Claimants usually receive their refund checks within two weeks of the State Controller's receipt of the refund schedule.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board delegate the authority to issue refunds of \$250,000 or less to staff and raise the threshold for Board Member approval of refunds from \$100,000 to \$250,000.

Board staff also recommends that the Board authorize the publication of proposed amendments to BOE Rules for Tax Appeals Regulations 5218, 5237, and 5267 to conform these regulations to the new delegation and the increase in the Board Member approval threshold on refunds from \$100,000 to \$250,000. Since various RTC sections (see Exhibit 5 for a list of sections) require that a public record be

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maintained with respect to any refund in excess of \$50,000, staff also proposes that public records for determinations to refund amounts above \$50,000 continue to be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative will reduce the number of cases requiring Board approval by approximately 44%. This change would also allow claimants to receive their refunds up to three months earlier on approved claims between \$100,001 and \$250,000 and would reduce staff hours spent preparing those cases for Board calendar.

As shown in Exhibit 4 in FY 2013/2014, 275 refunds in excess of \$100,000 were prepared by SUTD and STFD equating to a dollar figure of \$202,171,481. If the approval threshold had been at \$250,000, 122 of these cases would not have required summary preparation. The dollar figure for these cases amounts to \$17,154,522. Refunds for these cases would have been granted to the claimant up to three months earlier. Under this proposal, the Board would still have approved \$185,016,959 in refunds for the 153 items in excess of \$250,000. In dollars, this represents over 92% of the refunds (see Exhibit 4).

There would also be a savings of staff hours. Board summaries related to each of these refunds can require several hours of staff time. After preparation of the summary by the auditor, there are added layers of staff and management review, such as the Refund Coordinator, Petitions Section, Division Chief, Assistant Chief Counsel, Department Deputy Director, Board Proceedings Division, and individual Board Member staff. Raising the threshold for Board Member approval would save hundreds of staff hours preparing these summaries for Board Calendar (see Operational Impact on the next page) while still maintaining the same internal processing and approval level of review.

B. Pros of Alternative 1

- Allows claimants to receive their refunds up to three months earlier.
- Reduces the number of cases requiring Legal Department and Board Member review.
- Substantially decreases staff workload in preparing summaries for Board Calendar.
- Maintains the consistency for Board Member approval of refunds between SUTD and STFD.
- Reduces the redundancy of summary reviews while maintaining sufficient supervisor management review.
- Retains Board Member approval of the highest dollar refund cases.

C. Cons of Alternative 1

Board Members will no longer be required to approve staff recommendations on refunds between \$100,001 and \$250,000. Although a public record will be maintained in the Board Proceedings Division, the cases will not be presented to the Board for approval.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation requires the amendment of Regulations 5218, 5237, and 5267 as shown in Exhibits 1, 2, and 3.

E. Operational Impact of Alternative 1

Multi-level reviews of Board summaries would be eliminated for refund cases ranging from \$100,001 to \$250,000 while maintaining the integrity of the refund process. These reviewers include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings

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Division; and individual Board Member staff. It is conservatively estimated that in addition to each Department's Refund staff's initial preparation of the summary, up to five additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2013/2014 on claims ranging from \$100,001 to \$250,000, this represents up to 610 hours expended in preparing cases for the Consent or Adjudicatory Calendars (122 cases x 5 hours). (See Exhibit 4.)

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the amended regulations is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 1

Taxpayers with approved refunds between \$100,001 and \$250,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

H. Critical Time Frames of Alternative 1

Implementation will take place following the approval of the amended regulations by the Office of Administrative Law.

VII. Alternative 2 – Delegate Approval Requirement to Staff**A. Description of Alternate 2**

Alternatively, staff could be delegated the authority to issue all refunds without Board Member approval, which would also require amendments to Regulations 5218, 5237, and 5267. Since various RTC sections regarding refunds require that a public record be maintained with respect to any refunds in excess of \$50,000, staff also proposes that a public record of determinations to grant refunds above \$50,000 continue to be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow claimants to receive their refunds up to three months earlier on all approved claims of over \$100,000. The cases brought before the Board and the related number of staff hours spent preparing those summaries for Board calendar will be eliminated.

During FY 2013/2014, the Board granted \$202,171,481 in SUTD and STFD refunds from the Consent and Adjudicatory Calendars.

B. Pros of Alternative 2

- Allows more claimants to receive their refunds up to three months earlier.
- Eliminates more refund summaries requiring Legal Department and Board Member reviews.
- Eliminates more staff workload in preparing summaries for Board Calendar.

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- Eliminates more redundancy while maintaining sufficient supervisor and management review.

C. Cons of Alternative 2

Board Members will no longer be required to approve any staff recommendations on refunds.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, this alternative does require amendments to Regulation 5218, 5237, and 5267.

E. Operational Impact of Alternative 2

Multi-level reviews of Board summaries would be eliminated for all refund cases while maintaining the integrity of the refund process. These summary reviews include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings Division; and individual Board Member staff. It is conservatively estimated that in addition to Refund staff's initial preparation of the summary, up to 5 additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2013/2014 on claims over \$100,000, this represents up to 1,375 hours expended in preparing cases for the Consent or Adjudicatory Calendars (275 cases x 5 hours).

F. Administrative Impact of Alternative 2**1. Cost Impact**

The workload associated with publishing the amended regulations is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 2

Taxpayers with approved refunds over \$100,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

H. Critical Time Frames of Alternative 2

Implementation will take place following the approval of the amendments of the regulations by the Office of Administrative Law.

VIII. Alternative 3 – Make No Change**A. Description of Alternative 3 – Make No Change**

Do not change the current requirement that Board Members approve claims for refund in excess of \$100,000.

B. Pros of Alternative 3

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Board Members will continue to review and approve all refunds in excess of \$100,000.

C. Cons of Alternative 3

Claimants will continue to experience delays in receiving their refunds due to the requirements of the calendaring process for refunds in excess of \$100,000.

D. Statutory or Regulatory Change for Alternative 3

None.

E. Operational Impact of Alternative 3

None.

F. Administrative Impact of Alternative 3

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 3

None.

H. Critical Time Frames of Alternative 3

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division

Current as of: April 3, 2015

BOARD OF EQUALIZATION RULES FOR TAX APPEALS
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

**ARTICLE 2A: PETITIONING NOTICES OF DETERMINATION
AND
NOTICES OF DEFICIENCY ASSESSMENT**

5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

(a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.

(c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.

(e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

(1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Board approval.

(2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer's Favor.

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(1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Board approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

(g) If the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's petition will be resolved in accordance with the change, subject to Board approval if applicable.

(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of ~~\$100,000~~250,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:

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(1) The Board may approve the findings.

(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.

(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.

BOARD OF EQUALIZATION RULES FOR TAX APPEALS
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 3: CLAIMS FOR REFUND

5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$100,000~~250,000.

- (a) If the assigned section determines that a refund in excess of ~~\$100,000~~250,000 should be granted, the recommendation for the proposed refund must be submitted to the Board for approval except where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program, where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.
- (b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the claimant. Where the Board approves a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.
- (c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).
- (d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$100,000~~250,000 must be submitted to the Executive Director for approval. If the Executive Director approves, the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.
- (e) If the assigned section determines that a refund in excess of ~~\$100,000~~250,000 should be denied, and the claimant has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval. If the Board approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.
- (f) If the assigned section determines that a refund in excess of \$50,000 should be granted and the determination is not required to be submitted to the Board, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

BOARD OF EQUALIZATION RULES FOR TAX APPEALS
California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 6: APPEALS CONFERENCES

5267. ISSUANCE OF POST APPEALS CONFERENCE NOTICES; BOARD APPROVAL.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

- (1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;
- (2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and
- (3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding ~~\$100,000~~250,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of ~~\$100,000~~250,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Board for approval as a nonappearance item, at which time:

- (1) The Board may approve the recommendation.
- (2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division.
- (3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for a Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may

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request a Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.

(d) If a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation, recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, and the recommendation does not require Board approval, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Refund Claims Requiring Board Approval

Exhibit 4

Analysis of SUTD and STFD Claims Requiring Board Approval FY 2013/2014

Board Meeting Date	# Cases greater than \$100,000, less than \$250,000	Dollar Amount	# Cases greater than \$250,000	Dollar Amount	Total # cases over \$100,000	Total Dollar Amount
7/17-7/18/13	11	\$ 1,803,370	19	\$ 25,474,304	30	\$ 27,277,674
8/13/13	6	799,097	11	7,602,818	17	8,401,915
9/10/13	16	1,812,976	16	7,673,965	32	9,486,941
10/22/13*						
10/29-10/31/13	5	636,673	10	9,447,385	15	10,084,058
11/19-11/20/13	8	1,110,905	9	2,697,601	17	3,808,506
12/17/13	14	1,988,281	12	10,023,898	26	12,012,179
1/16/14	13	1,881,876	17	20,681,884	30	22,563,760
2/25-2/27/14	7	1,103,020	19	39,712,763	26	40,815,783
3/25/14	5	875,215	8	18,409,860	13	19,285,075
4/22/14	15	1,929,989	11	17,648,182	26	19,578,171
5/22/14	10	1,586,001	9	8,354,788	19	9,940,789
6/24-6/26/14	12	1,627,119	12	17,289,511	24	18,916,630
Totals	122	\$17,154,522	153	\$185,016,959	275	\$ 202,171,481

***No Consent Items or Actions**

Raising the threshold for Board Member approval to \$250,000

Reduction in number of cases to be approved by the Board: 275 - 153 = 122

Percentage reduction in cases to be approved by Board: 122 ÷ 275 = 44%

Difference in dollar value: \$202,171,481 - \$185,016,959 = \$17,154,522

Percentage of SUTD and STFD cases still requiring Board approval based on dollars:

$$\$185,016,959 \div \$202,171,481 = 92\%$$

For redeterminations appeals, only cases that resulted in a refund to the taxpayer were included in the above data.

Revenue and Taxation Code Sections Relating to Refunds

Exhibit 5

Tax/Fee Program	Revenue and Taxation Code Refund Section
Sales and Use Tax	6901
Motor Vehicle Fuel Tax	8126
Use Fuel Tax	9151
Private Railroad Car Tax	11551
Insurance Tax	12977
Cigarette and Tobacco Products Tax	30361
Alcoholic Beverages Tax	32401
Timber Tax	38601
Energy Resources Users Surcharge	40111
Emergency Telephone Users Surcharge	41100
Natural Gas Users Surcharge	55221
California Tire Fee	55221
Fire Prevention Fee	55221
Lumber Products Assessment	55221
Electronic Waste Recycling Fee	55221
Marine Invasive Species Fee	55221
Water Rights Fee	55221
Childhood Lead Poisoning Prevention Fee	43451
Occupational Lead Poisoning Prevention Fee	43451
Hazardous Waste Fee Programs	43451
Integrated Waste Management Fee	45651
Oil Spill Response, Prevention, and Administration Fees	46501
Underground Storage Tank Fee	50139
Diesel Fuel Tax	60521

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 29, 2015

ITEM P

OTHER ADMINISTRATIVE MATTERS

ITEM P3

SALES AND USE TAX DEPUTY DIRECTOR'S REPORT

1. REFUND APPROVAL

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chairman

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board Proceedings
Division

---oOo---

For Staff:

Jeff McGuire
Deputy Director
Sales & Use Tax
Administration

Lynn Bartolo
Chief, Special Taxes
Policy & Compliance
Division

Kevin Hanks
Chief, Sales & Use Tax
Administration

Randy Ferris
Chief Counsel
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 APRIL 29, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond, our next
6 matter.

7 MS. RICHMOND: Our next matter is Item P3
8 Sales and Use Tax Deputy Director's Report; Item
9 P3.1 Refund Approval.

10 MR. HORTON: Okay. Welcome. Please
11 introduce yourself for the record.

12 MR. MCGUIRE: Good morning, Members. I'm
13 Jeff McGuire with the Sales and Use Tax Department,
14 and with me today is Lynn Bartolo of our Special
15 Taxes and Fees Department.

16 We have one item before you today for your
17 consideration which involves a proposal to raise the
18 threshold for Board Member approval of refunds.

19 The Board's current delegation of authority
20 to staff is set at \$100,000 or less. Board Member
21 approval is currently required for all refunds in
22 excess of \$100,000.

23 For purposes of this discussion, just to
24 clarify, "refunds" refers to refund approvals,
25 denials and credits and cancellations included on
26 the Board's agenda, either under nonappearance
27 matters, matters for consideration or credits,
28 cancellation and refund matters that are either

1 consent or adjudicatory.

2 The alternatives before you start with
3 Alternative 1, which is recommended by staff, which
4 would increase the threshold from the current
5 \$100,000 to \$250,000. This change would still
6 require the Board to approve 92 percent of the
7 dollars that currently go before the Board for
8 approval for refunds.

9 Under this change, cases between 100,000
10 and 250,000 would be processed and refunded to
11 taxpayers up to three months sooner by bypassing the
12 Board's approval process. All the public posting
13 requirements required under the law, which are --
14 include all refunds over \$50,000, would continue to
15 be met for the ones between 100,000 and 250,000 that
16 staff would approve.

17 This change would require some amendments
18 to our Board Regulations 5218, 5237 and 5267 which
19 are Board's rules for tax appeals. And as such, the
20 changes that anything you adopt today would actually
21 not take place until we actually amend those
22 regulations and those are approved by the Office of
23 Administrative Law.

24 Our second alternative would just delegate
25 authority to issue all refunds approval from the
26 Board to staff. And under this change then all of
27 the cases would potentially be processed up to three
28 months sooner and give the money back to taxpayers.

1 This would also require changes to those
2 three regulations and would be implemented, again,
3 once we change the regulations and those are
4 approved by the Office of Administrative Law. And
5 all the public record posting requirements would
6 continue to be met by us as the agency as we do
7 currently for all over \$50,000 refunds.

8 And then, finally, our third alternative is
9 just to actually leave it the way it is today, which
10 is \$100,000.

11 And so we are here today before you to
12 request your approval of one of these alternatives
13 and then if -- as necessary, your authorization to
14 publish any changes to the regulations mentioned.

15 MR. HORTON: Discussion?

16 Member Harkey.

17 MS. HARKEY: Hi. Thank you very much.

18 I am predisposed just to let them all stay
19 with the Department. But before we do that, what is
20 it that we get now? If you could describe exactly
21 what we get now and what the criteria are right now
22 for those items over a hundred thousand. Because as
23 I -- I know what I think I get. I want to hear from
24 you for the record.

25 MR. McGUIRE: So I guess, just to make
26 sure, what you get as the Board in addition to what
27 we would do at the staff level?

28 MS. HARKEY: Right.

1 MR. MCGUIRE: All right. So normally at
2 the staff level it has an approval level within each
3 of our departments based upon the level of the
4 refund, how high up it has to go within our
5 departments to be approved.

6 When they actually move on to the Board,
7 then of course we prepare all the materials for the
8 Board, the planning with the Board Proceedings
9 Division to get those in time, ahead of time.

10 We prepare hearing -- in essence,
11 summaries. We call them refund summaries, not
12 hearing summaries. But refund summaries on each of
13 those for the U.S., the Members and your staff to
14 review and understand what all the items were in
15 those.

16 Those, also, that come before the Board do
17 require additional approval levels within our
18 department. So any one of those that are going to
19 go to the Board do come up to, like, my level as a
20 Deputy Director and Lynn Bartolo's level over at
21 Special Taxes and Fees, as well as those go through
22 our Assistant Chief Counsel in Legal before those
23 actually go to you guys.

24 So there's a lot of kind of administrative
25 process in getting those to you, which is really
26 just related to providing you with the information
27 so you can understand what was the whole background
28 on those cases that's really already been reviewed

1 by staff but prepared additionally for you.

2 MS. HARKEY: Okay. How frequently -- I
3 guess, we would still -- we would still, as Board
4 Members, be privy to a staff report and the refund
5 summary reports? If we didn't see these they would
6 be appealed?

7 MR. MCGUIRE: Right. We could -- we could
8 provide any reports that the Board would like us to
9 provide on refunds just like we do on some of the
10 other items that we process through our department
11 each year. Like where we grant relief of certain
12 things, we provide you guys with a report on that,
13 like 6596 relief and things like that. So we
14 could -- we could do that.

15 We don't currently have an alternate
16 process to provide you with that information for
17 cases over a certain dollar amount. We process the
18 ones under a hundred thousand, and all the ones over
19 a hundred thousand come to you.

20 MS. HARKEY: Okay. For the ones under a
21 hundred thousand right now, if we wanted to view
22 something, what would we get?

23 MR. MCGUIRE: You would make a request to
24 us as the department, either department, and we
25 would prepare an ad hoc report to you about that.

26 We don't have a -- we don't currently have
27 a process that we do that on a regular basis, but we
28 could if that was the desire of the Board.

1 MS. HARKEY: Okay. If -- if -- how many --
2 how many of these appeals -- or not appeals. But
3 how many of these -- of these refunds -- before it
4 comes to us, staff is recommending a refund?

5 MR. MCGUIRE: Yes, a refund, cancellation
6 or credit, right.

7 MS. HARKEY: That's -- that's just
8 standard.

9 How many times does a Board Member pull
10 these because they don't agree?

11 MR. MCGUIRE: We have -- we aren't aware
12 that the Board has.

13 MS. HARKEY: I'm just not aware --

14 MR. MCGUIRE: I mean historically there
15 must have been some situation, but in recent memory
16 we can't remember any.

17 MS. HARKEY: Okay. I'm just -- I'm just
18 wondering. And I know this may be subject for a
19 little discussion, but I'm -- I'm just thinking that
20 we pretty much rely on you for your staff report,
21 your recommendation, and I'm not really aware that
22 the Board staff gives money away easily. So I think
23 these are pretty well ferreted out.

24 Yes, Mr. Hanks.

25 MR. HANKS: Yes. Ms. Harkey, Kevin Hanks
26 with the Sales and Use Tax Department.

27 Just in response to -- to your inquiry, I
28 just wanted to comment that very occasionally Board

1 Members might have some questions concerning the --
2 the write-ups that -- that we're recommending in
3 connection with refund matters. Ordinarily it
4 relates to items apart from the refund itself, but
5 whether or not petitioner has been apprised of their
6 appeals rights concerning any other elements that
7 they might disagree with.

8 For instance, you might have a taxpayer
9 that isn't full in agreement with the amount of the
10 refund that's being recommended, but they're
11 indicating to us they want more of a refund
12 actually. And so those are the type of situations
13 that we typically might see where a Board Member
14 might have a question.

15 MS. HARKEY: So -- so if we didn't -- if we
16 chose to just let you have approval for those items,
17 what recourse would the taxpayer have, an appeal?

18 MR. HANKS: They would have their appeals
19 rights.

20 MS. HARKEY: Okay.

21 MR. HANKS: Correct.

22 MS. HARKEY: Thank you.

23 MR. HANKS: Correct. So that wouldn't
24 change.

25 MS. HARKEY: Thank you.

26 MR. HORTON: Member Ma.

27 MS. MA: So, Mr. McGuire, you said that
28 usually takes three to four months longer for a

1 refund if they -- if we have to come to the Board
2 for approval.

3 MR. MCGUIRE: That's correct.

4 MS. MA: Do we give interest --

5 MR. MCGUIRE: Yeah, we -- well --

6 MS. MA: -- to the taxpayer?

7 MR. MCGUIRE: Currently credit interest is
8 at zero, so --

9 We do -- we -- we do grant interest. But,
10 again, current -- in the current periods it's zero
11 right now, based on current interest rates and
12 that's the statutory calculation of interest. So
13 debit interest, like if you owed us, is at six
14 percent, but credit interest is at zero.

15 MS. MA: And what's the rate for interest
16 if we are assessing the tax?

17 MR. MCGUIRE: That would be six percent
18 debit interest, right. So we charge six percent.
19 We give back zero right now.

20 A lot of times --

21 MS. MA: And then how is this determined,
22 like who determined this?

23 MR. MCGUIRE: This is a statutory
24 calculation that's based upon -- I can't remember
25 the exact details. But it's calculated based in
26 statute where we look at certain factors and current
27 interest rates and it's discounted.

28 There's been a number of legislative

1 proposals over the years to take the interest rates
2 back to being equalized like they were back years
3 ago when I started at the Board. But they've been
4 separate for probably 15 or 20 years now.

5 MS. MA: Okay, thank you.

6 MR. HORTON: Member -- Member Runner.

7 MR. RUNNER: Yeah, I -- I'm actually fine
8 with going to all with the idea, but I -- what I
9 would like, though, is to -- and again, Jeff, maybe
10 you could help us know if this would slow the
11 process down, then I may not be too concerned about
12 it if it does slow the process down. A report that
13 would be -- but go to the 250. That each month we
14 as a Board -- I'd like to see a report of our
15 refunds that are 250 and above, as they would be
16 done. And that -- and that -- but -- but only as a
17 report, not as a -- not as an item of -- of action
18 or --

19 Does that make sense?

20 MR. McGUIRE: Yeah. No, that absolutely
21 can be done.

22 MR. RUNNER: Would that add -- would that
23 be expedited?

24 MR. McGUIRE: That would definitely help us
25 shrink the time down because we have to write an
26 individual summary --

27 MR. RUNNER: Right.

28 MR. McGUIRE: -- for you guys in detail of

1 each case. But there would still be some lead time
2 for us with the Board Proceedings process, just to
3 get that. So --

4 MR. RUNNER: No, I don't mean a report to
5 the Board. I'm sorry.

6 MR. McGUIRE: Oh, I'm sorry.

7 MR. RUNNER: I meant an individual -- a
8 report to Board Members, not a report to the Board.

9 MR. McGUIRE: Oh, just like a Member --

10 MR. RUNNER: Yeah, yeah.

11 MR. McGUIRE: -- a report from like us as
12 the Department --

13 MR. RUNNER: Yeah.

14 MR. McGUIRE: -- to you guys?

15 MR. RUNNER: Yes. Not at a Board meeting.

16 MR. McGUIRE: Yeah, we could do that.

17 MR. RUNNER: It would just be just so we're
18 knowledgeable about those -- those larger ones.

19 MR. McGUIRE: And I don't believe that
20 would have any slowdown on the process though.
21 Because, again, we would be notifying you after we'd
22 approved because, again, we're not asking -- we
23 wouldn't be asking for your approval --

24 MR. RUNNER: Right --

25 MR. McGUIRE: -- again. So it would be --

26 MR. RUNNER: Afterwards.

27 MR. McGUIRE: That would be fine. That
28 would be easy to do.

1 MR. HORTON: When there is a dispute
2 between the taxpayer and the Department where the
3 taxpayer is of the opinion that the deposit -- I
4 mean the claim should be higher, what discretion
5 does the Board have, aside from the appeals process,
6 in order to grant that claim?

7 MR. McGUIRE: Really I believe -- unless
8 I'm wrong, that's the appeals process. The taxpayer
9 can request an appeals hearing and then appeal that
10 all the way to you guys as the Board.

11 Ultimately, if they had some dispute, they
12 could take us to court ultimately, you know, after.
13 Because we've in essence denied, I guess, part of
14 their claim if they wanted more and we only gave
15 them a part of it.

16 MR. HORTON: When it's presented to the
17 Board, at the time that it's presented, does the
18 Board have the discretion at that time to adjust
19 that claim?

20 MR. McGUIRE: Yeah, under the Board's rules
21 of appeals you can approve, adjust, you know, and
22 modify anything on those claims that come before
23 you.

24 MR. HORTON: Yeah.

25 MR. RUNNER: But we --

26 MS. HARKEY: I think --

27 MR. RUNNER: For as long as I've -- I mean
28 I've only been here four, but --

1 MR. HORTON: I mean I --

2 MR. RUNNER: We pretty much accept them.

3 MR. HORTON: I generally --

4 MS. HARKEY: Well, you could -- I mean --
5 Go ahead. I'm sorry.

6 MR. HORTON: I'm -- Members, I don't know
7 what the number is, what the threshold should be.

8 I think it's wise to expedite the process
9 and get the claims for refunds to these individuals
10 as soon as possible.

11 If there is a disputed amount, I believe
12 that amount should come to the Board. And I'm not
13 necessarily prepared to give -- personally to give
14 up that -- that authority or responsibility to be
15 able to adjust in favor of the taxpayer if we agree,
16 which is generally the only direction that we
17 ultimately go is in favor of the taxpayer if their
18 claim is -- if they feel the claim is higher or to
19 give direction as a body to the staff as to how to
20 deal with those claims.

21 So I guess a solution would be is that if
22 there are any disputed amounts, that they still come
23 to the Board. That all the amounts that are agreed
24 to, everyone's in agreement, so why rubber-stamp it?
25 But when there are disputed amounts, the Board
26 should have somewhat some discretion in that
27 process, and I'm not necessarily prepared to give
28 that up.

1 I see Legal wanting to --

2 MR. FERRIS: No.

3 MR. HORTON: No?

4 MR. FERRIS: I wanted to keep my focus on
5 you.

6 MR. HORTON: Oh, okay. All right.

7 MS. MA: Would there be notification to the
8 taxpayer that this is the refund amount; however, if
9 they do not agree, then, you know, their course of
10 action is X?

11 MR. McGUIRE: Right. Yeah, currently we
12 advise them if they disagree, then they can request
13 an appeals conference. Which, you know, kind of
14 starts moving them into the appeals process that
15 ultimately could, you know, be sitting right here
16 before you guys, discussing -- not like an audit
17 like we had earlier, but a refund case.

18 MS. MA: And how long would that process
19 take?

20 MR. McGUIRE: If they were appealing all
21 the way to the Board?

22 MS. MA: Yes.

23 MR. McGUIRE: That could take, you know,
24 maybe a year or two.

25 MR. RUNNER: We can use General Electric
26 for an example.

27 MR. HORTON: Yeah.

28 MR. McGUIRE: It could be take a little

1 while.

2 MR. HORTON: No, no, no. I mean it -- in
3 my -- in my experience, in the rare occasions when
4 that does happen, these companies, they do these --
5 they do this risk assessment and the cost of
6 lawyers -- in order to get their rights, in order
7 to -- to make their statement, the cost of lawyers
8 and time and delay is generally not worth 50, a
9 hundred thousand dollars in claim. But they truly
10 believe that that refund should be higher, they
11 should receive more money than what the staff has
12 allowed. But because of the risks associated with
13 that or the cost of litigating that, they just go
14 ahead and settle. "Oh, well, just settle with the
15 Board of Equalization."

16 But anyway, that's just my --

17 MR. RUNNER: I was going to say at least
18 my -- again, my time here, once they came on that
19 list, I kind of assumed that they're all okay.
20 Because if they're not, then we've -- then
21 they've -- then they've talked to us individually or
22 they've going through the appeal -- they're going
23 through some appeal process.

24 I'm trying to remember if we've ever -- I
25 don't think I've ever had a case where we actually
26 had somebody who said, "Hey, I'm on the list for
27 appeals and I need -- I need you to take me off."

28 MR. HORTON: For refund.

1 MR. RUNNER: I mean, "I'm on the list for
2 refund; I need you to take me off." I don't know.

3 MR. McGUIRE: I agree. I'm not aware of
4 that because they would have requested an appeals
5 conference.

6 MR. RUNNER: Right.

7 MR. McGUIRE: And then moved through, you
8 know, further up in the process.

9 MR. RUNNER: Yeah.

10 MS. HARKEY: I'm open for whatever.

11 MR. RUNNER: So I -- I -- well, let me
12 start. I'll go ahead and make a motion --

13 MR. HORTON: Why don't we --

14 Let me ask the Department, are there times
15 that the taxpayer disagrees with your -- the
16 amounts, and they feel that the claim should be
17 higher?

18 MS. BARTOLO: Occasionally, yes.

19 MR. HORTON: Occasionally.

20 MR. McGUIRE: There -- there -- there's
21 some situations.

22 MR. HORTON: On those occasions, what
23 happens?

24 MR. McGUIRE: Typically they would request
25 an appeals conference because they disagree with the
26 Department.

27 MR. HORTON: Has those appeals ever come
28 before the Board when they disagree?

1 MR. MCGUIRE: Yes.

2 MS. BARTOLO: Yeah.

3 MR. MCGUIRE: Uh-huh, absolutely.

4 MR. RUNNER: We get those.

5 MR. HORTON: And would it be faster to have
6 that item come before the Board and the Board grant
7 the appeals or grant the claim?

8 MR. MCGUIRE: You mean just going straight
9 to the Board with those instead of going to an
10 appeals conference?

11 MR. HORTON: If they -- as opposed to
12 filing an appeal, it stays in its normal course of
13 action now, and when it comes before the Board, they
14 simply tell the Board that they disagree or they
15 contact the Member and say we disagree, we think it
16 should be higher and here's why.

17 Or, in fact Members have actually said in
18 the past that they disagreed with the decision and
19 pulled it off the calendar. And then we resolved it
20 and ultimately agreed. Only happened twice to my
21 knowledge.

22 MS. HARKEY: So it has happened.

23 MR. MCGUIRE: Yeah, I think, again, it's
24 like a disputed audit amount. You know, a
25 deficiency as well as a refund, those appeals
26 processes are the same process that they can go
27 through. So if they agree at the staff's
28 recommendation to approve the refund and, you know,

1 even if they maybe thought it should be a little bit
2 different than it was agreed to but they thought
3 that's fine, then those wouldn't move forward and we
4 wouldn't even know that sometimes maybe they even
5 had, you know, a little bit of heartburn over them
6 or thought it should have been slightly different.

7 I think there is a process. I -- I just
8 wasn't sure if you were saying that we try to do
9 some expedited process for refund disputes that's
10 different from the process that vets them through
11 the appeals like we would with deficiencies.

12 MR. HORTON: I'm okay with trying it,
13 Members. It just -- it's an authority that I'm
14 not --

15 MS. STOWERS: Yeah.

16 MR. HORTON: -- necessarily all that
17 comfortable with releasing.

18 MR. RUNNER: Well, we're --

19 MR. HORTON: Well, here's -- if --
20 My apologies, Mr. Runner.

21 MR. RUNNER: Yeah. Go ahead.

22 MR. HORTON: Please. No, I'm deferring to
23 you.

24 MR. RUNNER: Oh. No. I'm going to say
25 it's really -- I don't think it's an authority that
26 we're really giving up. I mean right now we --
27 we -- we -- in that sense, they're -- I mean they
28 are basically rubber-stamped.

1 The ability for somebody who has a concern
2 about refund, there's a whole process for appeal.
3 And that's what they deal with. And in fact I've
4 had numerous conversations with folks who are
5 concerned about a refund, and so we'll be in the
6 process. But they're not the ones that are on the
7 list because they've -- those folks have already
8 kind of worked through all their issues.

9 So I -- I think it -- that would be my
10 concern is -- and the other issue is if we
11 actually -- if we actually ever thought that
12 somebody on this list would come here and say "I
13 want to go ahead and have a hearing on this," we're
14 not -- I don't think those are public hearings at
15 that point. So then we would have to re -- it'd end
16 up in another agenda anyhow and staff would have to
17 then do their presentation. So we wouldn't be ready
18 to -- we wouldn't be ready to actually do the
19 hearing.

20 MR. HORTON: Right.

21 MR. RUNNER: So I don't see us giving up
22 anything. I think we're expediting, again, getting
23 people back their money. That's -- I mean gotta get
24 back to what the breadth of this is, is we are
25 holding people's money and we're trying to get it
26 back to them.

27 MS. MA: Yes, I would agree too. We hold
28 it. We give them no interest. We're not adding any

1 value to the process. So why does it have to come
2 to us? That's my --

3 MR. HORTON: We'll take that as a motion
4 for Alternative 3.

5 MR. RUNNER: 2 -- is that 2?

6 MR. HORTON: 2?

7 MR. McGUIRE: That would be 3, I believe.

8 MR. RUNNER: Oh, 3. I'm sorry.

9 MS. STOWERS: 3 is --

10 MR. RUNNER: Is it 3?

11 MR. McGUIRE: Oh no. That would be 2.

12 MR. HORTON: We'll take that as a motion
13 for Alternative 3 by Member Ma. Second by --

14 MS. HARKEY: Alternative 2.

15 MR. HORTON: Alternative 2 by Member Ma.
16 Second by Member Harkey. With --

17 MR. RUNNER: With the understanding that
18 there will be a report to the Board Members on items
19 over 250,000.

20 MR. McGUIRE: That would will be monthly
21 report then, right?

22 MR. RUNNER: Monthly report that will just
23 come to the Board.

24 MR. McGUIRE: Okay.

25 MR. RUNNER: Not to Board meetings but to
26 the Board Members.

27 MS. MA: Can you just read us Alternative 2
28 again?

1 MR. MCGUIRE: Okay. So Alternative 2 would
2 delegate all authority -- or it -- it would delegate
3 authority to issue all refund approval without
4 requiring the Board. It would delegate it to staff.

5 And so the change with basically anything
6 currently we do up to a hundred thousand. It would
7 go over a hundred thousand, up to whatever amount
8 that would be.

9 We still do have to revise the regulations
10 which is the public process. So as we're doing
11 that, that's also another opportunity. If people
12 had some concerns over our making these changes,
13 that could happen in that process that will come
14 before you again. And ultimately the Office of
15 Administrative Law is the final approval of our
16 regulation. So that's when it would actually take
17 effect.

18 And then we added to the alternative that
19 staff will provide a monthly report to the Board of
20 all refunds over a hundred thousand dollars.

21 MR. RUNNER: I said 250.

22 MS. HARKEY: 250.

23 MR. MCGUIRE: Oh, 250. Okay. I just want
24 to make sure I have the right --

25 MS. HARKEY: The Board Members,
26 individually.

27 MR. RUNNER: Yeah.

28 MR. MCGUIRE: Right.

1 MR. HORTON: There's a motion and a second.
2 Without objection, such will be the order.
3 With it passing, I really only want to see
4 it if there's an objection. I don't need to see it
5 if there's concurrence on both parts. So save
6 yourselves some time.

7 ---oOo---

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on April 29, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 23 constitute a complete and accurate transcription of the shorthand writing.

Dated: May 18, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL
Hearing Reporter



**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Rules for Tax Appeals Regulations 5218, Review of the Petition by the Assigned Section, 5235, Action on the Claim for Refund, 5237, Board Approval Required for Refunds Over \$100,000, and 5267, Issuance of Post Appeals Conference Notices; Board Approval.

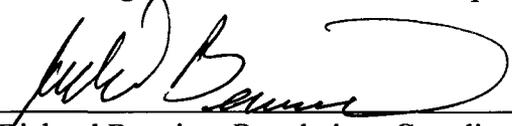
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

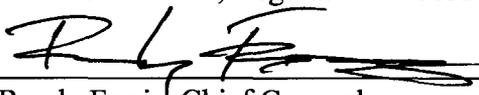
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that 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 cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 10/08/15
Richard Bennion, Regulations Coordinator

Approved by  Date 10/8/15
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 5218, Review of the Petition by the Assigned Section, et seq.			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below):

Please see the attached.

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? YES NO

If YES, complete E2. and E3

If NO, skip to E4

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- 3. Annual Savings. (approximate)

\$ _____

- 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

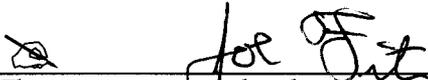
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

October 7, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

October 7, 2015

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to
California Code of Regulations, Title 18, Sections
5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000, and*
5267, *Issuance of Post Appeals Conference Notices; Board Approval.*

As explained in more detail in the initial statement of reasons, the State Board of Equalization (Board) has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight.

Also, as explained in more detail in the initial statement of reasons, in 2009, the Board expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees and penalties by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly. California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, currently prescribe the requirements for the Board's and Executive Director's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount. And, Regulation 5235, *Action on the Claim for Refund*, clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

In addition, as explained in more detail in the initial statement of reasons, on April 29, 2015, the Board unanimously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority, and establish a new process for the Board's Deputy Directors to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including payments made through the electronic funds transfer program, or cancel fraud or evasion penalties in any amount. However, the proposed amendments do not change the substantive standards for determining whether an amount should be refunded, credited, or canceled. The proposed amendments will ensure that there continues to be sufficient oversight of substantial refunds, credits, and cancellations by requiring a Deputy Director's approval before Board staff can actually refund, credit, or cancel an amount in excess of

\$100,000 or cancel a fraud or evasion penalty. And, the modified adjusted rate of interest currently paid on refunds and credits is zero percent (0%). (See, e.g., Rev. & Tax. Code, §§ 6591.5, subd. (d), and 6907.) Therefore, the Board has determined that the proposed amendments will make the Board's internal processing of refunds, credits, and cancellations more efficient and permit refunds in excess of \$100,000 to be issued up to three months earlier. However, the proposed amendments will not change the size of the refunds, credits, or cancellations made by the Board and will not change the amount of credit interest currently paid on refunds or credits.

As a result, the Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Furthermore, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 do not impose any costs on any persons, including businesses, and the Board has determined that there is nothing in the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would impact revenue. Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267:

- 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;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, and will result in no cost or savings in federal funding to the State of California;
- Will result in no direct or indirect cost to 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, and will result in no other non-discretionary cost or savings imposed on local agencies; and
- Will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

In addition, Regulations 5218, 5235, 5237, and 5267 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also

determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small businesses.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2015-1007-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE OCT 07 '15 OCT 23 '15 Office of Administrative Law NOTICE	REGULATIONS
--	-------------

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
---	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Review of the Petition by the Assigned Section	TITLE(S) 18	FIRST SECTION AFFECTED 5218	2. REQUESTED PUBLICATION DATE October 23, 2015
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
-------------------	------------------	-----------------------	---------------------------

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

TITLE 18. BOARD OF EQUALIZATION

**The State Board of Equalization Proposes to Adopt
Amendments to California Code of Regulations, Title 18, Sections
5218, *Review of the Petition by the Assigned Section*,
5235, *Action on the Claim for Refund*,
5237, *Board Approval Required for Refunds Over \$100,000*, and
5267, *Issuance of Post Appeals Conference Notices; Board Approval*.**

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*. The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments provide new procedures for the Board's Deputy Director's to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and provide taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 16 or 17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

AUTHORITY

Regulations 5218, 5235, 5237, and 5267: Government Code section 15606 and RTC sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

REFERENCE

Regulation 5218: RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Regulation 5235: RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522.

Regulation 5237: RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Regulation 5267: RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the

Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements

for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be

needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size. Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with

Regulation 5237 because its title refers to “Board Approval,” it contains provisions for the Board’s approval of Board staff’s recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board’s decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director’s approval of Board staff’s recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board’s determination that it is sufficient for the Board’s Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to “Board approval pursuant to Regulation 5237.” Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board’s Deputy Directors to make the determinations as to whether to approve their staff’s recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director’s determination if it is less favorable than the Deputy Director’s staff’s recommendation;
- Amend Regulation 5237 to delete its provisions for the Board’s approval of Board staff’s recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director’s approval of Board staff’s recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board’s Deputy Directors to make the determinations as to whether to approve their staff’s recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to “Board” approval with references to “Deputy Director” approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulation’s currently requiring that the Board approve Board staff’s recommendations to refund, credit, or cancel amounts in excess of \$100,000. Regulations 5218 and 5267 are the only state regulations currently requiring that the

Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board's staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulation 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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 amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

NO KNOWN COST IMPACTS TO 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 action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O.

Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 5218, 5235, 5237, and 5267 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared copies of the text of the proposed amendments to Regulations 5218, 5235, 5237, and 5267. Additions to the regulations are underlined in the text and deletions from the regulations are shown in ~~strikeout~~ format in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are 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 amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the

sufficiently related change that are received prior to the Board's adoption of the resulting regulation(s).

EFFECTIVE DATE

The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable to the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267, pursuant to Government Code section 11343.4, subdivision (b)(3).

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 5218, 5235, 5237, and 5267, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, October 23, 2015 7:31 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Buck, Alfred; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Huxsoll, Cary; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Romano, Dario; Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; White, Sharon; Wiggins, Brian; Williams, Lee; Zivkovich, Robert; Zumaeta, Jaclyn
Subject: State Board of Equalization - Announcement of Regulatory Change to Regulation 5218, 5235, 5237, and 5267

The State Board of Equalization proposes to adopt amendments to Rules for Tax Appeals Regulations 5218, *Review of the Petition by the Assigned Section, 5235, Action on the Claim for Refund, 5237, Board Approval Required for Refunds Over \$100,000, and 5267, Issuance of Post Appeals Conference Notices; Board Approval*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on December 16-17, 2015.

The proposed amendments make the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/reg/reg_5218_5235_5237_5267_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

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 Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130

Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, October 23, 2015 10:43 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 5218, 5235, 5237, 5267

The State Board of Equalization proposes to adopt amendments to Rules for Tax Appeals Regulations 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on December 16-17, 2015.

The proposed amendments make the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_5218_5235_5237_5267_2015.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

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 Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Sections 5218, *Review of the Petition by the Assigned Section, 5235, Action on the Claim for Refund, 5237, Board Approval Required for Refunds Over \$100,000, and 5267, Issuance of Post Appeals Conference Notices; Board Approval.*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section, 5235, Action on the Claim for Refund, 5237, Board Approval Required for Refunds Over \$100,000, and 5267, Issuance of Post Appeals Conference Notices; Board Approval.* The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments provide new procedures for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and provide taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 16–17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 16 or 17, 2015.

At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

AUTHORITY

Regulations 5218, 5235, 5237, and 5267: Government Code section 15606 and RTC sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

REFERENCE

Regulation 5218: RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Regulation 5235: RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522.

Regulation 5237: RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Regulation 5267: RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW PURSUANT TO GOVERNMENT
CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of

\$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of

Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's

recommendations to refund, credit, or cancel amounts regardless of their size. Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer

program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulations currently requiring that the Board approve Board staff's recommendations to refund, credit, or cancel amounts

in excess of \$100,000. Regulations 5218 and 5267 are the only state regulations currently requiring that the Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulations 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

**NO SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS**

The Board has made an initial determination that adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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 amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

**NO KNOWN COST IMPACTS TO 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 action.

**RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT REQUIRED BY GOVERNMENT
CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

**NO SIGNIFICANT EFFECT ON
HOUSING COSTS**

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 5218, 5235, 5237, and 5267 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared copies of the text of the proposed amendments to Regulations 5218, 5235, 5237, and 5267. Additions to the regulations are underlined in the text and deletions from the regulations are shown in strikeout format in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are 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 amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the sufficiently related changes that are received prior to the Board's adoption of the resulting regulation(s).

EFFECTIVE DATE

The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any

amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable to the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267, pursuant to Government Code section 11343.4, subdivision (b)(3).

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 5218, 5235, 5237, and 5267, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

BUREAU OF REAL ESTATE

NOTICE OF HEARING BY THE REAL ESTATE COMMISSIONER: ANNUAL FEE REVIEW — REQUIRED BY STATUTE

Wayne S. Bell, Real Estate Commissioner, proposes to consider whether the fees charged by the Bureau of Real Estate ("CalBRE") should be lower than the maximum amount allowed pursuant to California Business and Professions Code ("the Code") Sections 10209.5, 10210, 10214.5, 10215, 10250.3 and 11011. The Commissioner's consideration will include all comments, objections and recommendations regarding such fees.

PUBLIC HEARING ANNOUNCEMENT

Sections 10226 and 11011 of the Code require, among other things, that at least one regulation hearing be held each calendar year to determine if fees lower than those authorized under Section 10226.5(b) of the



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

October 23, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt

Amendments to California Code of Regulations,

Title 18,

Sections 5218, Review of the Petition by the Assigned Section,

5235, Action on the Claim for Refund,

5237, Board Approval Required for Refunds Over \$100,000, and

5267, Issuance of Post Appeals Conference Notices; Board Approval.

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*. The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments provide new procedures for the Board's Deputy Director's to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and provide taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 16 or 17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

AUTHORITY

Regulations 5218, 5235, 5237, and 5267: Government Code section 15606 and RTC sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

REFERENCE

Regulation 5218: RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Regulation 5235: RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522.

Regulation 5237: RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Regulation 5267: RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044,

55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO
GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)**

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009,

the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper

recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size.

Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient

oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulation's currently requiring that the Board approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000. Regulations 5218 and 5267 are the only state regulations currently requiring that the Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board's staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulation 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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 amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

NO KNOWN COST IMPACTS TO 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 action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 5218, 5235, 5237, and 5267 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared copies of the text of the proposed amendments to Regulations 5218, 5235, 5237, and 5267. Additions to the regulations are underlined in the text and deletions from the regulations are shown in strikethrough format in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are 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 amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the sufficiently related change that are received prior to the Board's adoption of the resulting regulation(s).

EFFECTIVE DATE

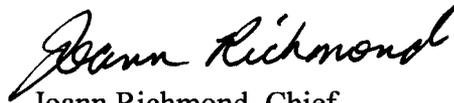
The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable to the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267, pursuant to Government Code section 11343.4, subdivision (b)(3).

October 23, 2015

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 5218, 5235, 5237, and 5267, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED



At the December 16, 2015 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Sections 5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000, and*
5267, *Issuance of Post Appeals Conference Notices; Board Approval.***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The State Board of Equalization (Board) is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code (RTC) sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

California Code of Regulations, title 18, section (Regulation) 5218, *Review of the Petition by the Assigned Section*, currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination under RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352. Regulation 5235, *Action on the Claim for Refund*, currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund under RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522. Regulation 5237, *Board Approval Required for Refunds Over \$100,000*, currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds under RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals under the provisions in RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636,

12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Proposed Amendments

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be

needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size. Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues (or problems within the meaning of Gov. Code, 11346.2, subd. (b)) with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the

Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-005, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its April 29, 2015, Board meeting in deciding to propose the amendments to Regulations 5218, 5235, 5237, and 5267, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to amend Regulations 5218, 5237, and 5267 to raise the current \$100,000 threshold for the Board's approval of refunds, credits, and cancellations to \$250,000, delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267, or make no changes to the regulations. The Board determined that it is reasonably necessary to delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267 because the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

In addition, the Board considered whether to replace the requirements for the Board's approval of refunds, credits, and cancellations in excess of \$100,000 and cancellations of fraud or evasion penalties in any amount in Regulations 5218, 5237, and 5267 with requirements for the Board's Deputy Directors' approval of their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties, or not to require additional approval of Board staff's recommendations. The Board determined that it is reasonably necessary to amend Regulations 5218, 5237, and 5267 to replace the requirements for the Board's approval with requirements for a Deputy Director's approval because the Board determined that, in the absence of Board approval, a Deputy Director's approval is needed to ensure that there is sufficient oversight of substantial refunds, credits, and cancellations.

Furthermore, the Board considered whether to eliminate the requirement in Regulation 5237 that the Board's Executive Director approve Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 or to make no changes to the requirement. The Board determined that it was reasonably necessary to delete the requirement for the Executive Director's approval from Regulation 5237 because the Board determined that a Deputy Director's approval provides sufficient oversight of substantial refunds, credits, and cancellations, including refunds of duplicate or erroneous payments made through the electronic funds transfer program.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternatives have been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in

carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2,
SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY
GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. However, the proposed amendments do not change the substantive standards for determining whether an amount should be refunded, credited, or canceled. The proposed amendments will ensure that there continues to be sufficient oversight of substantial refunds, credits, and cancellations by requiring a Deputy Director's approval before Board staff can actually refund, credit, or cancel an amount in excess of \$100,000 or cancel a fraud or evasion penalty in any amount. And, the modified adjusted rate of interest currently paid on refunds and credits is zero percent (0%). (See, e.g., RTC, §§ 6591.5, subd. (d), and 6907.) Therefore, the Board has determined that the proposed amendments will make the Board's internal processing of refunds, credits, and cancellations more efficient and permit refunds in excess of \$100,000 to be issued up to three months earlier. However, the proposed amendments will not change the size of the refunds, credits, or cancellations made by the Board and will not change the amount of credit interest currently paid on refunds or credits.

As a result, the Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 do not impose any costs on any persons, including businesses, and the Board has determined that there is nothing in the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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.

Furthermore, Regulations 5218, 5235, 5237, and 5267 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant adverse economic impact on business.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5218**

5218. Review of the Petition by the Assigned Section.

(a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.

(c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.

(e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

(1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval.

(2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer's Favor.

(1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the

taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Deputy Director~~Board~~ approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(g) Deputy Director Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be resolved in accordance with the Deputy Director's findings.

~~(hg) If the assigned section's findings are not subject to Deputy Director approval, but If the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's appeal petition will be resolved in accordance with the change, subject to Board approval if applicable.~~

~~(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:~~

~~(1) The Board may approve the findings.~~

~~(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.~~

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board~~

~~Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5235**

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

- (1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director~~Board~~ approval requirements of section 5237, if applicable); and
- (2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401,

32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

5237. Deputy Director~~Board~~ Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department~~Board~~ for approval ~~except where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program~~, where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Deputy Director~~Board~~, the Deputy Director ~~may approve the assigned section's recommendation or exercise~~~~Board~~ has discretion to make the Deputy Director's own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer~~claimant~~.

(1) ~~If~~~~Where~~ the Deputy Director~~Board~~ approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

~~(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).~~

~~(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 must be submitted to the~~

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

~~Executive Director for approval. If the Executive Director approves, the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.~~

(~~ce~~) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the ~~taxpayer~~claimant has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Deputy Director of the assigned section's Department Board for approval as provided in subdivision (b). If the Deputy Director Board approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(~~df~~) If the assigned section or the Deputy Director of the assigned section's Department determines that a refund in excess of \$50,000 should be granted ~~and the determination is not required to be submitted to the Board~~, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221 and 60521, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5267**

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

- (1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;
- (2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and
- (3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax~~Board~~ for approval-as-a nonappearance item, at which time:

(1) The Deputy Director~~Board~~ may approve the recommendation.

(2) The Deputy Director~~Board~~ may exercise its discretion to make the Deputy Director's~~its~~ own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer; ~~but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:~~

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be advised offered the opportunity for a Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request a Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

~~(d) If the Appeals Division or a Deputy Director a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation, recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, and the recommendation does not require Board approval, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

Regulation History

Types of Regulations: Rules for Tax Appeals

Regulations: 5218, 5235, 5237, 5267

Title: 5218, *Review of the Petition by the Assigned Section*,
5235, *Action on the Claim for Refund*,
5237, *Board Approval Required for Refunds Over \$100,000*, and
5267, *Issuance of Post Appeals Conference Notices; Board Approval*.

Preparation: Bradley M. Heller
Legal Contact: Bradley M. Heller

The State Board of Equalization proposes to adopt amendments to make the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval.

History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 23, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 7, 2015	Notice to OAL
April 29, 2015	Other Administrative Matters P3.1, Board Authorized Publication (Vote 5-0)

Sponsor: NA
Support: NA
Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Rules for Tax Appeals Regulations 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds over \$100,000*, 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on October 23, 2015, 54 days prior to the public hearing.

December 21, 2015

A handwritten signature in cursive script, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT
DECEMBER 16, 2015

ITEM F
PUBLIC HEARINGS
F4
PROPOSED AMENDMENTS TO RULES FOR TAX APPEALS
REGULATIONS 5218, 5235, 5237 AND 5267

REPORTED BY: Kathleen Skidgel
CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Staff:

Bradley Heller
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 16, 2015

4 ----oOo----

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next matter is Item F4,
7 Proposed Amendments to Rules for Tax Appeals
8 Regulations 5218, Review of the Petition by the
9 Assigned Section, 5235, Action on the Claim for
10 Refund, 5237, Board Approval Required for Refunds
11 Over \$100,000, and 5267, Issuance of Post Appeals
12 Conference Notices. And this is for Board
13 approval.

14 MR. HORTON: Members, we might remember
15 that this is pursuant to the request of the Members.

16 MR. HELLER: That's right.

17 MR. HORTON: Mr. Heller, please introduce
18 yourself for the record.

19 MR. HELLER: Thank you. Good afternoon,
20 Chairman Horton and Members of the Board. I'm
21 Bradley Heller from the Board's Legal Department,
22 and I'm here to ask the Board to vote to adopt the
23 proposed amendments to Regulations 5218, 5235, 5237
24 and 5267.

25 The proposed amendments make the
26 regulations consistent with the Board's prior
27 delegation of authority to staff to refund credit or
28 cancel amounts in excess of \$100,000 without the

1 Board's approval.

2 MR. HORTON: Thank you.

3 Discussion, Members?

4 Member Stowers moves adoption of staff
5 recommendation. Second by Member Harkey.

6 Without objection, Members, such will be
7 the order.

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REPORTER'S CERTIFICATE

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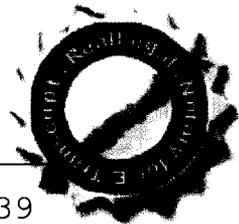
State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on December 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: December 18, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter



2015 MINUTES OF THE STATE BOARD OF EQUALIZATION**Wednesday, December 16, 2015****F4 Proposed Amendments to Rules for Tax Appeals Regulations 5218, Review of the Petition by the Assigned Section, 5235, Action on the Claim for Refund, 5237, Board Approval Required for Refunds Over \$100,000, and 5267, Issuance of Post Appeals Conference Notices; Board Approval**

Bradley Heller, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments making the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval (Exhibit 12.7).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulations 5218, 5235, 5237 and 5267 as published.

[G1] LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

G1.1 E.W. International Trade, Inc., 719634 (BH)
10/01/08 to 12/31/10, \$83,012.14 Tax, \$8,301.23 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

G1.2 John Paul Hiraoka-Lee, 585999 (CH)
10/01/07 to 09/30/10, \$36,810.27 Tax, \$3,681.02 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

G1.3 Miguel Angel Sandoval, 601184 (GH)
07/01/04 to 06/30/07, \$109,792.32 Tax, \$10,979.20 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

G1.4 Claude G. Eid, 903020 (STF)
June 2, 2015 Seizure Date, \$484.48 Approximate Value
Action: Determined that staff properly seized the tobacco products.

G1.5 Ashok B. Patel, 911740 (STF)
June 18, 2015 Seizure Date, \$189.53 Approximate Value
Action: Determined that staff properly seized the tobacco products.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
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SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

October 23, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt

Amendments to California Code of Regulations,

Title 18,

Sections 5218, Review of the Petition by the Assigned Section,

5235, Action on the Claim for Refund,

5237, Board Approval Required for Refunds Over \$100,000, and

5267, Issuance of Post Appeals Conference Notices; Board Approval.

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*. The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments provide new procedures for the Board's Deputy Director's to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and provide taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 16 or 17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

AUTHORITY

Regulations 5218, 5235, 5237, and 5267: Government Code section 15606 and RTC sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

REFERENCE

Regulation 5218: RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Regulation 5235: RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522.

Regulation 5237: RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Regulation 5267: RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044,

55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO
GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)**

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009,

the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper

recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size.

Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient

oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulation's currently requiring that the Board approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000. Regulations 5218 and 5267 are the only state regulations currently requiring that the Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board's staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulation 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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 amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

NO KNOWN COST IMPACTS TO 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 action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 5218, 5235, 5237, and 5267 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared copies of the text of the proposed amendments to Regulations 5218, 5235, 5237, and 5267. Additions to the regulations are underlined in the text and deletions from the regulations are shown in strikeout format in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are 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 amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the sufficiently related change that are received prior to the Board's adoption of the resulting regulation(s).

EFFECTIVE DATE

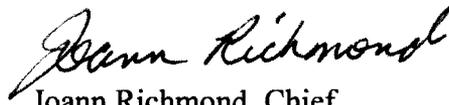
The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267, pursuant to Government Code section 11343.4, subdivision (b)(3).

October 23, 2015

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 5218, 5235, 5237, and 5267, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Joann Richmond".

Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Sections 5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000,* and
5267, *Issuance of Post Appeals Conference Notices; Board Approval.***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The State Board of Equalization (Board) is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code (RTC) sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

California Code of Regulations, title 18, section (Regulation) 5218, *Review of the Petition by the Assigned Section*, currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination under RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352. Regulation 5235, *Action on the Claim for Refund*, currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund under RTC sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, and 60522. Regulation 5237, *Board Approval Required for Refunds Over \$100,000*, currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds under RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals under the provisions in RTC sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636,

12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, and 60581.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Proposed Amendments

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be

needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size. Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues (or problems within the meaning of Gov. Code, 11346.2, subd. (b)) with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the

Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-005, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its April 29, 2015, Board meeting in deciding to propose the amendments to Regulations 5218, 5235, 5237, and 5267, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to amend Regulations 5218, 5237, and 5267 to raise the current \$100,000 threshold for the Board's approval of refunds, credits, and cancellations to \$250,000, delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267, or make no changes to the regulations. The Board determined that it is reasonably necessary to delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267 because the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

In addition, the Board considered whether to replace the requirements for the Board's approval of refunds, credits, and cancellations in excess of \$100,000 and cancellations of fraud or evasion penalties in any amount in Regulations 5218, 5237, and 5267 with requirements for the Board's Deputy Directors' approval of their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties, or not to require additional approval of Board staff's recommendations. The Board determined that it is reasonably necessary to amend Regulations 5218, 5237, and 5267 to replace the requirements for the Board's approval with requirements for a Deputy Director's approval because the Board determined that, in the absence of Board approval, a Deputy Director's approval is needed to ensure that there is sufficient oversight of substantial refunds, credits, and cancellations.

Furthermore, the Board considered whether to eliminate the requirement in Regulation 5237 that the Board's Executive Director approve Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 or to make no changes to the requirement. The Board determined that it was reasonably necessary to delete the requirement for the Executive Director's approval from Regulation 5237 because the Board determined that a Deputy Director's approval provides sufficient oversight of substantial refunds, credits, and cancellations, including refunds of duplicate or erroneous payments made through the electronic funds transfer program.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternatives have been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in

carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. However, the proposed amendments do not change the substantive standards for determining whether an amount should be refunded, credited, or canceled. The proposed amendments will ensure that there continues to be sufficient oversight of substantial refunds, credits, and cancellations by requiring a Deputy Director's approval before Board staff can actually refund, credit, or cancel an amount in excess of \$100,000 or cancel a fraud or evasion penalty in any amount. And, the modified adjusted rate of interest currently paid on refunds and credits is zero percent (0%). (See, e.g., RTC, §§ 6591.5, subd. (d), and 6907.) Therefore, the Board has determined that the proposed amendments will make the Board's internal processing of refunds, credits, and cancellations more efficient and permit refunds in excess of \$100,000 to be issued up to three months earlier. However, the proposed amendments will not change the size of the refunds, credits, or cancellations made by the Board and will not change the amount of credit interest currently paid on refunds or credits.

As a result, the Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 do not impose any costs on any persons, including businesses, and the Board has determined that there is nothing in the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 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.

Furthermore, Regulations 5218, 5235, 5237, and 5267 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant adverse economic impact on business.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5218**

5218. Review of the Petition by the Assigned Section.

- (a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.
- (b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.
- (c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.
- (d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.
- (e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.
- (1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval.
 - (2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.
- (f) Any Finding is Not in Taxpayer's Favor.
- (1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director~~Board~~ approval if applicable, unless, within 30 days of the date of that letter, the

taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Deputy Director~~Board~~ approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director~~Board~~ approval if applicable.

(g) Deputy Director Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be resolved in accordance with the Deputy Director's findings.

~~(hg) If the assigned section's findings are not subject to Deputy Director approval, but If the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's appeal petition will be resolved in accordance with the change, subject to Board approval if applicable.~~

~~(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:~~

~~(1) The Board may approve the findings.~~

~~(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.~~

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board~~

~~Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5235**

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

- (1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director~~Board~~ approval requirements of section 5237, if applicable); and
- (2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director~~Board~~ approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401,

32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

5237. Deputy Director~~Board~~ Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department~~Board~~ for approval ~~except where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program~~, where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Deputy Director~~Board~~, the Deputy Director~~Board~~ ~~has discretion to make the Deputy Director's~~ own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer~~claimant~~.

(1) ~~If~~Where the Deputy Director~~Board~~ approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

~~(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).~~

~~(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 must be submitted to the~~

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

~~Executive Director for approval. If the Executive Director approves, the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.~~

(~~ce~~) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the ~~taxpayer~~claimant has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Deputy Director of the assigned section's Department Board for approval as provided in subdivision (b). If the Deputy Director Board approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(~~df~~) If the assigned section or the Deputy Director of the assigned section's Department determines that a refund in excess of \$50,000 should be granted ~~and the determination is not required to be submitted to the Board~~, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221 and 60521, Revenue and Taxation Code.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5267**

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

- (1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;
- (2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and
- (3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax~~Board~~ for approval ~~as a nonappearance item~~, at which time:

(1) The Deputy Director~~Board~~ may approve the recommendation.

(2) The Deputy Director~~Board~~ may exercise ~~its~~ discretion to make the Deputy Director's~~its~~ own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer; ~~but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:~~

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

~~(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be advised offered the opportunity for a Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request a Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.~~

~~(d) If the Appeals Division or a Deputy Director a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation, recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, and the recommendation does not require Board approval, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

Regulation History

Types of Regulations: Rules for Tax Appeals

Regulations: 5218, 5235, 5237, 5267

Title: 5218, *Review of the Petition by the Assigned Section*,
5235, *Action on the Claim for Refund*,
5237, *Board Approval Required for Refunds Over \$100,000*, and
5267, *Issuance of Post Appeals Conference Notices; Board Approval*.

Preparation: Bradley M. Heller

Legal Contact: Bradley M. Heller

The State Board of Equalization proposes to adopt amendments to make the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval.

History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 23, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 7, 2015	Notice to OAL
April 29, 2015	Other Administrative Matters P3.1, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA