

REPLACE SUBDIVISION (C) OF SECTION 4020, AS PUBLISHED ON THE WEBSITE ON SEPTEMBER 14, 2005, WITH THE FOLLOWING:

(c) Method of Filing.

- (1) The taxpayer, claimant, or authorized representative shall mail or personally deliver one copy of the appeal along with any related documents to the following address:

Board Proceedings Division, MIC 81
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0081

- (2) In lieu of mailing or personal delivery, the appeal and related documents may be transmitted to the Board Proceedings Division via facsimile, electronic mail, or other electronic means. However, documents filed pursuant to this paragraph must be transmitted to and received by the Board Proceedings Division in accordance with instructions provided by the Chief of Board Proceedings.

REPLACE ARTICLES 3 THROUGH 6 OF PART 4, AS PUBLISHED ON THE WEBSITE ON SEPTEMBER 14, 2005, WITH THE FOLLOWING ARTICLES 3 THROUGH 5:

Article 3: Briefing Schedules and Procedures

4030. General Requirements.

- (a) Briefing is required in all appeals from actions of the Franchise Tax Board. The parties to an appeal shall adhere to the briefing schedules and other requirements set forth in this article.
- (b) Upon receipt of a perfected appeal, the Chief of Board Proceedings shall notify each party that a perfected appeal has been filed and that briefing will begin under the applicable briefing schedule, as determined by the Chief of Board Proceedings. The notification may be included, if appropriate, in the acknowledgment letter issued pursuant to section 4022. Throughout the briefing schedule, the Chief of Board Proceedings shall keep the parties apprised of applicable deadlines by written notification.
- (c) The Chief of Board Proceedings, in his or her discretion, may extend the deadline for filing any brief upon a showing of reasonable cause or by written stipulation of the parties.

- (d) Every brief shall be filed in accordance with the methods listed in subdivision (c) of section 4020. A brief shall be considered filed on the “date of mailing” as defined in subdivision (c) of section 4021.
- (e) The party filing a brief is responsible for sending one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings shall acknowledge receipt and shall provide each opposing party with a copy of the brief and any supporting exhibits.
- (f) All briefs shall be no longer than 30 double-spaced 8½” by 11” pages, or 15 single-spaced 8 ½” by 11” pages, excluding any table of contents, table of authorities, and exhibits. All briefs shall be printed only on one side in a type-font size of at least 10 points or 12 characters per inch. The Chief of Board Proceedings may grant an exemption to the requirements of this subdivision upon written request that establishes the necessity thereof. If a brief is filed that does not comply with the requirements of this subdivision, the Chief of Board Proceedings may, in his or her discretion, return the brief to the filing party and grant 10 days in which to file a corrected brief. Failure to file a corrected brief within the 10-day period shall constitute a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, such waiver shall have the effect of concluding the briefing schedule.
- (g) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, shall constitute a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, such failure shall have the effect of concluding the briefing schedule.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4031. General Briefing Schedule.

- (a) Application. The briefing schedule in this section shall apply to all appeals from actions of the Franchise Tax Board, unless the more specific briefing schedules contained in sections 4032 or 4033 apply.
- (b) Opening Briefs.
 - (1) The perfected appeal shall be considered the taxpayer’s Opening Brief.
 - (2) The Franchise Tax Board shall file its Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the taxpayer’s perfected appeal.
- (c) Reply Briefs.

- (1) The taxpayer may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Opening Brief. The taxpayer's Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Opening Brief. Except as provided in paragraph (2) of this subdivision, the filing of the taxpayer's Reply Brief shall conclude the briefing schedule.
- (2) The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief of Board Proceedings. The Franchise Tax Board's Reply Brief, if filed, shall address only points of disagreement with the taxpayer's Reply Brief.
 - (A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the taxpayer's Reply Brief in which to file a written request for permission to file its own Reply Brief.
 - (B) Upon receipt of the Franchise Tax Board's written request, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:
 - (i) Whether the taxpayer's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;
 - (ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and
 - (iii) Whether the appeal is so complex as to require additional discussion or clarification.
 - (C) If the Chief of Board Proceedings determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board permission to file a Reply Brief. The Franchise Tax Board shall file its Reply Brief not later than 30 days from the date that permission is granted.
 - (D) If the Chief of Board Proceedings determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board's request to file a Reply Brief and the briefing process shall be concluded.
- (3) If the Franchise Tax Board files a Reply Brief, the taxpayer may file a Second Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Reply Brief. The taxpayer's Second Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Reply Brief. The filing of the taxpayer's Second Reply Brief shall conclude the briefing schedule.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4032. Briefing Schedule for Innocent Spouse Appeals.

- (a) Application. The briefing schedule in this section shall apply to all appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code section 18533.
- (b) Definitions. For purposes of this section:
 - (1) The “Appealing Spouse” is the individual who files an appeal from the Franchise Tax Board’s grant or denial, in whole or in part, of innocent spouse relief.
 - (2) The “Non-Appealing Spouse” is the individual with whom the Appealing Spouse filed a joint return for the year at issue.
 - (3) The “requesting spouse” is the individual who requested relief from the joint and several liability imposed by Revenue and Taxation Code section 19006. The requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.
 - (4) The “non-requesting spouse” is the individual with whom the requesting spouse filed a joint return for the year at issue. The non-requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.
- (c) Rights of the Non-Appealing Spouse.
 - (1) The Non-Appealing Spouse shall have the right to meaningful participation in the appeal, subject to the provisions of this section.
 - (2) Upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings shall provide one copy of the appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her rights under this section.
 - (3) The Chief of Board Proceedings shall use the best available information to contact the Non-Appealing Spouse.
- (d) Opening Briefs.
 - (1) The Appealing Spouse’s perfected appeal shall constitute the Appealing Spouse’s Opening Brief.
 - (2) The Franchise Tax Board shall file its Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the perfected appeal.

- (3) The Non-Appealing Spouse may file an Opening Brief not later than 90 days from the date of the notification of his or her right to participate in the appeal. The filing of an Opening Brief shall have the effect of joining the Non-Appealing Spouse as a party to the appeal. The failure to file an Opening Brief within the time provided shall constitute a waiver of the right to participate in the appeal.

(e) Reply Briefs.

- (1) The Appealing Spouse may file a Reply Brief not later than 30 days from the later of:

- (A) The date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Opening Brief; or

- (B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Opening Brief.

The Appealing Spouse's Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Opening Brief and the Non-Appealing Spouse's Opening Brief.

- (2) If the Appealing Spouse files a Reply Brief, the Non-Appealing Spouse may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief. The Non-Appealing Spouse's Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse's Reply Brief.

- (3) The Franchise Tax Board may not file a Reply Brief in response to the Appealing Spouse's Reply Brief without written permission from the Chief of Board Proceedings. The Franchise Tax Board's Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse's Reply Brief.

- (A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief in which to file a written request for permission to file its own Reply Brief.

- (B) Upon receipt of the Franchise Tax Board's request, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

- (i) Whether the Appealing Spouse's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

- (ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

- (iii) Whether the appeal is so complex as to require additional discussion or clarification.
- (C) If the Chief of Board Proceedings determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board permission to file a Reply Brief. The Franchise Tax Board shall file its Reply Brief not later than 30 days from the date that permission is granted.
- (D) If the Chief of Board Proceedings determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board's request to file a Reply Brief.
- (4) If neither the Non-Appealing Spouse nor the Franchise Tax Board file a Reply Brief, the briefing schedule shall be concluded.
- (5) The Appealing Spouse may file a Second Reply Brief not later than 30 days from the later of:
 - (A) The date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Reply Brief; or
 - (B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief.

The Appealing Spouse's Second Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Reply Brief and the Non-Appealing Spouse's Reply Brief. The filing of the Appealing Spouse's Second Reply Brief shall conclude the briefing schedule.

- (f) Conformity with Federal Action. If, prior to the Board's decision on the appeal, any party to the appeal receives notification that the requesting spouse has been granted relief under Internal Revenue Code section 6015, the following procedures shall apply in addition to the other procedures set forth in this section:
 - (1) The party who receives notification that relief has been granted under Internal Revenue Code section 6015 shall submit proof of such notification to the Chief of Board Proceedings as soon as is practicable.
 - (2) Regardless of whether the non-requesting spouse has joined the appeal, the Chief of Board Proceedings shall notify the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, the non-requesting spouse may provide "information that indicates that relief should not be granted," as that phrase is defined in Revenue and Taxation Code section 18533, subdivision (i)(2). Such information should be sent to the Board Proceedings Division at the address provided in Chief of Board Proceedings' notice to the non-requesting spouse

- (3) If the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse and the Franchise Tax Board each may file an additional brief. An additional brief shall be filed not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief filed pursuant to this paragraph shall address only points of disagreement with the information described in paragraph (2) of this subdivision.
- (4) If this subdivision becomes applicable after the briefing schedule has concluded, then briefing shall be reopened for the purpose of complying with this subdivision and any hearing, appeals conference, or decision shall be postponed as appropriate.
- (5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule shall not be considered concluded until the requirements of this subdivision have been satisfied.

Reference: Section 15606 of the Government Code. Sections 18533, 19006, and 19047 of the Revenue and Taxation Code.

4033. Simplified Briefing Schedule for Small Tax Cases and HRA Appeals.

- (a) Intent. This section is intended to provide a simplified briefing schedule and an expedited resolution of the appeal. The Board Proceedings Division and the Appeals Division shall consider this intent and shall expedite the processing of appeals to which this section applies, consistent with workload constraints.
- (b) Pro Bono Representation. Taxpayers and claimants to whom this section applies shall be notified of, and may take advantage of, any pro bono representation provided pursuant to an agreement between a law school and the Board of Equalization.
- (c) Application.
 - (1) This section shall apply to all appeals from the Franchise Tax Board's denial of assistance under the Homeowners and Renters Property Tax Assistance Law.
 - (2) In addition to appeals described in paragraph (1), any taxpayer filing an appeal pursuant to the Administration of Franchise and Income Tax Law may elect to apply this section if:
 - (A) The amount at issue is not more than \$10,000;
 - (B) The specific briefing schedule in section 4032 does not apply; and
 - (C) Where the taxpayer is a trust, partnership, limited partnership, limited liability company, limited liability partnership, or corporation, the amount at issue includes only one or more of the following:

- (i) One or more of the taxes or fees imposed by Revenue and Taxation Code sections 17935, 17941, 17942, 17948, and 23153;
 - (ii) One or more of the penalties imposed by Revenue and Taxation Code sections 19131, 19132, 19133, 19134, 19141, 19172, and 19184;
 - (iii) One or more of the fees imposed by Revenue and Taxation Code sections 19221, 19254; and
 - (iv) Interest imposed by Revenue and Taxation Code section 19101.
- (3) For purposes of this subdivision, the “amount at issue” includes any tax, penalties, fees, and paid interest upon which the taxpayer and the Franchise Tax Board disagree and over which the Board has jurisdiction. Unpaid interest shall be included in the “amount at issue” only if the taxpayer is seeking interest abatement under Revenue and Taxation Code section 19104, and only to the extent of the unpaid interest accrued through the date of the Franchise Tax Board’s notice from which the appeal is made.
- (d) Upon receipt of a perfected appeal, other than an appeal under the Homeowners and Renters Property Tax Assistance Law, the Chief of Board Proceedings shall determine whether the taxpayer filing the appeal is eligible to elect to apply this section. The Chief of Board Proceedings may consult with Appeals Staff to determine the taxpayer’s eligibility. If the Chief of Board Proceedings determines that the taxpayer is eligible to elect to apply this section, the following procedures shall apply:
- (1) The Chief of Board Proceedings shall notify the taxpayer of the right to make the election. Such notification shall explain that an election to apply this section constitutes a waiver of the right to request an oral hearing pursuant to section 4042. Such notification may be included in the acknowledgment letter issued pursuant to section 4022, if appropriate.
 - (2) The taxpayer must affirmatively elect the application of this section and inform the Chief of Board Proceedings in writing not later than 30 days from the date of the notification described in paragraph (2). If the taxpayer fails to make the election within the 30-day period, then the briefing schedule in section 4031 shall apply.
 - (3) The Chief of Board Proceedings shall notify the Franchise Tax Board of the taxpayer’s election, or failure to make an election, to apply this section.
 - (4) An election to apply this section is only revocable until the Franchise Tax Board files its Opening Brief. Thereafter, the election is irrevocable.
- (e) Briefing Schedule. Where this section applies, whether mandatory or by election:

- (1) The perfected appeal shall constitute the taxpayer or claimant's Opening Brief.
- (2) The Franchise Tax Board shall file its Opening Brief not later than 60 days from the later of:
 - (A) The date the Chief of Board Proceedings acknowledges receipt of a claimant's perfected appeal; or
 - (B) The date the Chief of Board Proceedings notifies the Franchise Tax Board that a taxpayer has elected to apply this section.
- (3) The taxpayer or claimant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Opening Brief. The Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Opening Brief. The filing of the Reply Brief shall conclude the briefing schedule.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, and 20645 of the Revenue and Taxation Code.

Article 4: Appeals Conferences; Board Hearings; Decisions and Opinions

4040. Appeals Conference.

- (a) Scheduling. At the conclusion of the applicable briefing schedule pursuant to article 3 of this part, the Board Proceedings Division shall contact the parties and schedule an appeals conference.
 - (1) The appeals conference may be held at the Board's Sacramento headquarters, a Board district office, by videoconference, by telephone, or by means of a secure internet connection.
 - (2) The Board Proceedings Division shall make a reasonable effort to schedule the appeals conference at a time and location that is convenient to the taxpayer or claimant. However, scheduling is subject to the workload constraints of the Appeals Division.
 - (3) In the case of an appeal to which section 4032 applies, there shall be one appeals conference at which all parties will be invited to appear, unless a court order prohibits one or more parties from appearing.
- (b) Notice. The Board Proceedings Division shall notify each party in writing of the time and location of the appeals conference. The notice shall contain the deadline by which the parties must respond.
- (c) Response to Notice; Waiver. Not later than 15 days from the date of the notice issued pursuant to subdivision (b), each party must respond to confirm that party's attendance at the appeals conference. The response shall be filed in accordance with

the methods listed in subdivision (c) of section 4020. The response shall be considered filed on the “date of mailing” as defined in subdivision (c) of section 4021

- (1) A party’s failure to respond within the 15-day period shall constitute a waiver of that party’s right to appear at the appeals conference, unless such failure to respond was due to reasonable cause.
 - (2) A party’s failure to appear at a scheduled appeals conference shall constitute a waiver of that party’s right to appear at the appeals conference, unless the party demonstrates that the failure to appear was due to extreme hardship.
 - (3) At any time, a party may expressly waive the right to appear at the appeals conference.
 - (4) One party’s waiver shall not prevent the appeals conference from continuing with the other party in attendance.
- (d) Rescheduling. A request to reschedule the appeals conference shall be made not later than 15 days from the date of the notice issued pursuant to subdivision (b).
- (1) The Chief of Board Proceedings shall grant a party’s first request to reschedule the appeals conference upon a showing of reasonable cause. The Chief of Board Proceedings shall grant a party’s subsequent requests only upon a showing of extreme hardship.
 - (2) Any request to reschedule the appeals conference that is made more than 15 days from the date of the notice issue pursuant to subdivision (b) may be granted only upon a showing of extreme hardship.
- (e) Conduct and Nature of the Appeals Conference. An employee of the Appeals Division shall conduct the appeals conference. It is the responsibility of the conference holder to take a fresh look at the law and facts provided by all parties and to make his or her own objective recommendation for resolving the appeal.
- (1) The Appeals Division shall develop procedures to ensure that all appeals conferences are conducted in a fair, efficient, and uniform manner. To the extent practicable, such procedures shall ensure that the appeals conference is non-adversarial in nature.
 - (2) The conference holder will not record, videotape, or report the appeals conference. Either party may arrange for the appeals conference to be recorded or reported, at that party’s expense. If the appeals conference is recorded or reported, a transcript shall be made available to all participants and such transcript shall become public record.
- (f) Submission of Additional Briefing and Evidence. The conference holder may request that either or both parties submit additional briefing or evidence and may set forth any

order, deadlines, and conditions for briefing that he or she deems appropriate. However, if the conference holder requests that a party submit additional briefing or evidence after the appeals conference, the other party shall be given no less than 15 days within which to respond to such briefing and evidence. Any deadline for the submission of briefing or evidence requested under this subdivision may be extended upon a showing of reasonable cause.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4041. Decision and Recommendation.

- (a) After an appeals conference conducted pursuant to subdivision (e) of section 4040, and after the receipt of all briefing and evidence required pursuant to subdivision (f) of section 4040, the Appeals Division shall prepare a Decision and Recommendation.
- (b) If no appeals conference is held, then the Appeals Division shall prepare a Decision and Recommendation based upon the briefing and evidence on file. However, if the Appeals Division determines that the briefing and evidence on file is incomplete, it may request that either or both parties submit additional briefing or evidence. The Appeals Division may set forth any order, deadlines, and conditions for briefing that it deems appropriate. Any deadline for the submission of briefing or evidence requested under this subdivision may be extended upon a showing of reasonable cause.
- (c) The Decision and Recommendation shall include all of the following:
 - (1) A concise statement of each issue raised by the taxpayer or claimant;
 - (2) The Franchise Tax Board's position on each issue raised by the taxpayer or claimant;
 - (3) A statement of the relevant law applicable to each issue raised by the taxpayer or claimant;
 - (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;
 - (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 taxpayer or claimant; and
 - (7) If appropriate, a recommendation that a Formal Opinion be prepared pursuant to section 4044.

- (d) The Board Proceedings Division shall send one copy of the Decision and Recommendation to each party.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4042. Board Hearing.

- (a) Not later than 30 days from the date of the Decision and Recommendation issued pursuant to section 4041, any party may make a written request for an oral hearing before the Board. Upon receipt of a timely, written request, the Chief of Board Proceedings shall schedule and notice an oral hearing pursuant to article 2 of part 5.
- (b) Notwithstanding subdivision (a), a request for an oral hearing shall be denied if the requesting party waived his or her right to appear at the appeals conference or if the appeal was subject to the briefing schedule set forth in section 4033. However, the Board, in its discretion, may order that an oral hearing be held in any appeal.
- (c) In the case of an appeal to which section 4032 applies, there shall be one oral hearing at which all parties shall be invited to appear, unless a court order prohibits one or more parties from appearing.
- (d) Upon the scheduling and noticing of an oral hearing, the Appeals Division shall prepare a Hearing Summary. The individual assigned to prepare the Hearing Summary shall not be the same individual who prepared the Decision and Recommendation. The Hearing Summary shall contain sufficient information to assist the Board in the conduct of an efficient oral hearing and, at the discretion of the Appeals Division, may contain analysis and comments. The Hearing Summary also may contain, if appropriate, a recommendation that a Formal Opinion be prepared pursuant to section 4044. The Board Proceedings Division shall send one copy of the Hearing Summary to each party.
- (e) At or after the oral hearing, the Board may order either or both parties to submit additional briefing or evidence. The Board may set forth any order, deadlines, and conditions for briefing that it deems appropriate. The Board Proceedings Division shall administer any request made under this subdivision. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.
- (f) If the Hearing Summary contains a recommendation that a Formal Opinion be prepared, then in addition to deciding the appeal, Board shall decide whether to order the preparation of a Formal Opinion.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4043. Decision Without Oral Hearing.

- (a) If no party requests an oral hearing pursuant to subdivision (a) of section 4042, or if an oral hearing is denied pursuant to subdivision (b) of section 4042, then the Decision and Recommendation shall be submitted to the Board for consideration as a non-appearance matter. The Decision and Recommendation shall remain confidential until considered by the Board.
- (b) If the Decision and Recommendation contains a recommendation that a Formal Opinion be prepared, then in addition to deciding the appeal, Board shall decide whether to order the preparation of a Formal Opinion.
- (c) The parties shall be notified of the Board's action on the Decision and Recommendation.
- (d) No Decision and Recommendation shall be cited as precedent in any appeal or other proceeding before the Board.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4044. Formal Opinion.

- (a) The Appeals Division shall prepare a Formal Opinion when ordered to do so by the Board. The Formal Opinion shall contain findings of fact and conclusions of law for the purpose of setting precedent. The Formal Opinion shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board.
- (b) The date on which the Board adopts the Formal Opinion shall be the date of the decision for purposes of this part.
- (c) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion is appropriate, the following factors shall be considered:
 - (1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;
 - (2) Whether the Opinion would resolve or create an apparent conflict in the law;
 - (3) Whether the Opinion would involve a legal issue of continuing public interest; and
 - (4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.
- (d) Precedent Set. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board.

Comment: I thought "living law" might be a good term instead, but it is only a suggestion.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code. California Rule of Court 976.

4045. Dissenting Opinion.

- (a) The Appeals Division shall prepare a Dissenting Opinion at the direction of one or more Board Members who oppose the adoption of a Formal Opinion. The dissenting Board Member or Members shall give such direction during the Board meeting at which the Formal Opinion is adopted or during the Board meeting at which the Formal Opinion is ordered to be prepared. The Appeals Division shall consult with the dissenting Board Member or Members to confirm the content of the Dissenting Opinion.
- (b) The Dissenting Opinion shall be deemed to be adopted on the same date on which the Formal Opinion is adopted and shall be published as a supplement to the Formal Opinion.
- (c) A Dissenting Opinion may be cited and relied upon in the same manner as a dissent in a published opinion of the California Supreme Court or California Court of Appeal.

Reference: Section 15606 of the Government Code. Sections 19047 and 19333 of the Revenue and Taxation Code.

4046. Frivolous Appeal Penalty.

If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, pursuant to Revenue and Taxation Code Section 19714, on the taxpayer or claimant that filed the appeal. The Appeals Division may recommend the imposition of such a penalty in the Decision and Recommendation and/or the Hearing Summary. The following factors shall be considered in determining whether, and in what amount, to impose a frivolous appeal penalty:

- (a) Whether the taxpayer is making arguments that the Board, in a Formal Opinion, or courts have repeatedly rejected;
- (b) Whether the taxpayer is making the same arguments that the same taxpayer made in prior appeals;
- (c) Whether the taxpayer is making arguments that are frivolous and groundless on their face;
- (d) Whether the taxpayer filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; and
- (e) Whether the taxpayer has a history of filing frivolous appeals or failing to comply with California's tax laws.

Article 5: Petitions for Rehearing and Rehearings

4050. Finality of Decision.

The Board's decision pursuant to article 4 of this part shall become final 30 days after the date of the decision unless, within that 30-day period, one of the following occurs:

- (a) A party to the appeal files a Petition for Rehearing. The filing of a Petition for Rehearing by one party shall not preclude the filing of a Petition for Rehearing by another party. However, each Petition for Rehearing must be filed within the aforementioned 30-day period, as extended by the provisions of subdivision (b) of section 4021. Each Petition for Rehearing also must meet the formatting and page requirements of subdivision (f) of section 4030.
- (b) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance.
 - (1) The Board Chair may make an order pursuant to this subdivision only for one or more of the following reasons:
 - (A) The decision contains a clerical error;
 - (B) The decision contains a mistake of fact or law affecting the outcome of the appeal;
 - (C) A party or a party's representative deliberately misrepresented facts; or
 - (D) The Board or any employee of the Board denied a substantial right of a party under this part.
 - (2) If the Board Chair makes an order pursuant to this subdivision, the Chief of Board Proceedings shall notify all parties of the order and the reason or reasons therefor.
 - (3) An order made pursuant to this subdivision shall preclude the finality of the decision if, and only if, the appeal is scheduled for an expunging vote at the first regular Board meeting that succeeds the date of the Board Chair's order.
 - (4) If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board does not vote to expunge the decision, then the decision shall become final immediately.
 - (5) If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board votes to expunge the decision, then the Board shall reconsider and decide the appeal in a manner it deems appropriate. The Board's subsequent decision shall become final after the passage of 30 days.

- (6) This subdivision shall not become effective unless and until the Board passes a resolution in an open meeting that expressly delegates to the Board Chair the authority to order decisions held in abeyance pursuant to this subdivision.

Reference: Section 15606 of the Government Code. Sections 19048 and 19334 of the Revenue and Taxation Code.

4051. Petition for Rehearing; Reply

(a) Definitions.

- (1) The “Filing Party” is the party who files a Petition for Rehearing.
- (2) The “Non-Filing Party” is the party who does not file a Petition for Rehearing.

- (b) The Petition for Rehearing, and any replies thereto, shall be filed in accordance with the methods listed in subdivision (c) of section 4020. Such documents shall be considered filed on the “date of mailing” as defined in subdivision (c) of section 4021.

(c) Acceptance or Rejection of the Petition for Rehearing.

- (1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings shall determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.
- (2) If the Petition for Rehearing is timely, the Chief of Board Proceedings shall accept the Petition for Rehearing and send a letter to all parties acknowledging the acceptance. The Chief of Board Proceedings also shall send one copy of the Petition for Rehearing to each Non-Filing Party.
- (3) If the Petition for Rehearing is not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and notify the Filing Party of any alternative rights or remedies.

(d) Briefing Schedule.

- (1) Not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of a timely Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing. The Reply to the Petition for Rehearing shall address only the Non-Filing Party’s areas of disagreement with the Filing Party and shall meet the requirements of subdivision (f) of section 4030. The filing of the Reply to the Petition for Rehearing shall conclude the briefing schedule.
- (2) If there is more than one Filing Party, then each party may file a Reply to each Petition for Rehearing under the requirements of paragraph (1) of this subdivision.

4052. Decision on Petition for Rehearing.

- (a) Definition. A “Decision on Petition for Rehearing” is a written decision setting forth findings of fact and conclusions of law for the purpose of deciding whether to grant a rehearing.
- (b) Preparing the Decision on Petition for Rehearing. At the conclusion of the briefing schedule set forth in subdivision (d) of section 4051, the Appeals Division shall prepare a Decision on Petition for Rehearing. That individual who prepares the Decision on Petition for Rehearing shall not be the same individual that prepared the Decision and Recommendation under section 4041.
- (c) Submission of additional briefing and evidence. The Appeals Division may request that either or both parties submit additional briefing or evidence. The Appeals Division may set forth any order, deadlines, and conditions for briefing that it deems appropriate. Any deadline for the submission of briefing or evidence requested under this subdivision may be extended upon a showing of reasonable cause.
- (d) Adoption; Date of Decision. The Decision on Petition for Rehearing shall be submitted to the Board for consideration as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board votes to grant or deny a rehearing, shall be the date of the decision for purposes of this part.
 - (1) If the Board grants a rehearing, then the Board’s decision under article 4 of this part shall be held in abeyance pending resolution of the rehearing.
 - (2) If the Board denies a rehearing, then the Board’s Decision on Petition for Rehearing shall become final upon the passage of 30 days, unless within that 30-day period the Board Chair orders the decision held in abeyance pursuant to the provisions, and subject to the requirements, of subdivision (b) of section 4050.
- (e) Reasons for Granting a Rehearing. A rehearing shall be granted only for one or more of the following reasons:
 - (1) The Petition for Rehearing demonstrates the existence of irregularity in the proceedings before the Board by which the Filing Party was prevented from having a fair consideration of its case;
 - (2) The Petition for Rehearing demonstrates the existence of accident or surprise, against which ordinary prudence could not have guarded, and by which the Filing Party was prevented from having a fair consideration of its case;
 - (3) The Petition for Rehearing presents newly discovered evidence that is material to the resolution of the appeal. Evidence shall be considered “newly discovered”

only if the Filing Party, using reasonable diligence, could not have discovered, prepared, or submitted the evidence prior to the Board's decision;

- (4) The Petition for Rehearing demonstrates a reasonable likelihood that there was insufficient evidence to justify a factual finding in the Board's decision; or
 - (5) The Petition for Rehearing demonstrates a reasonable likelihood that the Board's decision contains an error in law.
- (f) No Precedent Set. No Decision on Petition for Rehearing shall be cited as precedent in any appeal or other proceeding before the Board, unless the Board orders that the Decision on Petition for Rehearing be prepared as a Formal Opinion pursuant to section 4044.

Reference: Section 15606 of the Government Code. Sections 19048 and 19334 of the Revenue and Taxation Code. Section 657 of the Code of Civil Procedure.

4053. Rehearings.

- (a) Briefing Schedule. If the Board grants a rehearing, the Chief of Board Proceedings, in consultation with Appeals Staff, shall determine a briefing schedule appropriate for the rehearing, considering the following factors:
- (1) The specific facts and legal issues still in dispute upon rehearing;
 - (2) The sufficiency of briefing provided to date, including any materials submitted in support of, or in opposition to, the Petition for Rehearing;
 - (3) The party upon whom the burden of proof rests;
 - (4) The complexity of the appeal; and
 - (5) The age of the appeal.

Once the briefing schedule is established, the Chief of Board Proceedings shall inform all the parties in writing. Notwithstanding the provisions of article 3 of this part, all briefs shall be submitted in the order, and within any deadlines, specified by the Chief of Board Proceedings. Each brief shall be filed in accordance with the methods listed in subdivision (c) of section 4020 and shall be considered filed on the "date of mailing" as defined in subdivision (c) of section 4021. In addition, each brief shall meet the requirements of subdivision (f) of section 4030.

- (b) Hearing and Decision.
- (1) If, in its decision on the petition for rehearing, the Board directed that an oral hearing be held, then at the conclusion of the briefing schedule, the Chief of Board Proceedings shall schedule and notice a hearing pursuant to article 2 of part 5. The Appeals Division shall prepare a Hearing Summary.

- (2) If, in its decision on the petition for rehearing, the Board did not direct that an oral hearing be held, then at the conclusion of the briefing schedule, the Appeals Division shall prepare a Decision on Rehearing. The Decision on Rehearing shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board adopts the Decision on Rehearing, or otherwise votes to decide the appeal without adopting the Decision on Rehearing, shall be the date of the decision for purposes of this part.
- (c) No Precedent Set. No Decision on Rehearing shall be cited as precedent in any appeal or other proceeding before the Board, unless the Board orders that the Decision on Rehearing be prepared as a Formal Opinion pursuant to section 4044.
- (d) Finality of Decision. The Board's decision upon rehearing shall become final after the passage of 30 days, unless within that 30-day period the Board Chair orders the decision held in abeyance pursuant to the provisions, and subject to the requirements, of subdivision (b) of section 4050.

Reference: Section 15606 of the Government Code. Sections 19048 and 19334 of the Revenue and Taxation Code.