Board of Equalization Rules for Tax Appeals

Chapter 1: Title

5000.1000 Statement of Intent; Title.

In fulfillment of its constitutional and statutory duties, the State Board of Equalization hereby promulgates this division to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. These regulations shall be known as the *Board of Equalization Rules for Tax Appeals* (RTA). It is the intent of the State Board of Equalization that these regulations specifically address public concerns regarding its administrative and appellate review processes and improve the relationship between tax and fee payers and the State Board of Equalization.

References to "section" mean a section in this division unless otherwise noted.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Article XIII, section 11 of the California Constitution; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881.

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

Article 1: Application of this Chapter

5000.2000 Application of Chapter and Definitions.

This chapter shall apply to petitions for redetermination, administrative protests, applications for administrative hearings, claims for refund, and requests for relief filed with the Board pursuant to the:

(a) Sales and Use Tax Law. Part 1 of division 2 of the Revenue and Taxation Code.

(b) Motor Vehicle Fuel Tax Law. Part 2 of division 2 of the Revenue and Taxation Code.

(c) Use Fuel Tax Law. Part 3 of division 2 of the Revenue and Taxation Code.

(d) Tax on Insurers Law. Part 7 of division 2 of the Revenue and Taxation Code.

(e) Cigarette and Tobacco Products Tax Law. Part 13 of division 2 of the Revenue and Taxation Code.

(f) Alcoholic Beverage Tax Law. Part 14 of division 2 of the Revenue and Taxation Code.

(g) Timber Yield Tax Law. Part 18.5 of division 2 of the Revenue and Taxation Code.

(h) Energy Resources Surcharge Law. Part 19 of division 2 of the Revenue and Taxation Code.

(i) Emergency Telephone Users Surcharge Law. Part 20 of division 2 of the Revenue and Taxation Code.

(j) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee. Part 22 of division 2 of the Revenue and Taxation Code.

(k) Integrated Waste Management Fee Law. Part 23 of division 2 of the Revenue and Taxation Code.

(l) Oil Spill Response, Prevention, and Administration Fees Law. Part 24 of division 2 of the Revenue and Taxation Code.

(m) Underground Storage Tank Maintenance Fee Law. Part 26 of division 2 of the Revenue and Taxation Code.

(n) Fee Collection Procedures Law. Part 30 of division 2 of the Revenue and Taxation Code.

(o) Diesel Fuel Tax Law. Part 31 of division 2 of the Revenue and Taxation Code.

The definitions contained in section 5000.5002 of this division shall apply to this chapter. Where provisions of section 5000.5002 conflict with provisions of this chapter, the provisions of this chapter shall control.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522. History: California Code of Regulations, title 18, section 5020.

5000.2001 International Fuel Tax Agreement.

To the extent that sections in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Resources Code section 42882; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522. History: California Code of Regulations, title 18, section 5020.

5000.2002 Notice.

Any notice given pursuant to this chapter shall be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Resources Code section 42882; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103, 60333. History: California Code of Regulations, title 18, section 5036.

Article 2A: Petitioning Notices of Determination and Notices of Deficiency Assessment

5000.2010 Persons Permitted to File Petitions for Redetermination.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against whom a notice of determination or notice of deficiency assessment is issued, or a representative who requested a notice of determination pursuant to Revenue and Taxation Code sections 7675.1, 8782.1, or 60316, that disagrees with any item included in the notice of determination or notice of deficiency assessment (except an item described in sections 5000.2017, subdivision (a), 5000.2018, and 5000.2019) may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.

(b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued pursuant to one of the following sections of the Revenue and Taxation Code:

(1) Sales and Use Tax Law. Sections 6481 or 6511.

(2) Alcoholic Beverage Tax Law. Sections 32271 or 32291.

(3) Timber Yield Tax Law. Sections 38416 and 38425.

(4) Hazardous Substances Tax Law. Section 43201.

(5) Integrated Waste Management Fee Law. Section 45201.

(6) Oil Spill Response, Prevention, and Administration Fees Law. Sections 46201 or 46251.

(7) Underground Storage Tank Maintenance Fee Law. Section 50113.

(8) Fee Collection Procedures Law. Section 55061.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation pursuant to Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301,

45301, 46351, 50114, 55081, 60350. History: California Code of Regulations, title 18, section 5021.

5000.2011 Successor's Petition for Reconsideration.

A successor served with a notice of successor liability pursuant to Revenue and Taxation Code sections 6814, 9024, 38564, 46454, or 60474 may file a petition for reconsideration of successor liability in the manner provided in this article for petitioning any other liability imposed under the Sales and Use Tax Law, Use Fuel Tax Law, Timber Yield Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, or Diesel Fuel Tax Law, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6814, 9024, 38564, 46454, 60474. History: California Code of Regulations, title 18, sections 1334, 1421, 1702.

5000.2012 Limitation Period.

(a) A petition for redetermination must be filed within 30 days from the date that the Board mailed the notice of determination or notice of deficiency assessment to the person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against which the notice was issued.

(b) Notwithstanding subdivision (a), petitions for redetermination of determinations issued pursuant to Revenue and Taxation Code section 30173 (Cigarette and Tobacco Products Tax Law) must be filed within 10 days from the date that the Board mailed the notice of determination to the distributor.

(c) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a) and (b).

(d) A petition for redetermination is premature and not valid if it is filed before a notice of determination, notice of deficiency assessment, or notice of successor liability is issued. However, the Board may accept a premature petition for redetermination as an administrative protest pursuant to section 5000.2030.

(e) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the Board has acted upon the petition and the Board's action becomes final.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

5000.2013 Contents of Petitions for Redetermination, and Supporting Arguments and Evidence.

(a) Every petition for redetermination shall:

(1) Be in writing.

(2) Identify the amounts the petitioner wishes to contest (petitioners may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the Board should reconsider the determination.

(4) Be signed by the petitioner or the petitioner's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference with the Appeals Division, a request for an oral hearing before the Board, or both. If a petition for redetermination only includes a request for an appeals conference, an oral hearing before the Board may still be requested in accordance with section 5000.2106.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A petitioner may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38442, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881, Public Resources Code. Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351. History: California Code of Regulations, title 18, section 5021.

5000.2014 Amendments to Petitions for Redetermination.

A petition for redetermination may be amended to state additional grounds or reasons why the Board should reconsider the determination at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Government Code section 15606, Government Code; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351. History: California Code of Regulations, title 18, section 5021.

5000.2015 Accrual of Interest.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606, Government; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

5000.2016 Filing Petitions for Redetermination Pursuant to the Tax on Insurers Law.

An insurer or surplus line broker filing a petition for redetermination with the Board in regard to a notice of deficiency assessment issued pursuant to the Tax on Insurers Law, shall file a copy of its petition with the Commissioner of Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination with the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code section 12428.

5000.2017 Scope of Petition for Redetermination Filed Pursuant to Hazardous Substances Tax Law.

(a) Hazardous or Extremely Hazardous Waste. The Board shall acknowledge all petitions for redetermination filed pursuant to the authority contained in Revenue and Taxation Code section 43301. However, the Board will not make a determination as to whether any substance is a hazardous or extremely hazardous waste. The Board shall forward a petition for redetermination based upon such grounds to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and shall not consider such a petition for redetermination until after the Director of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) The Board will accept a petition for redetermination of the Childhood Lead Poisoning Prevention Fee that is founded upon any grounds, including such grounds as:

(A) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(B) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(C) The petitioner contends that the amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(2) The Board will not act upon a petition that is founded upon grounds described in subparagraphs (A), (B), or (C) of paragraph (1) of this subdivision until after the State Director of Health Services has acted upon the petitioner's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43301, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code section 43301; Health and Safety Code section 105310.

5000.2018 Scope of Petition for Redetermination Filed Pursuant to Covered Electronic Waste Recycling Fee.

The Board shall acknowledge the filing of all petitions for redetermination of the Covered Electronic Waste Recycling Fee. However, the Board will not make a determination as to whether an item is or is not a covered electronic device. The Board shall forward a petition for redetermination based upon such grounds to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Public Resources Code section 42464.6.

5000.2019 Scope of Petition for Redetermination Filed Pursuant to Water Rights Fee Law.

Pursuant to Water Code section 1537, a petition for redetermination under the Fee Collection Procedures Law should be filed with the State Water Resources Board if the petition requests reconsideration of a determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Water Code section 1537.

5000.2020. Filing Petitions for Redetermination.

(a) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of petitions and related documents. A petition or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Petitions for redetermination and related documents may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below for the particular tax or fee law at issue:

(1) Sales and Use Tax Law.

Petitions Section, MIC: 38
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0038

(2) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Occupational Lead Poisoning Prevention Fee, and Marine Invasive Species Fee Collection Law.

Environmental Fees Section, MIC: 57
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(3) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, Integrated Waste Management Fee Law, Tire Recycling Fee, and Natural Gas Surcharge.

Excise Taxes Section, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(4) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Water Rights Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Petition Group
State Board of Equalization

P.O. Box 942879
Sacramento, CA 94279-0030

(5) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(6) Covered Electronic Waste Recycling Fee.

Electronic Waste Recycling Fee Section, MIC: 88
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0088

(c) The Chief of Board Proceedings may reject any petition for redetermination or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561, 6814, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

5000.2021 Assignment and Acknowledgment of Petitions for Redetermination.

(a) After receiving a petition for redetermination, the Board will assign the petition to the appropriate section or group listed in section 5000.2020 based upon the type of tax or fee at issue.

(b) Once a petition for redetermination is assigned to the appropriate section or group, Board staff from that section or group will promptly send the petitioner a letter acknowledging receipt of its petition for redetermination.

(c) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

5000.2022 Review of the Petition and Referral to District Office or Audit Group.

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

(b) Referral to District Office or Audit Group. The assigned section or group may refer the petition back to the district office or audit group that issued the notice being petitioned for further investigation and comment.

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

(d) Findings. Upon completion of its review, the assigned section or group shall present its findings to the petitioner.

(e) Agreement or Disagreement. If the petitioner agrees with the findings reached by the assigned section or group, or fails to request an appeals conference and/or oral hearing, a notice of redetermination will be issued in accordance with such findings. If the petitioner disagrees with any portion of the findings reached by the assigned section or group, and indicates its disagreement by requesting an appeals conference with the Appeals Division, or by requesting or confirming a previous request for an oral hearing, the assigned section or group shall prepare a summary analysis.

(f) The summary analysis is a written summary of the petitioner's contentions, the appropriate department's position, and the reasons why the assigned section or group believes that the appropriate department's position should be sustained.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

5000.2023 Assignment of Petition to Appeals Division.

Once the assigned section or group completes its summary analysis of the petition for redetermination, the section or group shall forward the entire petition file to the Case Management Section of the Board Proceedings Division and mail a copy of the summary analysis to the petitioner. An appeals conference with the Appeals Division or an oral hearing before the Board will then be scheduled.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352. History: California Code of Regulations, title 18, section 5023.

Article 2B: Filing an Administrative Protest

5000.2030 Premature or Untimely Petition as Administrative Protest.

(a) If the Board receives a petition for redetermination filed prior to or after the expiration of the applicable time periods provided for in section 5000.2012, the Board may treat the premature or untimely petition as an administrative protest when determined by the Headquarters Operations Division Chief, County Property Tax Division Chief, Excise Taxes and Fees Division Chief, or Fuel Taxes Division Chief, or his or her designee, as appropriate. Board staff shall advise persons filing premature petitions to file timely petitions.

(b) If the Board treats a premature or untimely petition as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination.

(c) Notwithstanding subdivision (b) of this section, the Board has discretion to grant or deny a request for an appeals conference or oral hearing before the Board on an administrative protest, however, such requests will be liberally granted.

(d) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6981, 8191, 9196, 12951, 30421, 32440, 38631, 40121, 41107, 43491, 45801, 46551, 50151, 55281, 60581.

5000.2031 Accrual of Interest.

The Board's treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

5000.2032 No Stay of Collection Activities.

In general, the Board's treatment of a premature or untimely petition for redetermination as an administrative protest does not stay the Board's efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

Article 2C: Contesting a Jeopardy Determination

5000.2040 Amounts Contained in Notices of Jeopardy Determination are Immediately Due and Payable.

(a) If the Board believes that the collection of any tax or fee or any amount of tax or fee required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, the Board may issue a notice of jeopardy determination.

(b) The notice of jeopardy determination shall state the tax or fee, or amount of tax or fee required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6536, 7698, 8826, 30241, 32311, 38431, 43350, 45351, 46301, 50120.1, 55101, 60330.

5000.2041 Persons Permitted to File a Petition for Redetermination of a Jeopardy Determination.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) to file petitions for redetermination and related documents. A petition for redetermination of a jeopardy determination or related document may be filed electronically if an electronic copy of such document is transmitted to the appropriate section or group identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(c) A petition for redetermination of a jeopardy determination and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the address provided on the notice of jeopardy determination. The Chief of Board Proceedings may reject any petition for redetermination of a jeopardy determination or related document filed in any manner that is not authorized by this section. .

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332. History: California Code of Regulations, title 18, sections 5030, 5031.

5000.2042 Contents of Petitions for Redetermination of Jeopardy Determination.

A petition for redetermination of a jeopardy determination shall satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332. History: California Code of Regulations, title 18, section 5031.

5000.2043 Limitation Period for Petitions for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the Board mailed the notice of jeopardy determination or 10 days from the date the Board personally served the notice of jeopardy determination.

(b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332. History: California Code of Regulations, title 18, section 5031.

5000.2044 Security Requirement for Petitions.

The Board will not accept a petition for redetermination of a jeopardy determination unless the petitioner deposits with the Board the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5000.2043.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332. History: California Code of Regulations, title 18, section 5031.

5000.2045 Administrative Review of Petitions for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination may raise any objections the petitioner has to the notice of jeopardy determination, including objections to the appropriateness of the Board's issuance of the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination and will be done promptly.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332. History: California Code of Regulations, title 18, section 5031.

5000.2046 Application for Administrative Hearing.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

(1) To establish that the jeopardy determination is excessive.

(2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(5) To request administrative review of any other issue raised by the jeopardy determination.

(b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of applications for administrative hearings and related documents. An application for an administrative hearing or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the appropriate section or group identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov. An application for an administrative hearing and related documents may also be filed by mailing the application and related documents to the address shown on the notice of jeopardy determination, or hand delivering the application and related documents to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any application for an administrative hearing or related document filed in any manner that is not authorized by this section.

(c) If an application is filed pursuant to this section and a petition is filed pursuant to section 5000.2041, the application and petition will be consolidated into one administrative hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 50120.3, 55103, 60333. History: California Code of Regulations, title 18, sections 5030, 5032.

5000.2047 Limitation Period for Applications for Administrative Hearing.

(a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the Board mailed the notice of jeopardy determination or personally served the notice of jeopardy determination.

(b) If an application for administrative hearing is filed after the expiration of the time period provided for in subdivision (a), the application should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If the Board agrees that good cause existed for the person's failure to file a timely application, the Board may still accept the person's untimely application and grant the person an administrative hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333, Revenue and Taxation Code. History: California Code of Regulations, title 18, section 5032.

5000.2048 Contents of Applications for Administrative Hearing.

Every application for administrative hearing shall:

(a) Be in writing.

(b) Identify the purpose for which the person has applied for an administrative hearing.

(c) State the specific factual or legal grounds upon which the application is founded.

(d) Be signed by the person or the person's authorized representative.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301,

60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333. History: California Code of Regulations, title 18, section 5032.

5000.2049 Option to Post Security.

(a) A person is not required to post security to obtain an administrative hearing from the Board.

(b) Property seized pursuant to a notice of jeopardy determination or jeopardy assessment shall not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending shall be at the applicant's expense. The Board has discretion to waive, credit, or refund storage expenses.

(c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits with the Board the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5000.2044.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333. History: California Code of Regulations, title 18, sections 5032, 5033.

5000.2049.5 Assignment of Applications for Administrative Hearing to Appeals Division.

(a) Upon receipt of an application for administrative hearing, the Board shall promptly:

(1) Acknowledge its receipt;

(2) Assign the application to the Appeals Division for an appeals conference;

(3) Schedule an appeals conference; and

(4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, the Appeals Division shall promptly issue a determination as to each issue raised in the application and provide notice of its determination to the applicant. The Appeals Division may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property shall not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that

the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the determination of the Appeals Division, the applicant may request an oral hearing before the Board. The Board has discretion to grant or deny an oral hearing on an application for administrative hearing. If the Board grants an oral hearing, it shall schedule the matter for hearing as soon as practicable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333. History: California Code of Regulations, title 18, sections 5034, 5035.

Article 3: Claims for Refund

5000.2050 Persons Permitted to File a Claim for Refund.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer who believes that it has overpaid a tax or fee, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such persons' behalf.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon the following grounds should be filed with the Controller and is not governed by the provisions of this chapter:

(1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.

(2) The motor vehicle fuel was exported for use outside of California.

(3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.

(4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.

(5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).

(6) The claimant is a supplier that:

(A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and

(B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.

(7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.

(8) The claimant used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.

(9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

(1) The Board will acknowledge all claims for refund filed pursuant to the authority contained in Revenue and Taxation Code section 43452. However, the Board will not make a determination as to whether any substance is a hazardous or extremely hazardous waste. The Board shall forward a claim for refund based upon such grounds to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452

(2) The Board will only consider a claim for refund required to be forwarded to the Director of Toxic Substances Control pursuant to paragraph (1) of this subdivision after the Director of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) Any claims for refund of the Childhood Lead Poisoning Prevention Fee may be submitted to the Board. The Board will accept a claim for refund of the Childhood Lead Poisoning Prevention Fee that is founded upon any grounds, including such grounds as:

(i) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(ii) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(iii) The petitioner contends that the amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(B) The Board will not act upon a claim for refund described in clauses (i), (ii), or (iii) of subparagraph (A) of this paragraph until after the State Director of Health Services has acted upon the claimant's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. The Board shall acknowledge all claims for refund of the Covered Electronic Waste Recycling Fee. However, the Board will not make a determination as to whether an item is or is not a covered electronic device. The Board shall forward claims for refund based upon such grounds to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. The Board cannot accept a claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee, or the amount of such fee. A claim for refund based upon these grounds should be directed to the State Water Resources Control Board. This prohibition does not apply if the determination has already been set aside by the State Water Resources Control Board or a court reviewing the determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

5000.2051 <u>Limitation Period.</u>

(a) The Board cannot approve a refund requested in a claim for refund, unless the claim for refund is filed with the Board within the time periods provided in this section.

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed with the Board prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made pursuant to the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Alcoholic Beverage Tax Law. In lieu thereof, a claim for refund filed pursuant to the Alcoholic Beverage Tax Law is timely if it is filed with the Board within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Cigarette and Tobacco Products Tax Law.

(1) Stamps and Meter Register Settings. Subdivision (b)(1) of this section does not apply to claims for refund for overpayments made with regard to purchases of stamps or meter register settings. In lieu thereof, a claim for refund for an overpayment made with regard to a purchase of stamps or meter register settings shall be timely if filed with the Board within three years from the due date for the payment of the purchase for which the overpayment was made.

(2) Other Claims for Refund. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Cigarette and Tobacco Products Tax Law, which are not described in paragraph (1) of this subdivision. In lieu thereof, a claim for refund described in this paragraph (2) is timely if it is filed with the Board within three years from the 25th day after the close of the monthly period for which the overpayment being claimed was made.

(3) Exported Tobacco Products. Notwithstanding subdivision (b) of this section and paragraphs (1) and (2) of this subdivision, claims for refund based upon the grounds that the tobacco products upon which the tax was paid were exported, must be filed with the Board within three months after the close of the calendar month in which the tobacco products were exported.

(e) Tax on Insurers Law. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Tax on Insurers Law. In lieu thereof, a claim for refund filed pursuant to the Tax on Insurers Law shall be timely if it is filed with the Board within four years after April 1st of the year following the year for which the overpayment was made. A claim for refund filed pursuant to the Tax on Insurers Law may be filed with the Board or the Commissioner of Insurance.

(f) Emergency Telephone Users Surcharge Law. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Emergency Telephone Users Surcharge Law. In lieu thereof, a claim for refund filed pursuant to the Emergency Telephone Users Surcharge Law is timely if it is filed with the Board within three

years after the last day of the second month following the close of the month for which the overpayment being claimed was made.

(g) Hazardous Substances Tax Law. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Hazardous Substances Tax Law. In lieu thereof, a claim for refund filed pursuant to the Hazardous Substance Tax Law is timely if it is filed with the Board within three years after the date taxes were due and payable for the period for which the overpayment was made.

(h) Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. Subdivision (b)(1) of this section does not apply to claims for refund filed pursuant to the Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. In lieu thereof, a claim for refund filed with the Board pursuant to these laws is timely if it is filed with the Board within three years after the due date of the payment for the period for which the overpayment was made.

(i) Diesel Fuel Tax Law. Subdivision (b) of this section does not apply to claims for refund filed pursuant to Revenue and Taxation Code section 60501 (diesel fuel lost sold or removed) or 60502 (ultimate vendor claims). In lieu thereof, a claim for refund described in this subdivision is timely if it is filed with the Board within three years from the date of the purchase of the diesel fuel to which the claim relates, or, if the tax was not invoiced at the time of the purchase of the diesel fuel, six months after the receipt of an invoice for the tax, whichever period expires later.

(j) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with the Board with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed pursuant to the Tax on Insurers Law or the Emergency Telephone Users Surcharge Law, or claims described in subdivision (i) of this section.

(k) Financially Disabled Persons.

(1) The periods described in subdivisions (b), (c), (d)(2), (f), (g), and (h) of this section are suspended during any period of a person's life that the person is financially disabled.

(2) A person is financially disabled if:

(A) The person is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the person that can be expected to result in death or that has lasted or can be

expected to last for a continuous period of not less than 12 months; and

(B) Proof of the person's impairment is furnished to the Board.

(3) A person is not financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(4) This subdivision does not apply to claims for refund filed pursuant to the Tax on Insurers Law or claims for refund of overpayments made with respect to purchases of stamps or meter register settings filed pursuant to the Cigarette and Tobacco Products Tax Law.

(l) Levies and Liens. A claim for refund for an overpayment of a sales or use tax collected by the Board by means of levy, through the use of liens, or by other enforcement procedures is timely if it is filed within three years of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6902, 6902.3, 6902.4, 8128, 8128.1, 9152, 9152.1, 12978, 30178, 30178.1, 30362, 30362.1, 32402, 32402.1, 32407, 38602, 38602.5, 40112, 40112.1, 41101, 41101.1, 43452, 43452.1, 45652, 45652.1, 36502, 36502.1, 50140, 50140.1, 55222, 55222.1, 60507, 60522, 60522.1.

5000.2052 Failure to File Timely Claims for Refund.

The Board shall determine whether a claim for refund is timely. The claimant's failure to file a claim within the applicable time period, as provided for in section 5000.2051, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6905, 8128, 9152, 12980, 30178, 30178.1, 30364, 32403, 38604, 40114, 41103, 43453, 45653, 46504, 50141, 55223, 60507, 60522.

5000.2053 Contents of Claims for Refund.

(a) All Claims. Every claim for refund shall be in writing, shall be signed by the claimant or the claimant's authorized representative, and shall include:

(1) The specific grounds or reasons why the claimant made the overpayment being claimed as a refund.

(2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.

(3) The amount of the refund being claimed, if known.

(4) Information necessary to contact the claimant or its authorized representative.

(b) Sales and Use Tax Claims. For claims for refund filed pursuant to the Sales and Use Tax Law, the claim for refund may also include a breakdown of the refund into state, local, and district tax amounts.

(c) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and (b) for the periods of the claim.

(d) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary for the Board to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(e) Forms. The use of a completed form provided by the Board for use as a claim for refund will satisfy the requirements of this section (other than subdivision (d)).

(f) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid to the Board for any reporting period.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6904, 8129, 9153, 12979, 30176, 30176.1, 30176.2, 30177, 30363, 32402, 32402.1, 32407, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, 60501, 60502, 60505, 60505.5, 60523. History: California Code of Regulations, title 18, section 5022.

5000.2054 Contents of Claims for Refund Under Diesel Fuel Tax Law.

Notwithstanding section 5000.2053, claims for refund of payments made with respect to the Diesel Fuel Tax Law must be prepared and filed in the following manner:

(a) Diesel Fuel that is Lost, Sold, or Removed.

(1) A claim for refund must satisfy the requirements of paragraph (2) of this subdivision if it is based upon the grounds that:

(A) Tax was imposed on the diesel fuel to which the claim relates; and

(B) The claimant bought or produced the diesel fuel to which the claim relates and the same diesel fuel was:

(i) Used for purposes other than operating motor vehicles upon the public highways of California;

(ii) Exported for use outside of California;

(iii) Used in construction equipment that is exempt from registration pursuant to the Vehicle Code;

(iv) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture;

(v) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency;

(vi) Sold by a supplier to any consulate office or consulate employee;

(vii) Lost in the ordinary course of handling, transportation, or storage;

(viii) Sold to the United States, its agencies, or instrumentalities;

(ix) Sold to a train operator for use in a diesel-powered train or other off-highway use; or

(x) Removed from an approved terminal at the terminal rack.

(2) A claim for refund based upon the grounds described in paragraph (1) of this subdivision must:

(A) Be prepared and filed on a form prescribed by the Board.

(B) Be accompanied by the original invoice showing the purchase, or, if no original invoice was created, an electronic invoice and the original bill of lading or fuel manifest.

(C) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(D) Include the claimant's statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(E) Include a statement by the person who sold the diesel fuel to the claimant that the diesel fuel did not contain visible evidence of dye.

(F) Identify the total amount of diesel fuel covered by the claim.

(G) Describe the use made of the diesel fuel.

(H) Be accompanied by proof that the diesel fuel was exported, if the claim is based upon the grounds that the diesel fuel was exported.

(3) Claims for refund based upon the grounds provided for in paragraph (1) of this subdivision must be filed on a calendar year basis, except that claims for refund of more than $750 may be filed for a quarter of a calendar year.

(b) Ultimate Vendors of Diesel Fuel. A claim for refund based upon the grounds that the claimant was an ultimate vendor that sold tax-paid diesel fuel to an ultimate purchaser for use on a farm for farming purposes, or use in an exempt bus operation may not be filed for an amount less than $200 or a period shorter than one week and must:

(1) Be prepared and filed on a form prescribed by the Board.

(2) Contain the claimant's permit number.

(3) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(4) Include the name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons of diesel fuel the claimant sold to each.

(5) Include the claimant's statement that the diesel fuel covered by the claim did not contain evidence of visible dye.

(6) Identify the total amount of diesel fuel covered by the claim.

(7) Include the claimant's statement that it has an unexpired exemption certificate described in Revenue and Taxation Code section 60503 and has no reason to believe the certificate is false.

(8) Include the claimant's statement that the amounts claimed have not been refunded to the claimant previously.

(c) Persons filing claims for refund pursuant to this section should contact the Board's Fuel Taxes Division and must use the proper form prescribed by the Board.

(d) Other Claims. Claims for refund under the Diesel Fuel Tax Law that are not described in subdivision (a) or (b) of this section may be filed in the manner provided for in section 5000.2053.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 60501, 60502, 60505, 60505.5, 60523. History: California Code of Regulations, title 18, sections 1430-1435.

5000.2055 Claims for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.

A claim for refund based upon the grounds provided for in Revenue and Taxation Code section 32407 must satisfy the requirements of California Code of Regulations, title 18, section 2553.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 32451. Reference: Revenue and Taxation Code section 32407. History: California Code of Regulations, title 18, section 2553.

5000.2056 Contents of Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.

In addition to the requirements of section 5000.2053, claims for refund of amounts paid with regard to purchases of stamps or meter register settings shall satisfy the requirements of and be prepared and filed on any form required by California Code of Regulations, title 18, sections 4061 through 4065. All other claims for refund filed pursuant to the Cigarette and Tobacco Products Tax Law are not required to comply with this additional requirement. Contact the Board's Excise Taxes and Fees Division for the appropriate form.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 30451. Reference: Revenue and Taxation Code sections 30176, 30176.1, 30176.2, 30177, 30363. History: California Code of Regulations, title 18, sections 4061-4065.

5000.2057 Filing Claims for Refund.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of claims for refund and related documents. A claim for refund or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) or (c) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Claims for refund and related documents filed pursuant to the Sales and Use Tax Law may also be mailed to the:

Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

(c) Other claims for refund and supporting documents may be mailed to the address provided in this subdivision for the particular tax or fee law at issue:

(1) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee and Covered Electronic Waste Recycling Fee), Occupational

Lead Poisoning Prevention Fee, and Marine Invasive Species Fee Collection Law.

Environmental Fees Section, MIC: 57
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(2) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, Integrated Waste Management Fee Law, Tire Recycling Fee, and Natural Gas Surcharge.

Excise Taxes Section, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(3) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Water Rights Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Refund Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0030

(4) Covered Electronic Waste Recycling Fee Law.

Electronic Waste Recycling Section, MIC: 88
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0088

(5) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(d) A claim for refund and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California.

(e) The Chief of Board Proceedings may reject any claim for refund or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6902, 8128, 9152, 12978, 30178, 30178.1, 30362, 32402, 32402.1, 32407, 38602, 40112, 41101, 43452, 45652, 46502, 50140, 55222, 60501, 60502, 60507, 60521, 60522.

5000.2058 Assignment and Acknowledgment of Claims for Refund.

Once a claim for refund is received, it will be assigned to staff in the appropriate section or group, who will promptly send the claimant a letter acknowledging the claim.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6901, 6902, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 32401, 32402, 32402.1, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

5000.2059 Review Process and Request for Additional Information.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, staff from the appropriate section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60506, 60507, 60521, 60522.

5000.2060 Action on the Claim.

(a) Once the appropriate section or group has reviewed a claim for refund, it will make a recommendation as to whether the claim should be:

(1) Granted in its entirety.

(2) Granted in part and denied in part.

(3) Denied in its entirety.

(b) If the appropriate section or group recommends that a claim should be granted in its entirety, it will:

(1) Send the claimant a notice of refund showing the amount to be refunded (subject to the requirements of section 5000.2062); and

(2) Have a refund warrant prepared and sent to the claimant after determining if such amounts should be credited or offset against other liabilities as provided in section 5000.2063.

(c) If the appropriate section or group recommends that any amount claimed as a refund should be denied, it will send the claimant a letter containing its recommendation and an explanation of its reasons for making such recommendation.

(d) A claimant receiving a letter described in subdivision (c) may choose to agree or disagree with the recommendation in whole or in part.

(1) If the claimant agrees with a recommendation to grant a partial refund, the appropriate section or group will send the claimant a notice of refund showing the partial refund (subject to the requirements of section 5000.2062). Thereafter, the appropriate section or group will have a refund warrant prepared and sent to the claimant, but only after determining if such amounts should be credited or offset against other liabilities as provided in section 5000.2063.

(2) If the claimant agrees with a recommendation to deny a refund in its entirety, the appropriate section or group will send the claimant a notice of denial of claim for refund.

(3) If the claimant disagrees with a proposed recommendation to grant a partial refund or deny a refund in its entirety, the claimant may request that the recommendation be reconsidered in an:

(A) Appeals conference with the Appeals Division; and/or

(B) Oral hearing before the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60522. History: California Code of Regulations, title 18, section 5023.

5000.2061 <u>Discretion to Grant or Deny Conferences and Hearings.</u>

The Board has discretion to grant or deny a request for an appeals conference or oral hearing on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60522. History: California Code of Regulations, title 18, sections 5022, 5023.

5000.2062 Refunds Over $50,000.

(a) If the appropriate section or group has determined that a refund in excess of $50,000 should be granted, the appropriate section or group shall submit its recommendation for the proposed refund to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(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 $50,000 must be submitted to the Executive Director for approval. If the Executive Director approves, the appropriate section or group 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) Diesel Fuel Tax Law. Claims for refund filed pursuant to Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If the appropriate section or group has determined that a refund in excess of $50,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the appropriate section or group shall submit its recommendation to the Board for approval as provided in subdivision (a).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

5000.2063 Credits and Offsets.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount may not be paid directly to the claimant in a refund warrant because such amounts are subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant's refund remaining after the Board has credited or offset the refund against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant in a refund warrant.

(c) Diesel Fuel Tax Law. Credits claimed on a return in lieu of claiming a refund pursuant to Revenue and Taxation Code sections 60501 and 60502 are not subject to the requirements of this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6483, 6512, 6901, 8126, 8778, 8802, 9151, 12426, 12977, 30176, 30176.1, 30176.2, 30177, 30203, 30222, 30361, 38413, 38422, 38601, 40073, 40082, 40111, 41072, 41081, 41100, 43201, 43451, 45201, 45651, 46201, 46252, 46501, 50113, 50139, 55001, 55221, 60521.

5000.2064 Combined Claims for Refund on Behalf of Class of Taxpayers.

(a) This section applies only to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class shall establish:

(1) That it is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and the issues of fact that are common to all class members and those that are not, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority shall authorize the Board Staff to release to the representative any confidential information in the Board's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) That the representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) That the representative can fairly and adequately protect the interests of each member of the class and that the representative's interests are not antagonistic to members of the class.

(7) When requested by the Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If the Board Staff finds that the claim is a proper combined claim it shall, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If the Board Staff finds that the claim is not a proper combined claim, it shall act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund shall be limited to the amount of tax overpayment by that member under the tax law pursuant to which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member shall be established and the representative or member shall furnish or make available to the Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to the Board Staff, the representative or member, shall be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law pursuant to which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply with respect to persons who have not previously been notified of the claim, or who have notified the Board Staff that they desire to be

excluded from the combined claim. Nor does the waiver apply with respect to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Government Code section 15606(a); Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262 and 7270. Reference: Revenue and Taxation Code sections 6814, 6904 and 6932. History: California Code of Regulations, title 18, section 5024.

Article 4A: Requests for Innocent Spouse Relief Under the Sales and Use Tax Law

5000.2070 Requests for Innocent Spouse Relief (Sales and Use Tax, including State-administered local sales, transactions, and use taxes).

(a) Who May Request Relief. A divorced or separated person that has a sales or use tax liability and meets the requirements of California Code of Regulations, title 18, section 1705.1, subdivision (a), may file a request for innocent spouse relief with the Board.

(b) Request Requirements. A request for innocent spouse relief shall be:

(1) In writing.

(2) Signed and dated by the spouse requesting relief.

(3) Specifically request innocent spouse tax relief.

(4) Identify the tax from which relief is sought.

(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the spouse requesting relief believes he or she should not be held responsible for the tax liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A will satisfy all the requirements of subdivision (b) of this section.

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the time periods provided in California Code of Regulations, title 18, section 1705.1, subdivision (e).

(e) Filing Requests. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of request for innocent spouse relief and related documents. A request for innocent spouse relief or related document may be filed electronically pursuant to this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website

at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Board's Offer in Compromise Section at the following address:

Offer in Compromise Section, MIC: 52
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any request for innocent spouse relief or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270. Reference: Revenue and Taxation Code section 6456. History: California Code of Regulations, title 18, section 1705.1.

5000.2071 Reviewing Requests for Innocent Spouse Relief.

(a) Assignment and Review. Once received, a request for innocent spouse relief will be assigned to staff in the Board's Offer in Compromise Section who will:

(1) Acknowledge receipt of the request in writing.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(3) Evaluate the merits of the request.

(4) Request additional documentation from the spouse requesting relief, if necessary.

(b) Granted Request for Innocent Spouse Relief. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the spouse who requested the relief a letter explaining the relief that was granted.

(c) Denied Request for Innocent Spouse Relief. If the Offer in Compromise Section determines that a request for innocent spouse relief should be denied, it will:

(1) Prepare and send the spouse requesting relief a letter explaining why it denied the request; and

(2) If it appears that the spouse requesting relief might be eligible for other equitable relief as provided for in California Code of Regulations, title 18, section 1705.1, subdivision (h), the Offer in Compromise Section will include a questionnaire and financial statement for the spouse requesting relief to complete and return.

(d) Requests for Other Equitable Relief. If the spouse requesting relief returns a completed questionnaire and financial statement to the Board, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided for in California Code of Regulations, title 18, section 1705.1, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the spouse requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270. Reference: Revenue and Taxation Code section 6456. History: California Code of Regulations, title 18, section 1705.1.

5000.2072 Requests for Reconsideration by the Board.

(a) If the Offer in Compromise Section denies a request for other equitable relief as provided for in California Code of Regulations, title 18, section 1705.1, subdivision (h), the spouse requesting relief may request that the denial be reconsidered by the Board at an oral hearing.

(b) An oral hearing may be requested by following the instructions contained on the denial letter described in section 5000.2071, subdivision (d).

(c) If a request for an oral hearing is granted, the Board may require that the spouse requesting relief participate in an appeals conference with the Appeals Division prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270. Reference: Revenue and Taxation Code section 6456. History: California Code of Regulations, title 18, sections 1705.1, 5023.

Article 4B: Successor's Request for Relief of Penalty Under the Sales and Use Tax Law

5000.2075 Successor's Request for Relief.

A successor requesting relief from penalties as provided for in California Code of Regulations, title 18, section 1702, subdivision (d)(2), may include its request for relief in its petition for reconsideration or amend its previously filed petition to include such request. If the successor has not filed a petition for reconsideration and does not intend to do so, the successor may file a request for relief from penalties without filing a petition for reconsideration. Every successor's request for relief filed pursuant to this section shall include a written statement signed under penalty of perjury stating the facts upon which the claim for relief is based, whether or not the request is included in a petition for reconsideration. Such request for relief shall be filed in accordance with the procedures provided in article 2A of this chapter for filing a petition for redetermination concerning the Sales and Use Tax Law.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 7051. Reference: Revenue and Taxation Code section 6814. History: California Code of Regulations, title 18, section 1702.

Article 4C: Other Requests for Relief of Penalties and Interest

5000.2080 No Independent Right to Oral Board Hearing.

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. The Board has discretion to grant or deny an oral hearing on a request for relief.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or petition for reconsideration, or claim for refund, the procedures applicable to such petitions or claims will apply to the request for relief. A request for relief included in a petition for redetermination or petition for reconsideration, or claim for refund must satisfy all of the requirements of this article applicable to such request for relief.

(c) The Board has discretion to associate any request for relief filed pursuant to this article with any pending petition for redetermination, petition for reconsideration, or claim for refund filed by the same person and covering the same periods as the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212. History: California Code of Regulations, title 18, section 5022.

5000.2081 Requests for Relief for Reasonable Cause.

(a) Authority to Grant Relief. If the Board finds that a person's failure to make a timely return, report, payment, or prepayment, or failure to comply with a written notice issued pursuant to Revenue and Taxation Code section 6074, subdivision (a) is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

(1) Sales and Use Tax Law. Revenue and Taxation Code sections 6074, 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655,7659.5, 7659.6, 7659.9, 7660, 7705, 7713, 7726, and 7727.

(3) Use Fuel Tax Law. Revenue and Taxation Code sections 8760, 8801, 8854, and 8876.

(4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12282, 12287, 12631, 12632, and 12633.

(5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30171, 30190, 30221, 30264, and 30281.

(6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.

(7) Timber Yield Tax Law. Revenue and Taxation Code sections 38421 and 38451.

(8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40067, 40081, 40096, and 40101.

(9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41060, 41080, 41090, and 41095.

(10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43155, 43170, and 43306.

(11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45153, 45160, and 45306.

(12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46154, 46154.1, 46160, 46251, and 46356.

(13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50112, 50112.7, and 50119.

(14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55042, 55050, and 55086.

(15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60250, 60301, 60338, 60355, 60361, and 60361.5.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control shall be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request for relief is based, and be signed by the person requesting relief under penalty of perjury.

(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief pursuant to this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and

Taxation Code sections 6074, 6592, 7657, 8877, 12636, 30282, 32255, 38452, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, 60209.

5000.2082 Requests for Relief Due to Unreasonable Error or Delay.

(a) The Board has discretion to relieve a person of interest imposed under the tax and fee laws described in subdivision (b) of this section, if the person was charged interest due to:

(1) Unreasonable error or delay:

(A) By a Board employee acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(2) An error by an employee of the Department of Motor Vehicles in calculating the use tax due on a vehicle or vessel registered with the Department of Motor Vehicles.

(b) This section applies to interest imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section shall:

(1) Be in writing;

(2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;

(3) Specifically identify the period for which interest relief is sought; and

(4) Be signed by the person requesting relief under penalty of perjury.

(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief pursuant to this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6593.5, 7658.1, 8878.5, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, 60212.

5000.2083 Requests for Relief Due to Reasonable Reliance on Written Advice.

(a) A person may be relieved from the liability for the payment of a tax or fee imposed under the tax and fee laws identified in subdivision (c) of this section, including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (b) or section 4902, subdivision (b); or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (c) or section 4902, subdivision (c); or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (d) or 4902, subdivision (d).

(b) Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

(d) A request for relief due to reliance upon written advice from the Board shall:

(1) Be in writing;

(2) Include the specific facts upon which the request for relief is based;

(3) Be signed by the person requesting relief under penalty of perjury; and

(4) Include an attached copy of the person's written request to the Board for written advice and a copy of the Board's written advice.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, 60210. History: California Code of Regulations, title 18, section 1705.

5000.2084 Requests for Relief Due to Disaster.

(a) If the Board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the Board may relieve the person of interest imposed under:

(1) Sales and Use Tax Law. Revenue and Taxation Code sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.

(2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7656, 7659.9, 7661, and 7706.

(3) Use Fuel Tax Law. Revenue and Taxation Code sections 8754, 8760, 8803, and 8876.

(4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.

(5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30815, 30190, 30223, and 30281.

(6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.

(7) Timber Yield Tax Law. Revenue and Taxation Code sections 38405, 38423, and 38451.

(8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40065, 40067, 40083, and 40101.

(9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41054, 41060, 41082, and 41095.

(10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43154, 43155, 43170, and 43201.

(11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45152, 45153, 45160, and 45201.

(12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46153, 46154, 46160, and 46253.

(13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50111, 50112, and 50112.7.

(14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55041, 55042, 55050, and 55061.

(15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60208, 60250, 60302, and 60339.

(b) A request for relief of interest due to a disaster shall:

(1) Be in writing;

(2) Identify the disaster due to which relief is sought;

(3) Identify the period for which relief is sought; and

(4) Be signed by the person requesting such relief under penalty of perjury.

(c) Form BOE-27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief pursuant to this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6593, 7658, 8878, 12637, 30283, 32256, 38453, 40103, 41097, 43158, 45156, 46157, 50112.3, 55046.5, 60211.

5000.2085 Filing Requests for Relief.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5000.2020 for the filing of a petition for redetermination concerning the same tax or fee law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5000.2057 for the filing of a claim for refund concerning the same tax or fee law at issue in the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

5000.2086 Assignment of Requests for Relief.

(a) Sales and Use Tax Law.

(1) Generally, a request for relief of an unpaid amount filed pursuant to the Sales and Use Tax Law shall be reviewed by the Petitions Section. However, a request for relief of an amount included in a return, shall be reviewed by the Return Analysis Section whether the amount is paid or not.

(2) A request for relief of a previously paid amount filed pursuant to the Sales and Use Tax Law may be treated as a claim for refund and reviewed by the Audit Determination and Refund Section under the procedures contained in article 3 of this chapter.

(b) Special Taxes.

(1) A request for relief filed pursuant to any tax or fee law governed by this chapter (other than the Sales and Use Tax Law), shall be reviewed by the appropriate section or group responsible for the particular tax or fee law concerned.

(2) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and reviewed by the appropriate section or group under the procedures contained in article 3 of this chapter.

(c) Once the request for relief is assigned, the assigned staff will promptly acknowledge receipt of the request in writing and may request additional information.

(d) The provisions of this section do not apply to requests for relief included in a petition for redetermination, petition for reconsideration, or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

5000.2087 Reviewing Requests for Relief.

(a) The assigned staff member will review a request for relief to:

(1) Determine if the request satisfies the requirements of this article 4C; and

(2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned staff member may request additional information from the person requesting relief.

(c) Once the assigned staff member has completed his or her review, he or she may determine that:

(1) No relief is warranted;

(2) Partial relief is warranted; or

(3) Full relief is warranted.

(d) Once the determination in subdivision (c) of this section is made, the assigned staff member shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned staff member's decision, the person requesting relief may send a request for reconsideration of the decision to the Deputy Director of the Sales and Use Tax or Special Taxes Department, as appropriate. Thereafter, the Deputy Director shall prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e) of this section, the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, the Board may exercise its discretion to grant an oral hearing. If an oral hearing is requested, the Board shall prepare and mail the person requesting relief a letter containing its decision.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

Article 5: Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes

5000.2090 Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.

(a) A claim or inquiry regarding the incorrect or non-distribution of local or district taxes shall meet the requirements of California Code of Regulations, title 18, sections 1807 and 1828, respectively.

(b) The Board encourages the use of electronic means for the filing of claims and inquiries. A claim or inquiry, or supporting document, may be filed electronically pursuant to this section if it is transmitted to the Allocation Group in accordance with instructions provided on the Board's website at www.boe.ca.gov. A claim or inquiry, or supporting document, may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Allocation Group
Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

The Chief of Board Proceedings may reject any claim or inquiry, or related document, filed in any manner that is not authorized by this section.

(c) Once a claim or inquiry is received by the Allocation Group it will be acknowledged and reviewed in accordance with the procedures contained in California Code of Regulations, title 18, section 1807 or 1828.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code Sections 7202, 7203, 7261, 7262, 7270; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 7209, 7223. History: California Code of Regulations, title 18, sections 1807 and 1828.

Article 6: Appeals Conferences

5000.2100 Referral to Appeals Division for Appeals Conference.

(a) If a petition for redetermination, petition for reconsideration, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals Division for an appeals conference, Board staff will contact the petitioner, claimant, or person requesting relief:

(1) To verify and update the person's contact information; and

(2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.

(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2101 Notice of Appeals Conference.

(a) The Board Proceedings Division shall prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which shall include the date, time, and location of the appeals conference.

(b) The Board Proceedings Division shall include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete and return the Response to Notice of Conference within 15 days of the date the Board Proceedings Division mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5000.2104 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence to the Board prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals Division within 15 days of the date the Board Proceedings Division mailed the Notice of Appeals Conference.

(d) The Board does not record appeals conferences. If the petitioner, claimant or person requesting relief would like to record the appeals conference the appropriate box must be checked on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals Division upon request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2102 Rescheduling or Postponing Appeals Conferences.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of requests to postpone or reschedule an appeals conference. A request to postpone or reschedule an appeals conference may be filed electronically pursuant to this section if it is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097

The Chief of Board Proceedings may reject any request to postpone or reschedule an appeals conference filed in any manner that is not authorized by this section.

(b) Rescheduling. If there is a scheduling conflict for an appeals conference scheduled to be held in-person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled with the same conference holder generally within 30 days to accommodate the parties. At the discretion of the Chief Counsel, a second rescheduling may be allowed. The Board Proceedings Division may reschedule an appeals conference scheduled to be heard at a district office to a different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (c).

(c) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases and reassigned when appeals conferences are subsequently held at such district office. If a party requests a postponement of an appeals conference to be held at a district office within 15 days after the date of the Notice of Appeals Conference sent by the Board Proceedings Division and has sufficient justification for requesting the postponement, the Chief of Board Proceedings may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the Notice of Appeals Conference, and can demonstrate extreme hardship (e.g., illness, death, disaster) for requesting the postponement, the Chief Counsel may allow the postponement. The Chief Counsel may only grant a party's second or subsequent request to postpone a previously postponed appeals conference if the party requesting postponement can demonstrate extreme hardship, however, a previously postponed appeals conference may be rescheduled as provided in subdivision (b).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2103 <u>Expediting an Appeals Conference.</u>

(a) The Board Proceedings Division will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

(1) Attend an appeals conference at the Board headquarter located at 450 N Street, Sacramento, California;

(2) Attend a video conference at one of the Board's district offices with the necessary equipment; or

(3) Participate in a telephone conference (the Board will place the call).

(b) Subdivision (a) of this section only applies to written notices sent to the Board at or before the due date of the Response to Notice of Conference and such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) of this section has expired, the Board Proceedings Division will still try to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief informs the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2104 <u>Conducting the Appeals Conference.</u>

(a) Conference Holder. The appeals conference will be held by an attorney or auditor assigned to the Appeals Division who has not had any prior involvement in the matter being discussed at the appeals conference. It is the responsibility of the conference holder to take a fresh look at the law and the facts and make his or her own objective recommendation.

(b) Audit Representative. Generally, a representative from the Board's audit staff will be present at the appeals conference to provide the audit staff's reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted. Where appropriate, a representative of the Board's collection staff will be present at the appeals conference instead of a representative from the Board's audit staff.

(c) Other Agency Representatives. A representative from a state agency other than the Board may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency. Such a representative will provide its agency's reasons for determining that the tax or fee at issue is due or should not be refunded.

(d) Nature of Appeals Conference. The appeals conference is not an adversary proceeding, it is an informal discussion of the relevant facts and applicable laws. As such, it is important that all relevant information be presented to the conference holder.

(1) A party may submit additional written arguments and documentary evidence to the Appeals Division at any time before or during the appeals conference. (When possible, such arguments and evidence should be submitted within 10 days of receipt of a Notice of Appeals Conference.)

(2) If any party requests permission to submit additional written arguments and documentary evidence at the appeals conference, the conference holder may grant that party 15 days after the appeals conference to submit such arguments and evidence. If there is sufficient justification, the conference holder may also grant the requesting party an additional 15 days to submit additional written arguments and documentary evidence. No further extensions of time to submit additional written arguments and documentary evidence will be granted without the approval of the Assistant Chief Counsel for the Appeals Division or his or her designee.

(3) If a party submits additional written arguments and documentary evidence after the appeals conference, the other party will be granted 15 days to respond to such arguments and evidence.

(e) Failure to Appear. If a petitioner, claimant, or person requesting relief, or an authorized representative fails to appear at an appeals conference, the conference holder will still hold the appeals conference as scheduled.

(f) Once the appeals conference is concluded, the conference holder will take the petition, claim for refund, or request for relief under consideration.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 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, 60581.
History: California Code of Regulations, title 18, section 5023.

5000.2105 Issuing a Decision and Recommendation.

(a) Within 90 days after the submission of any additional documents as authorized in subdivision (d) of section 5000.2104, the conference holder shall issue a written report of his or her findings, called a Decision and Recommendation, copies of which shall be sent to all parties. The Chief Counsel may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time shall be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation shall include all of the following:

(1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;

(2) The audit staff's position on each issue raised by the petitioner, claimant, or person requesting relief;

(3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;

(4) A clear application of the relevant law to all the relevant information presented to the conference holder;

(5) The conference holder's conclusions and recommendations after applying the relevant law to all of the relevant information; and

(6) A summary of any additional information or documentation that was not presented to the conference holder, which the conference holder believes

might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error, should contact the Appeals Division immediately. The Appeals Division may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2106 Conference Holder Recommendations.

(a) The conference holder may make the following recommendations in the Decision and Recommendation:

(1) Deny the petition, claim, or request for relief in its entirety.

(2) Grant the petition, claim, or request for relief in its entirety.

(3) Grant the petition, claim, or request for relief in part.

(4) That the appropriate department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for the Appeals Division to reconsider the petition, claim, or request for relief no later than 30-days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30-days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, the Board Proceedings Division will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if an oral hearing is not required by statute and the Board declines to grant such person a discretionary oral hearing.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board staff shall:

(i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and

(ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Board's audit department and any state agency represented at the appeals conference may:

(1) File a written request for the Appeals Division to reconsider the petition, claim, or request for relief within 30-days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c) of this section, if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference pursuant to section 5000.2104, subdivision (c), may file a written request for an oral hearing before the Board no later than 30-days after the Decision and Recommendation was issued. If an oral hearing is requested, the Board Proceedings Division will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if an oral hearing is not required by statute and the Board declines to grant such agency a discretionary oral hearing.

(e) If the Appeals Division receives a request for reconsideration, the Appeals Division will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration. The Appeals Division may

also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation shall satisfy all the requirements of section 5000.2105, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds $50,000, the recommendation to grant such petition, claim, or request will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2107 Post Appeals Conference Notices.

(a) The Board will issue a Notice of Redetermination, Statement of Account, Notice of Refund, or Denial of Claim based on a Decision and Recommendation if:

(1) The petitioner, claimant, or person requesting relief and the department or other agency represented at the appeals conference agree with the Decision and Recommendation in its entirety;

(2) The petitioner, claimant, person requesting relief, or another agency represented at the appeals conference do not request an oral hearing before the Board; or

(3) The petitioner, claimant, or person requesting relief has requested a discretionary oral hearing before the Board and the Board declines to grant the requested hearing.

(b) Notwithstanding the provisions of subdivision (a), a Notice of Determination, Statement of Account, or Notice of Refund will not be issued based upon a Decision and Recommendation if:

(1) The Decision and Recommendation recommends granting a petition or claim for refund because the petitioner or claimant:

(A) Accepted a valid resale or exemption certificate; or

(B) Did not issue a valid resale or exemption certificate.

(2) The Appeals Division recommends imposing a related liability on:

(A) The person who issued the resale or exemption certificate described in subparagraph (A) of paragraph (1) of this subdivision; or

(B) The person who sold tangible personal property without receiving a valid resale or exemption certificate from the petitioner or claimant described in paragraph (1) of this subdivision;

(3) The person described in paragraph (2) has requested and been granted an oral hearing to contest the Appeals Division's recommendation; and

(4) The Chief Counsel determines that both matters should be consolidated for an oral hearing before the Board.

(c) For purposes of this section, references to "Decision and Recommendation" shall include Supplemental Decisions and Recommendations described in section 5000.2106.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5023.

5000.2108 Board Hearings.

Board hearings shall be conducted pursuant to the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Resources Code section 42882; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522. History: California Code of Regulations, title 18, section 5020.

Article 7: Optional Briefs for Oral Hearings Before the Board

5000.2110 Briefing Schedule.

(a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.

(b) Briefs.

(1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel in accordance with section 5000.2111.

(2) Filing.

(A) Electronic Filing. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of briefs and related documents. Briefs and related documents may be filed electronically pursuant to this section if they are transmitted to the Board in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(B) Other Methods. Briefs and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the Chief of Board Proceedings, at the following address:

Chief of Board Proceedings, MIC: 80
State Board of Equalization

P.O. Box 942879
Sacramento, CA 94279-0080

(C) The Chief of Board Proceedings may reject any brief or related document filed in any manner that is not authorized by this section.

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

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

(c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

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

(e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief shall identify and only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing.

(f) Additional Briefing.

(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes

and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.

(2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 10 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

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

(g) Briefs Filed by Unrepresented Parties. Notwithstanding subdivisions (c), (d), and (e) of this section, a party who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing. A party who receives representation from a Board-approved pro bono or clinical program shall be considered to be unrepresented for purposes of this subdivision.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5075.

5000.2111 Extensions.

The Chief Counsel may grant a party a reasonable extension of time for the filing of any brief, upon a showing of reasonable cause. The request for an extension of time shall be submitted in writing before the scheduled due date of any brief. If an extension of time is granted for the filing of any brief, the Chief Counsel shall also grant an appropriate extension of time for filing a response to such brief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code 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, 60581. History: California Code of Regulations, title 18, section 5075.