Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax
Regulations 1807, *Petitions for Reallocation of Local Tax*, and

1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

OAL Approval

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19. Statement of Compliance
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21. Draft Minutes, Chief Counsel Matters, December 15, 2011, Item J1. The following items are exhibited:
22. Reporter's Transcript Chief Counsel Matters, Rulemaking, December 15, 2011, Item J1

RECEIVED
FEB 10 2012
by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

In re: **Board of Equalization**	**NOTICE OF APPROVAL OF REGULATORY ACTION**
Regulatory Action:	**Government Code Section 11349.3**
Title 18, California Code of Regulations	**OAL File No. 2011-1223-02 S**
Adopt sections: **Amend sections: 1807, 1828** **Repeal sections:**	

This rulemaking action adds very similar provisions to sections 1807 and 1828 of Title 18 of the California Code of Regulations. Primarily, the rulemaking action adds critical deadlines to the Sales and Use Tax Department review process of local entities' petitions for reallocation, distribution, or redistribution of tax monies by the Allocation Group so that petition cases are better expedited in this system.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/8/2012.

Date: 2/7/2012

Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Kristine Cazadd
Copy: Richard Bennion

STATE OF CALIFORNIA EDMUND G. BROWN, Jr., Governor

OFFICE OF ADMINISTRATIVE LAW
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DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 2/8/2012
RE: Return of Approved Rulemaking Materials
OAL File No. 2011-1223-02S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2011-1223-02S regarding Petitions for Reallocation of Local Tax).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

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

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

Enclosures

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse)

REGULAR

STD. 400 (REV. 01-09)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2011-1223-02S	

For use by Office of Administrative Law (OAL) only

2011 DEC 23 AM 9:01

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State of the State of California

FEB 7 2012 2:48 PM

DEBRA BOWEN
Secretary of State

AGENCY WITH RULEMAKING AUTHORITY: State Board of Equalization

AGENCY FILE NUMBER (If any):

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

1. SUBJECT OF NOTICE:
TITLE(S):
FIRST SECTION AFFECTED:
2. REQUESTED PUBLICATION DATE:

3. NOTICE TYPE: ☐ Notice re Proposed Regulatory Action ☐ Other
4. AGENCY CONTACT PERSON:
TELEPHONE NUMBER:
FAX NUMBER (Optional):

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn
NOTICE REGISTER NUMBER: 2011, 382
PUBLICATION DATE: 9-23-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Petitions for Reallocation of Local Tax

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT:
AMEND: 1807, 1828
REPEAL:

TITLE(S): 18

3. TYPE OF FILING

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

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
11/28/11 - 12/14/11 On per agency 2/6/12

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
- ☒ Effective 30th day after filing with Secretary of State
- ☐ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Rick Bennion	(916) 445-2130	(916) 324-3984	rbennion@boe.ca.gov

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Diane G. Olson
DATE: December 22, 2011

TYPED NAME AND TITLE OF SIGNATORY: Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
FEB 07 2012
Office of Administrative Law

Final Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any

notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Sales and Use Tax Department, the petitioner or any notified jurisdiction may request that the Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~its~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must

state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision ~~of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision

(b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board

hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Final Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Sales and Use Tax Department, the petitioner or any notified district may request that the Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~it's~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision ~~of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the

Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be

mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the

burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Chemical	*Type of Reproductive Toxicity*	*CAS No.*	*Date Listed*
Uracil mustard	developmental, female, male	66–75–1	January 1, 199
Urethane	developmental	51–79–6	October 1, 1994
Urofollitropin	developmental	97048–13–0	April 1, 1990
Valproate (Valproic acid)	developmental	99–66–1	July 1, 1987
Vinblastine sulfate	developmental	143–67–9	July 1, 1990
Vinclozolin	developmental	50471–44–8	May 15, 1998
Vincristine sulfate	developmental	2068–78–2	July 1, 1990
4–Vinylcyclohexene	female, male	100–40–03	August 7, 2009
Vinyl cyclohexene dioxide (4–Vinyl–1–cyclohexene diepoxide)	female, male	106–87–6	August 1, 2008
Warfarin	developmental	81–81–2	July 1, 1987
Zileuton	developmental, female	111406–87–2	December 22, 2000

Date: February 17, 2012

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2011–1223–02
BOARD OF EQUALIZATION
Petitions for Reallocation of Local Tax

This rulemaking action adds very similar provisions to sections 1807 and 1828 of Title 18 of the California Code of Regulations. Primarily, the rulemaking action adds critical deadlines to the Sales and Use Tax Department review process of local entities' petitions for reallocation, distribution, or redistribution of tax monies by the Allocation Group so that petition cases are better expedited in this system.

Title 18
California Code of Regulations
AMEND: 1807, 1828
Filed 02/07/2012
Effective 03/08/2012
Agency Contact:
Richard E. Bennion (916) 445–2130

File# 2011–1227–03
BOARD OF FORESTRY AND FIRE PROTECTION
Utility Clearing Exemption

This regulatory action makes permanent the temporary exemption to the utility vegetation clearing requirements in which healthy, mature trees (trunks and limbs) sufficiently rigid so they do not present a risk to public safety may remain at least six inches from energized utility lines (for lines less than 75,000 volts). The exemption applies exclusively to public utilities lines in areas designated by the Board as State Responsibility Areas (SRAs) for fire protection.

Title 14
California Code of Regulations
AMEND: 1257
Filed 02/08/2012
Effective 02/08/2012
Agency Contact: Eric Huff (916) 653–8031

File# 2011–1219–03
BUREAU OF AUTOMOTIVE REPAIR
Smog Check Licensing Restructure

This action updates the smog check licensing program based upon changes in the auto emissions testing, diagnostic and repair industry to better align the licensing requirements with the skills required and services provided.

Title 16
California Code of Regulations
ADOPT: 3340.16.4 AMEND: 3306, 3340.1, 3340.10, 3340.15, 3340.16.5, 3340.17, 3340.22, 3340.22.1, 3340.23, 3340.28, 3340.29, 3340.30, 3340.31, 3340.50, 3351.1
Filed 02/01/2012
Effective 02/01/2012
Agency Contact: Steven Hall (916) 255–2135

Rulemaking File Index

Title 18. Public Revenue

Sales and Use Tax
Regulations 1807, *Petitions for Reallocation of Local Tax*, and

1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes, April 26, 2011
    - Minutes
    - BTC Agenda
    - Issue Paper 11-004
    - Exhibit 1 Revenue Estimate
    - Exhibit 2 Overview of the Local Tax Petition Process
    - Exhibit 3 Alternative 1
    - Exhibit 4 Alternative 2
    - Exhibit 5 Alternative 3.1
    - Exhibit 6 Submission from Johan Klehs
    - Exhibit 7 Submission from The HdL Companies
    - Exhibit 8 Submission from MuniServices
    - Regulation History
4. Reporter's Transcript Business Taxes Committee, April 26, 2011
5. Business Tax Committee Minutes, August 23, 2011
    - Minutes
    - BTC Agenda
    - Informal Issue Paper
    - Exhibit 1 Staff Report on Filling and Processing Local Tax Petitions
    - Exhibit 2 Text of Proposed regulations 1807 & 1828
    - Exhibit 3 MuniServices Proposed Revisions to Regulations 1807/1828
    - Exhibit 4 Submission from the HDL Companies
    - Exhibit 5 Submission from Mr. Johan Klehs
    - Exhibit 6 Overview of the Local Tax Petition Process
6. Reporter's Transcript Business Taxes Committee, August 23, 2011
7. Estimate of Cost or Savings, August 29, 2011
8. Economic and Fiscal Impact Statements, September 12, 2011

9. Notice of Publications

- Form 400 and notice, Publication Date September 23, 2011
- Notice
- Proposed Text of Regulations 1807 and 1828
- Email sent to Interested Parties, September 23, 2011
- CA Regulatory Notice Register 2011, Volume No. 38-Z

10. Notice to Interested Parties, September 23, 2011

The following items are exhibited:

- Notice of Hearing
- Initial Statement of Reasons
- Proposed Text of Regulations 1807 and 1828
- Regulation History

11. Statement of Compliance

12. Public Comment, November 4, 2011, Robin Sturdivant, Local Government Advocate, HdL Companies

13. Public Comment, dated November 14, 2011, Albin C. Koch, Attorney At Law

14. Reporter's Transcript, Item F2, November 15, 2011

15. Draft Minutes, November 15, 2011, and Exhibits

- Notice of Proposed Regulatory Action
- Initial Statement of Reasons
- Proposed Text of Regulations 1807 and 1828
- Regulation History

16. Revised Estimate of Cost/Savings, approved on November 16, 2011

17. Revised Economic and Fiscal Impact Statement, STD 399, November 16, 2011

18 15-Day letter sent to Interested Parties, November 28, 2011

19. Statement of Compliance

20. Modified text of Regulation 1807 and 1828 mailed to interested parties

21. Draft Minutes, Chief Counsel Matters, December 15, 2011, Item J1. The following items are exhibited:

- 15 Day Notice to interested parties, November 28, 2011
- Proposed revised text of Regulations 1807 and 1828

22. Reporter's Transcript Chief Counsel Matters, Rulemaking, December 15, 2011, Item J1

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on December 22, 2011 and that the attached copy is complete.

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

December 22, 2011

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

Final Statement of Reasons for

Adoption of Proposed Amendments to

California Code of Regulations,

Title 18, Sections:

1807, *Petitions for Reallocation of Local Tax*, and

1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Update of Information in the Initial Statement of Reasons

Current Law

As explained in the initial statement of reasons, counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. (RTC § 7201.) Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC §7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Original Proposed Amendments to Regulations 1807 and 1828

As explained in the initial statement of reasons, Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828

and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Klehs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website.

At the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board agreed with Board staff, Mr. Klehs, the HdL Companies, and MuniServices, LLC that the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation improved the review processes prescribed by both regulations and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011.

Public Comments

On November 4, 2011, Ms. Sturdivant submitted written comments on behalf of the HdL Companies, which recommended that the Board revise the proposed amendments to Regulations 1807 and 1828 to clarify that that Board's Sales and Use Tax Department, as a whole, rather than the Sales and Use Tax Department's Allocation Group, is responsible for:

- Reviewing petitions filed pursuant to both regulations;
- Issuing decisions to grant or deny petitions under subdivision (b)(2) of both regulations;
- Reviewing objections to its decisions issued under subdivision (b)(2) of both regulations;
- Issuing supplemental decisions in response to such objections under subdivision (b)(7) of both regulations; and
- Deciding whether to grant or deny requests for extensions under subdivision (b)(10) (as proposed to be renumbered) of both regulations.

On November 14, 2011, Mr. Albin Koch submitted written comments, which disputed the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and recommend that the proposed amendments to both regulations provide that "on any intervening proceedings under the version of regulation 1807 that became effective September 10, 2008, including, but limited to, any in which Board Member hearings were granted or petitioners exhausted their administrative remedies."

November 15, 2011, Public Hearing

The Board conducted a public hearing regarding the proposed amendments to Regulations 1807 and 1828 on November 15, 2011. Ms. Sturdivant appeared at the public hearing and made comments in support of the changes to the original text of the proposed amendments to Regulations 1807 and 1828 that she recommended in her November 4, 2011, written comments. Mr. Klehs also appeared at the public hearing and expressed support for the Board's proposed amendments to Regulation 1807 and 1828 on behalf of the City of Livermore. No other interested parties asked to speak regarding the proposed amendments.

At the conclusion of the public hearing, the Board Members unanimously voted to authorize staff to make the sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828 that are necessary to clarify the regulations in the manner recommended by Ms. Sturdivant and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c).

The Board did not agree with Mr. Koch's written comment disputing the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and the Board did not agree to make the additional amendments recommended by Mr. Koch because the Board did not understand how the additional amendments clarified the regulations.

Regulations 1807 and 1828 were originally adopted in 2002. During 2008, the Board proposed and adopted amendments to both regulations; however, the illustrations of the proposed amendments to the text of both regulations showed the strikeout of the entire text of the 2002 versions of Regulations 1807 and 1828, including the titles, and the adoption of completely new underlined text for new regulations with new titles that were also numbered as Regulations 1807 and 1828. The Office of Administrative Law reviewed the substantive effect of the Board's 2008 rulemaking action and added the following history note to the official text of Regulations 1807 and 1828, as published in the California Code of Regulations: "Repealer and new section filed 8-11-2008; operative 9-10-2008 (Register 2008, No. 33)." The proposed amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), are consistent with the history note.

Revised Text of Proposed Amendments

In order to clarify the regulations in the manner recommended by Ms. Sturdivant, the Board made the following sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828:

- Replaced the reference to the "Allocation Group" in the title to subdivision (b) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced all of the references to the "Allocation Group" with references to the "Sales and Use Tax Department" in subdivision (b)(2), (3), (7), (8) (as proposed to be added), and (9) (as proposed to be renumbered) of both regulations;
- Replaced the first reference to the "Allocation Group" in subdivision (b)(4) and (5) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced the first and third references to the "Allocation Group" with references to the "Sales and Use Tax Department" and replaced the reference to the "Allocation Group's" decision with a reference to the "Sales and Use Tax Department's" decision in subdivision (b)(6) of both regulations;
- Replaced the first, third, fourth, and fifth references to the "Allocation Group" in subdivision (b)(10) (as proposed to be renumbered) of both regulations with references to the "Sales and Use Tax Department" and replaced the word "its" with "the Sales and Use Tax Department's" in the second sentence in subdivision (b)(10) (as proposed to be renumbered) of both regulations;
- Replaced the references to the "Allocation Group" and the "Allocation Group's" with references to the "Sales and Use Tax Department" and "Sales and Use Tax Department's," respectively, in subdivision (c)(1) of both regulations;
- Replaced the word "its" with "the Sales and Use Tax Department's" in the first sentence of subdivision (c)(2) of both regulations; and
- Deleted "of the Allocation Group" from subdivision (c)(2)(A) of both regulations.

In addition, the Board also made nonsubstantial changes to the original text of the proposed amendments to Regulations 1807 and 1828 by adding "Sales and Use Tax" before the word "Department" throughout subdivision (c)(2)(B)-(D) and (7) of both regulations to ensure that both of the regulations consistently refer to the Board's Sales and Use Tax Department by its full name. Then, on November 28, 2011, the Board made the revised text of the proposed amendments, with the changes clearly indicated, available to the public for an additional 15-day comment period.

December 15, 2011, Board Meeting

On December 15, 2011, the Board determined that the proposed amendments, with the changes described above, improved the review processes prescribed by Regulations 1807 and 1828 and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulations 1807 and 1828, with the changes described above. No interested parties submitted written comments regarding the changes to the original text

of the proposed amendments to Regulations 1807 and 1828 and no interested parties appeared on December 15, 2011, to comment on the changes to the original text of the proposed amendments to Regulations 1807 and 1828.

Documents Relied Upon

The Board relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, and comments made during the Board's discussions of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, in deciding to propose the original amendments to Regulations 1807 and 1828. The Board relied upon the November 4, 2011, written comments from Ms. Sturdivant, and Ms. Sturdivant's comments at the November 15, 2011, public hearing in deciding to make the sufficiently related changes to the original text of the proposed amendments. The Board also relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, comments made during the Board's discussions of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, comments made during the public hearing on November 15, 2011, including Ms. Sturdivant's comments, and the 15-day letter notifying the public and interested parties regarding the sufficiently related changes in deciding to adopt the proposed amendments to Regulations 1807 and 1828 with the changes describe in the 15-day letter.

The Board did not rely upon any data or any technical, theoretical or empirical study, report, or similar document in proposing and adopting the amendments to Regulations 1807 and 1828 that was not identified in the Initial Statement of Reasons, or which was otherwise not identified or made available for public review and comment at least 15 days prior to the adoption of the amendments.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

Alternatives and Public Comments

Alternatives Considered on April 26, 2011, and August 23, 2011

As explained in the initial statement of reasons, the Board considered four alternatives to the proposed amendments to Regulations 1807 and 1828 during its April 26, 2011, Business Taxes Committee meeting, which are described in detail in Formal Issue Paper 11-004 and summarized below. Alternative 1 was recommended by Board staff, alternative 2 was recommended by Mr. Klehs and supported by the HdL Companies, and

alternatives 3 and 4 were recommended by MuniServices, LLC. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

All four alternatives considered on April 26, 2011, recommended that Regulations 1807 and 1828 be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (3) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (4) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Therefore, all of these amendments were included in staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, and the Board voted to propose these amendments to Regulations 1807 and 1828 at the conclusion of its August 23, 2011, Business Taxes Committee meeting.

Further, alternative 1 recommended that the Board amend Regulations 1807 and 1828 to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 90 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within six months after receiving a timely written object to its original decision. Alternatives 2 recommend that the Board amend Regulations 1807 and 1828 to require the Allocation Group to consider an objection to its original decision on a petition and issue a supplemental decision on the petition within 90 days. Alternatives 3 and 4 recommended that the Board amend the regulations to require that the Allocation Group complete any supplemental investigation within 90 days after the Allocation Group receives an objection to its original decision on a petition and then meet and confer with the parties. Alternatives 3 and 4 also recommended that the amendments to both regulations allow a jurisdiction or district to request, any time after the parties meet and confer, that the Allocation Group issue its supplemental decision on a petition within 30 days after receiving such request and based upon the information in the Allocation Group's possession. The similar procedures embodied in the four alternatives regarding the issuance of supplemental decisions were combined into staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, that both regulations be amended to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely

written object to its original decision. The interested parties subsequently concurred with staff's revised recommendation, except that MuniServices, LLC, recommend that staff change 60 days to 30 days. And, the Board voted to propose the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation at the conclusion of its August 23, 2011, Business Taxes Committee meeting because, in some cases, the Allocation Group does need 60 days to prepare its supplemental decisions.

Furthermore, alternative 1 also recommended that the Board amend the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to clarify that the 2002 versions of the regulations were repealed and new versions of the regulations were adopted in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the regulations apply to procedures occurring after their effective dates and are not retroactive. Alternative 3 recommended that the Board adopt Regulations 1807.1 and 1828.1 containing the provisions of Regulations 1807 and 1828 as recommended to be amended in alternative 3, and amend Regulations 1807 and 1828 so that they cease to be operative when Regulations 1807.1 and 1828.1 become operative in order to make it clear that the provisions of new Regulations 1807.1 and 1828.1 are not retroactive. Alternative 4 simply recommended amending Regulations 1807 and 1828 to provide that the 2011 amendments have no retroactive effect. In its revised recommendation in the Informal Issue Paper dated August 10, 2011, Board staff continued to recommend that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be clarified as originally recommended by staff in alternative 1. However, MuniServices, LLC, recommend that the transition rules be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. The Board voted to propose to amend the transition rules in the manner recommended by staff at the conclusion of its August 23, 2011, Business Taxes Committee meeting because the Board agreed that staff's recommended amendments were consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations, and the Board determined that staff's recommended amendments clarified the regulations' existing transition rules without creating unnecessary confusion.

In addition, alternative 2 also recommended that the Board amend Regulations 1807 and 1828 to: (1) limit the time the Allocation Group has to prepare a second supplement decision after it receives an objection to its original supplemental decision; (2) require the Appeals Division to schedule an appeals conference within six months after receiving a petition file from the Allocation Group, and require the Appeals Division to schedule an appeals conference within 90 days after the Board receives an objection to a second supplemental decision; (3) reduce the additional time the Board's Chief Counsel can grant the Appeals Division to prepare its Decision and Recommendation (D&R) regarding a petition to 30 days; (4) eliminate the procedures for the parties to a petition to request that the Appeals Division reconsider its D&R and issue a Supplemental D&R; and (5) require the Board to issue a notice of hearing within 90 days after a party to a petition files a timely request for a Board hearing. However, the Board did not vote on whether to propose any of these amendments because they were no longer being

recommended by Mr. Klehs or the HdL Companies at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Finally, alternatives 3 and 4 also recommended that the Board amend Regulations 1807 and 1828 to: (1) impose a 270-day limit on the Allocation Group's initial investigation of a petition, require the Allocation Group to meet and confer with the petitioner regarding the status of its investigation if it has not issued a decision on the petition within that period, and allow the petitioner to request that the Allocation Group issue its decision within 30 days after it has met and conferred with the petitioner without regard to the status of the investigation; (2) prohibit an appeals conference holder from accepting post-conference submissions outside of the 30-day periods provided in the regulation, except upon the agreement of all the parties to a petition; and (3) require a party to a petition to provide a justification as to why that party is presenting new evidence to the Board prior to a Board hearing that was not previously provided during the Appeals Conference process, and require the Board to rule on the admissibility of the new evidence based upon such justification, at least 75 days prior to the Board hearing. However, the Board did not vote on whether to propose any of these amendments because they were no longer being recommended by MuniServices, LLC, at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Alternatives Considered on November 15, 2011

During the formal rulemaking process, the Board received the public comments from Ms. Sturdivant, Mr. Koch, and Mr. Klehs described above. The Board agreed with Ms. Sturdivant and made the sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828, discussed above, in response to Ms. Sturdivant's comments. The Board did not agree with Mr. Koch's written comment disputing the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and the Board did not agree to make the additional amendments recommended by Mr. Koch because the Board did not understand how the additional amendments clarified the regulations.

Regulations 1807 and 1828 were originally adopted in 2002. During 2008, the Board proposed and adopted amendments to both regulations; however, the illustrations of the proposed amendments to the text of both regulations showed the strikeout of the entire text of the 2002 versions of Regulations 1807 and 1828, including the titles, and the adoption of completely new underlined text for new regulations with new titles that were also numbered as Regulations 1807 and 1828. The Office of Administrative Law reviewed the substantive effect of the Board's 2008 rulemaking action and added the following history note to the official text of Regulations 1807 and 1828, as published in the California Code of Regulations: "Repealer and new section filed 8-11-2008; operative 9-10-2008 (Register 2008, No. 33)." The proposed amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), are consistent with the history note.

Determination Regarding Alternatives

By its motion on August 23, 2011, proposing the adoption of the original amendments to Regulations 1807 and 1828, its motion on November 15, 2011, which authorized sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828, and its motion on December 15, 2011, adopting the proposed amendments to Regulations 1807 and 1828 with the changes described above, the Board determined that no alternative to the adopted text of the proposed amendments to Regulations 1807 and 1828 would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the adopted amendments or would lessen the adverse economic impact on small businesses.

No Significant Adverse Economic Impact on Business

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made a determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant adverse economic impact on business, including small business.

The proposed regulation may affect small business.

No Federal Mandate

The adoption of the proposed amendments to Regulations 1807 and 1828 was not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1807 or 1828.

Updated Informative Digest for
Adoption of Proposed Amendments to
California Code of Regulations,
Title 18, Sections:

1807, *Petitions for Reallocation of Local Tax*, and

1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Current Law

As explained in the Informative Digest/Policy Statement included in the notice of proposed regulatory action published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the

district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Original Proposed Amendments to Regulations 1807 and 1828

As explained in the Informative Digest/Policy Statement included in the notice of proposed regulatory action published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation

recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that

the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

Public Comments

On November 4, 2011, Ms. Sturdivant submitted written comments on behalf of the HdL Companies, which recommended that the Board revise the proposed amendments to Regulations 1807 and 1828 to clarify that that Board's Sales and Use Tax Department, as a whole, rather than the Sales and Use Tax Department's Allocation Group, is responsible for:

- Reviewing petitions filed pursuant to both regulations;
- Issuing decisions to grant or deny petitions under subdivision (b)(2) of both regulations;
- Reviewing objections to its decisions issued under subdivision (b)(2) of both regulations;
- Issuing supplemental decisions in response to such objections under subdivision (b)(7) of both regulations; and
- Deciding whether to grant or deny requests for extensions under subdivision (b)(10) (as proposed to be renumbered) of both regulations.

On November 14, 2011, Mr. Albin Koch submitted written comments, which disputed the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and recommend that the proposed amendments to both regulations provide that "on any intervening proceedings under the version of regulation 1807 that became effective September 10, 2008, including, but limited to, any in which Board Member hearings were granted or petitioners exhausted their administrative remedies."

November 15, 2011, Public Hearing

The Board conducted a public hearing regarding the proposed amendments to Regulations 1807 and 1828 on November 15, 2011. Ms. Sturdivant appeared at the public hearing and made comments in support of the changes to the original text of the proposed amendments to Regulations 1807 and 1828 that she recommended in her November 4, 2011, written comments. Mr. Klehs also appeared at the public hearing and expressed support for the Board's proposed amendments to Regulation 1807 and 1828 on behalf of the City of Livermore. No other interested parties asked to speak regarding the proposed amendments.

At the conclusion of the public hearing, the Board Members unanimously voted to authorize staff to make the sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828 that are necessary to clarify the regulations in the manner recommended by Ms. Sturdivant and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c).

The Board did not agree with Mr. Koch's written comment disputing the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and the Board did not agree to make the additional amendments recommended by Mr. Koch because the Board did not understand how the additional amendments clarified the regulations.

Regulations 1807 and 1828 were originally adopted in 2002. During 2008, the Board proposed and adopted amendments to both regulations; however, the illustrations of the proposed amendments to the text of both regulations showed the strikeout of the entire text of the 2002 versions of Regulations 1807 and 1828, including the titles, and the adoption of completely new underlined text for new regulations with new titles that were also numbered as Regulations 1807 and 1828. The Office of Administrative Law reviewed the substantive effect of the Board's 2008 rulemaking action and added the following history note to the official text of Regulations 1807 and 1828, as published in the California Code of Regulations: "Repealer and new section filed 8-11-2008; operative 9-10-2008 (Register 2008, No. 33)." The proposed amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), are consistent with the history note.

Revised Text of Proposed Amendments

In order to clarify the regulations in the manner recommended by Ms. Sturdivant, the Board made the following sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828:

- Replaced the reference to the "Allocation Group" in the title to subdivision (b) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced all of the references to the "Allocation Group" with references to the "Sales and Use Tax Department" in subdivision (b)(2), (3), (7), (8) (as proposed to be added), and (9) (as proposed to be renumbered) of both regulations;
- Replaced the first reference to the "Allocation Group" in subdivision (b)(4) and (5) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced the first and third references to the "Allocation Group" with references to the "Sales and Use Tax Department" and replaced the reference to the "Allocation Group's" decision with a reference to the "Sales and Use Tax Department's" decision in subdivision (b)(6) of both regulations;
- Replaced the first, third, fourth, and fifth references to the "Allocation Group" in subdivision (b)(10) (as proposed to be renumbered) of both regulations with references to the "Sales and Use Tax Department" and replaced the word "its" with "the Sales and

Use Tax Department's" in the second sentence in subdivision (b)(10) (as proposed to be renumbered) of both regulations;

- Replaced the references to the "Allocation Group" and the "Allocation Group's" with references to the "Sales and Use Tax Department" and "Sales and Use Tax Department's," respectively, in subdivision (c)(1) of both regulations;
- Replaced the word "its" with "the Sales and Use Tax Department's" in the first sentence of subdivision (c)(2) of both regulations; and
- Deleted "of the Allocation Group" from subdivision (c)(2)(A) of both regulations.

In addition, the Board also made nonsubstantial changes to the original text of the proposed amendments to Regulations 1807 and 1828 by adding "Sales and Use Tax" before the word "Department" throughout subdivision (c)(2)(B)-(D) and (7) of both regulations to ensure that both of the regulations consistently refer to the Board's Sales and Use Tax Department by its full name. Then, on November 28, 2011, the Board made the revised text of the proposed amendments, with the changes clearly indicated, available to the public for an additional 15-day comment period.

December 15, 2011, Board Meeting

On December 15, 2011, the Board determined that the proposed amendments, with the changes described above, improved the review processes prescribed by Regulations 1807 and 1828 and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulations 1807 and 1828, with the changes described above. No interested parties submitted written comments regarding the changes to the original text of the proposed amendments to Regulations 1807 and 1828 and no interested parties appeared on December 15, 2011, to comment on the changes to the original text of the proposed amendments to Regulations 1807 and 1828.

There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Regulations 1807 and 1828 set forth in the 15-day letter notifying the public and interested parties regarding the sufficiently related changes, which updated the Informative Digest/Policy Statement included in the notice of proposed regulatory action for the original proposed amendments to Regulations 1807 and 1828 published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z) by describing the sufficiently related and nonsubstantial changes to the proposed amendments to both regulations. The objective of the proposed amendments is still to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: APRIL 26, 2011, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Issue/Topic:

Request approval and authorization to publish proposed amendments to Regulations 1807 and 1828 to improve the processes for handling local and district tax petitions.

Committee Discussion:

Staff presented the proposed amendments to Regulations 1807 and 1828. Interested parties addressed the Board explaining the need for additional deadlines throughout the local and district tax appeal process. There were suggestions and discussion about the costing model in regard to how costs are allocated to jurisdictions, the quality of petitions filed, the process by which staff investigates petitions, what causes delays, and whether additional deadlines or staffing would resolve excessive delays.

Committee Action:

At the suggestion of Ms. Yee, the Committee directed staff to develop guidelines for explaining what is expected of the parties involved in the process. This guidance should include: what jurisdictions and consultants need to provide when the petition is submitted, how the Allocation Group and Appeals Division staff will investigate and process the petition, and what is expected of taxpayers when they are asked to provide information.

These expectations will be discussed at the July 26, 2011 Business Taxes Committee meeting.

Agenda Item No: 2

Title: Proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Issue:

Request approval and authorization to publish proposed Regulation 1685.5 to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1.

Committee Discussion:

Staff presented the proposed Regulation 1685.5 and explained that due to time constraints in meeting the statutory deadline, an interested parties meeting was not held. Staff proposed to hold interested parties meetings for 2012 and subsequent years.

Mr. Robert Gutierrez with the California Taxpayers Association, addressed the Committee expressing a number of policy concerns with the fact that an interested parties meeting was not held to discuss and deliberate the use tax table and the methodology used in the regulation.

In response to Board Members' questions, staff addressed the need for a regulation and explained the calculation of the use tax factor. Senator Runner expressed concerns that the use tax table does not increase compliance with use tax reporting and stated that further taxpayer education is needed.

Committee Action:

Upon motion by Ms. Yee, seconded by Mr. Horton, the Committee approved and authorized for publication the proposed regulation. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed Regulation 1685.5 is attached. The Committee further directed staff to hold interested parties meetings on a going forward basis.

The vote was as follows:

MEMBER	Horton	Steel	Yee	Runner	Mandel
VOTE	**Yes**	**No**	**Yes**	**No**	**Yes**

Regulation 1685.5. ***Calculation of Estimated Use Tax – Use Tax Table***

Reference: Section 6452.1, Revenue and Taxation Code.

(a) IN GENERAL

The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

(b) DEFINITIONS AND DATA SOURCES

(1) AGI RANGES. The use tax table shall be separated into eight (8) AGI ranges as follows:

(A) AGI less than $20,000;

(B) AGI of $20,000 to $39,999;

(C) AGI of $40,000 to $59,999;

(D) AGI of $60,000 to $79,999;

(E) AGI of $80,000 to $99,999;

(F) AGI of $100,000 to $149,999;

(G) AGI of $150,000 to $199,999;

(H) AGI more than $199,999.

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On May 1, 2012, and each May 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on electronic and mail order purchases for the proceeding calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference

to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) PERCENTAGE OF INCOME SPENT ON ELECTRONIC AND MAIL ORDER PURCHASES. The percentage of income spent on electronic and mail order purchases during a calendar year shall be calculated by dividing the total spending at electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(6) AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying $10,000 by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through (G) shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(H) shall be determined by multiplying each range member's actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(d) USE TAX TABLE FORMAT

(1) The use tax table for calendar year 2011 shall provide as follows:

Adjusted Gross Income (AGI) Range			Use Tax Liability
Less Than $20,000			$7
$20,000	to	$39,999	$21
$40,000	to	$59,999	$35
$60,000	to	$79,999	$49
$80,000	to	$99,999	$63
$100,000	to	$149,999	$88
$150,000	to	$199,999	$123
More than $199,999 -Multiply AGI by 0.070% (.0007)			

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as the use tax table for calendar year 2011.

BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING AGENDA

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN
450 N STREET, SACRAMENTO - ROOM 121
APRIL 26, 2011 – 10:00 A.M.

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1. Proposed changes to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

   Staff request for approval and authorization to publish proposed revisions to improve the local tax appeals process.

2. Proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

   Staff request for approval to publish the proposed regulation to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1.

Issue Paper Number **11-004**

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

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

Petitions for the reallocation of local and district taxes

I. Issue

Should the process for handling local and district tax petitions be changed, including amending Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*?

II. Alternative 1 - Staff Recommendation

Amend Regulations 1807 and 1828 as recommended by staff. The full text of the revised regulations under this alternative is attached as Exhibit 3. The proposed amendments:

1. Explain that a 30-day extension can be requested when a jurisdiction is responding to a notice from the Local Revenue Allocation Unit (LRAU),
2. Add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request that the Allocation Group (AG) issue its supplemental decision within 90 days,
3. Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision,
4. Provide that potentially affected jurisdictions will be notified at the Appeals Division level, rather than the current practice of notification only at the Board hearing level, and
5. Clarify that participants are allowed 30 days to provide additional information following the appeals conference, and allow the other participants 30 days to respond to that information.

Staff recommends these revisions have a prospective application following the effective date of the amended regulations.

III. Other Alternatives Considered

Alternative 2

Amend Regulations 1807 and 1828 as suggested by Mr. Johan Klehs and supported by the HdL Companies. The full text of the revised regulations under this alternative is attached as Exhibit 4. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, Mr. Klehs and the HdL Companies recommend further amendments to Regulations 1807 and 1828 to include the following (see submissions, Exhibits 6 and 7):

1. Add a 90-day time limit for the AG to issue a supplemental decision.

2. Require that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG.
3. Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
4. Reduce the request for an extension of time to prepare the Decision and Recommendation (D&R) from 90 days to 30 days.
5. Eliminate the Request for Reconsideration (RFR) and Supplemental Decision and Recommendation (SD&R) processes.
6. Require that the Board Hearing notice be issued within 90 days of the request for hearing.

Alternatives 3.1 and 3.2

Amend Regulations 1807 and 1828 as recommended by MuniServices. MuniServices believes their revisions should have a prospective application and offers the Board two options to achieve this:

Alternative 3.1 - Replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or

Alternative 3.2 - Add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

The full text of the revised regulations under these alternatives, including an explanation for the proposed 3.1 and 3.2 alternatives, is attached as Exhibit 5. MuniServices' recommended procedural changes are the same for both Alternative 3.1 and 3.2. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, MuniServices recommends the following additional amendments (see submission, Exhibit 8):

1. Add a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the Compliance Policy and Procedures Manual (CPPM).
2. Add a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
3. Limit the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
4. Add a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.

IV. Background

Regulation 1807 provides the process for reviewing requests by jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The similar process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called "district taxes") is provided in Regulation 1828. These regulations were substantially revised in 2008 to streamline the appeals processes. Currently, the local and district tax appeals processes involve review by the AG, the Appeals Division, and Board Members.

In addition to Regulations 1807 and 1828, CPPM Chapter 9, *Miscellaneous,* and publication 28, *Tax Information for City and County Officials*, contain further information regarding the administration of local and district taxes.

At the September 15, 2010, Business Taxes Committee meeting, Mr. Klehs presented the Committee with his suggestions for improving the local tax appeals process and the issue was referred to the interested parties process for further review and discussion. Staff met with interested parties on January 6, 2011, and February 17, 2011, to discuss the proposed changes including revisions to both Regulations 1807 and 1828 and the BOE procedure manuals. The issue is scheduled for discussion at the April 26, 2011, meeting of the Business Taxes Committee.

V. Discussion

Timeliness

Many of the recommended regulation revisions address the length of time it takes to process a local tax appeal to final administrative resolution. Exhibit 2 provides an overview illustrating how local tax petitions are processed at the AG, Appeals Division, and Board Member levels. The exhibit also notes the main revisions proposed by staff and interested parties.

Allocation Group Level. The current AG process provides that if the AG does not issue its initial decision within 6 months, the petitioner may request that the AG issue a decision and the AG will issue its decision within 90 days of the request. Staff recommends a similar provision be added to the AG supplemental decision phase allowing the petitioner or notified jurisdiction to request that the AG issue its supplemental decision. The combination of these "trigger" provisions allows the petitioner, at its option, to define the timeframe of the AG review if the petitioner or notified jurisdiction believes the process is taking too long.

Interested parties propose different ways to address this issue. Mr. Klehs and the HdL Companies recommend adding a 90-day time limit for the AG to issue a supplemental decision. MuniServices proposes a new approach that replaces the trigger provisions with a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. MuniServices proposes a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. At any time after the meet and confer, the petitioner may request that the AG issue its supplemental decision within 30 days of receiving such a request.

Staff disagrees with Mr. Kleh's proposal to include a 90-day time deadline for the AG to issue a supplemental decision. We reiterate our concerns that to meet the deadline, staff will not always have enough time to investigate the new facts and arguments that are frequently presented as the basis for objecting to the AG's previous decision. Limitations on staff's ability to fully investigate new facts and arguments would likely result in more denied petitions and more objections to those denials. Staff believes that its amendments adding the optional trigger at the AG supplemental decision level address concerns that the current AG process time is effectively unlimited.

Staff also does not support the new meet-and-confer process suggested by MuniServices. While the 270-day timeframe suggested for the first AG decision is not an unreasonable amount of time to investigate most petitions, we note that it is similar to the timeframe currently provided if the petitioner utilizes the trigger provisions in subdivision (b)(3). That is, after 6 months (180 days) the petitioner can request AG to issue their decision in 90 days (180+90 = 270). At the AG supplemental decision step, we have the same concerns with the proposed 90-day as we noted with Mr. Kleh's recommendation.

With regard to the meeting requirement included in MuniServices proposal, the AG is open to meeting with jurisdictions and their representatives regarding specific cases. In fact, the AG encourages jurisdictions to continue their investigations after petitions are submitted and to provide the results of those investigations to staff for verification as soon as possible during the process. However, staff believes that a meet-and-confer meeting and the timeline for such a meeting should not be mandated by regulation. Including a meeting requirement into the regulation imposes a mandatory process on all jurisdictions without considering whether those other jurisdictions have interest in a meet-and-confer process. Instead of adding a new process into the regulation, staff recommends retaining the current regulation structure with the addition of the trigger at the AG supplemental decision step.

Staff believes the efficiency of the current AG process can be improved by working with jurisdictions to improve the completeness of petitions when they are submitted. As explained in staff's second discussion paper, the completeness of information and records provided by the petitioner can affect how quickly the assertions in the petition are verified. Last year the AG received an average of over 500 petitions a month and cleared about the same number[1]. Staff believes it can improve this clearance rate by improving the quality of petitions when they are submitted, which will allow the AG to speed up its review and verification, and more readily identify issues that require further investigation.

For example, in the past, many petitions submitted by jurisdictions consisted only of a general statement that the taxpayer has a sales office. Staff intends to review the AG questionnaire used to file local tax petitions and revise the form as needed to make it clear what information is needed from the petitioner to meet the requirements of Regulation 1807(a)(3), which defines a "petition." The goal is to ensure that the form will assist the petitioner to include in the petition specific information required by Regulation 1807(a)(3), and other information so that the AG can better understand the circumstances of a case. The form will also indicate that the petitioning jurisdiction should provide any documentation obtained to support the petition at the time the petition is filed, and encourage the jurisdiction to provide more details of its investigation and results, such as the exact questions asked of the taxpayer and the taxpayer's responses. To streamline the AG's investigation process, staff is also evaluating our processes for reviewing petitions as they come in so that incomplete petitions are quickly returned to the petitioner for the petitioner to complete and resubmit.

In addition to regulatory changes to the regulations, MuniServices recommended several procedural changes with regard to how petitions are investigated by the AG and field audit staff (Exhibit 8, pages 4

[1] The AG received 6,651 petitions in FY 09/10 (6,651÷12=554). The AG cleared 6,311 petitions in FY 09/10 (6,311÷12=526).

and 5). Staff has noted these recommendations and will consider them in future revisions to the various affected procedure manuals.

Appeals Division Level. Staff and interested parties agree with the idea of bringing potentially affected jurisdictions into the appeals process starting at the Appeals Division level. Accordingly, staff and interested parties propose that subdivision (c)(2) be revised to require that notice of an appeals conference be mailed to the petitioner, all notified jurisdictions, and any other jurisdiction that would be substantially affected if the petition were granted.

Staff and interested parties also agree to amend subdivision (c)(3) to clarify that appeals conference participants have 30 days after the conference to provide additional information, and that the other participants have 30 days to respond to the information provided. Staff does not recommend any further revisions to subdivision (c) to limit the acceptance of post-conference submissions. However, MuniServices further recommends that the Appeals Division not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

Mr. Klehs and the HdL Companies also recommend the following deadlines be included in the regulations to establish a definitive timeframe for the Appeals Division process:

- Require that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG. Currently, there is no deadline; participants are notified at least 45 days before the conference.
- Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
- Reduce the request for an extension of time to prepare the D&R from 90 days to 30 days.
- Eliminate the RFR and SD&R processes.

Staff does not recommend these additional revisions as we do not believe they will result in the most productive review and handling of cases. Keeping in mind that the purpose of the petition process is to ensure that the tax is correctly allocated, staff has a responsibility to all jurisdictions to only reallocate the reported tax when a preponderance of evidence shows that there was a misallocation. As at the AG level, we are concerned that to meet a deadline, the Appeals Division may not have enough time to obtain all necessary information or analysis from the parties in order to perform a complete and accurate analysis in its D&R. This is also a concern with the suggestion to limit post-appeals conference submissions. The Appeals Division's overall objective is to base its D&R on all available information and arguments. While it is not the primary responsibility of the Appeals Division to perform an investigation, as a practical matter, new facts and arguments frequently emerge during the course of preparing for the appeals conference and during the conference itself. This is even more likely to happen if potentially affected jurisdictions are brought into the process for the first time at the appeals conference. Limiting the time for the Appeals Division to review information, or limiting the acceptance of information upon agreement of the parties could result in the issuance of less comprehensive D&Rs and more decisions being appealed to the Board Member level with facts and arguments being presented for the first time at Board hearing. Again, the purpose of the process is to fully vet issues and possibly resolve them without having to move on to the next step of the appeals process.

Staff also does not recommend eliminating the RFR and SD&R processes. The RFR process allows for any new issue to be addressed in a SD&R before the case moves forward to Board hearing, or the

decision in the SD&R may resolve the issue so that the appeal does not need to move forward to Board hearing. In addition, the request for a SD&R occasionally comes from Board Members requesting clarification to a D&R. Finally, staff disagrees with eliminating these processes because such action would be inconsistent with the Board's Rules for Tax Appeals, Regulation 5266, *Appeals Staff Recommendations; Request for Reconsideration; Requests for Oral Hearings*.

Staff notes that while the timeframes for several of the steps are open-ended at the Appeals Division level, they are already more restrictive than the appeals process for general sales and use tax audits and claims for refund. The Rules for Tax Appeals Regulation 5265, *Issuance and Contents of a Decision and Recommendation*, allows the Chief Counsel to grant further extensions of time for staff to prepare the D&R and Regulation 5261, *Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences*, does not require that an appeals conference be scheduled within any particular timeframe. Considering that most local tax petitions are resolved at the AG level, it is fair to say that the typical petition that reaches the Appeals Division involves complicated issues that are often more difficult to analyze than the issues in most other local tax petitions (or in general sales and use tax cases). Staff does not believe it would be prudent to impose additional time restrictions for analyzing these complex cases, or shorten the length of time allowed for the Appeals Division to prepare the D&R.

Staff further notes that the proposed additional time limits do not take into account delays in setting conferences that could result from proposed amendments to local tax regulations being sent to the Business Taxes Committee such as were experienced when Regulation 1802 was amended to address the warehouse rule[2], or spikes in inventory volume such as when a large number of petitions were simultaneously sent to the Appeals Division (e.g., the Mass Appeals cases[3]). The time limits also do not take into account delays in setting conferences that result from coordinating dates with various participating jurisdictions and any requests by jurisdictions to reschedule or postpone an appeals conference.

Staff is unaware of any problems with setting appeals conferences as the Appeals Division has pending only four cases ready to set for conference, or of any problems with the Appeals Division issuing its D&Rs. As noted in staff's discussion papers, since September 2008, the Appeals Division has closed 1,327 petitions (involving 520 taxpayers), including 99.6% of the Mass Appeals cases. Since the last interested parties meeting, another 22 petitions (involving 2 taxpayers) were closed.

Board Member Level. Currently, Regulations 1807 and 1828 provide that when petitioners or notified jurisdictions request a Board hearing, the request must state the basis for the jurisdiction's disagreement with the D&R or SD&R, as applicable, and include all additional information in its possession that supports its petition. When the Board Proceedings Division receives a timely request for hearing, it sends the proper hearing notification at least 75 days before the hearing.

Mr. Klehs and the HdL Companies propose amendments that would require the notice of hearing be issued within 90 days of the request for hearing. MuniServices does not recommend adding this deadline, however, if new factual information is included with the request for Board Hearing, MuniServices

[2] The "warehouse rule" provides for direct distribution of local sales tax revenue to the jurisdiction where the retailer's stock of tangible personal property is located (warehouse), in cases where the retailer has sales offices in this state but the sale is negotiated out of state with no participation by the instate sales office, and fulfilled by the retailer's employees from the retailer's in-state stock of goods.

[3] The "Mass Appeals" cases refer to a large group of cases filed by MuniServices, LLC, which involve similar facts and arguments and have been processed by the Appeals Division in groups.

proposes amendments that require the requester to justify why that information was not provided at or before the appeals conference. MuniServices further proposes that Board Members rule on the admissibility of that additional information no later than 75 days before the date the hearing is set, and that the Board will promulgate policies regarding the scheduling of these admissibility hearings.

Staff is not aware of any significant delays in scheduling local tax appeal cases for Board hearing and does not recommend any regulatory changes to subdivision (d). Requiring that the Board hearing notice be sent within 90 days of receiving the request for hearing would also be inconsistent with the rules for other Sales and Use Tax appeals provided in the Rules for Tax Appeals. The requirement would also limit the Board's ability to schedule these cases with consideration of the Board's workload. Staff also does not believe it is necessary to implement new, undeveloped processes at the Board hearing level to address evidence presented in local tax cases. The rules for presenting evidence at Board hearings are already provided in Rules for Tax Appeals Regulation 5523.6, *Presentation of Evidence or Exhibits*.

Prospective Application

As with the 2008 revisions to Regulations 1807 and 1828, staff believes the current proposed amendments should apply prospectively. Accordingly, staff has revised subdivisions 1807(g) and 1828(f), "Operative Date and Transition Rules," to explain that the 2008 revisions and any future amendments to the regulations have no retroactive effect.

The need to revise the operative date references was suggested by BOE staff during the preparation of this issue paper. Staff emailed the proposed revisions to Mr. Klehs, the HdL Companies, and MuniServices on April 4, 2011 for their information, and noted that the language could be added to the interested parties' submissions if they wished. Staff did not receive a response from Mr. Klehs or the HdL Companies. However, MuniServices responded that they agreed that the proposed amendments should apply prospectively, but expressed concerns with staff's proposed language. To make the proposed revisions prospective, MuniServices proposes two options: Alternative 3.1 - replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or Alternative 3.2 - add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

Holding Local Tax Distributions in Suspense

One significant issue discussed during this interested parties process was the holding of local tax distributions in suspense while a suspected misallocation is being investigated. In his response to staff's initial discussion paper, Mr. Robert Cendejas submitted comments disagreeing with the proposal to place disputed local tax monies in trust until the BOE local tax appeals process is exhausted, noting the hardships cities would face if distributions were tied up for routine disputes. Mr. Cendejas also expressed his belief that only the Board Members themselves should be able to take such steps and only after a public hearing allowing the affected city to show why such action is unnecessary. In his response to the initial discussion paper, Mr. Joseph Vinatieri stated his view that staff's failure to make distributions is illegal, and that if funds are to be withheld, there should be legislative authorization to do so. MuniServices explained that they object to the suggestion that monies be withheld; they believe that control over monies should be a local matter subject to local control (Exhibit 8).

Mr. Klehs' final submission (Exhibit 6) did not include his earlier recommendation that Regulation 1807 be revised to require that any disputed local tax monies be placed in trust until the BOE local tax appeals process is exhausted. However, the HdL Companies reiterated their belief that Board staff could develop criteria for determining when distributions could be held. They suggest that, "... distributions should be held in suspense only if the amount involved is above a certain threshold such that reallocation would

create a substantial hardship for the losing jurisdiction, and only if/when there have been at least two adverse decisions against said jurisdiction. ..." (Exhibit 7).

After review of the submissions and discussions of the issue, staff does not recommend revisions to Regulation 1807 or to BOE procedure manuals to describe when distributions of local tax may be held in suspense. BOE has only held distributions in the past when staff believed the uniqueness of the situation warranted such action. This action has so rarely been taken that we do not believe that such procedures are necessary or that we could draft general rules that would provide useful guidance for future situations. We think staff must evaluate the facts and circumstances surrounding each case to determine if it is necessary to hold local tax distributions. Staff also does not believe it is necessary to adopt formal procedures for jurisdictions to request the Board hold distributions in a particular case. As with any other concerns regarding Sales and Use Tax matters, if a jurisdiction believes a situation warrants BOE evaluation, the jurisdiction is welcome to contact their Member, the BOE Executive Director, or the Sales and Use Tax Deputy Director and share those concerns.

With regard to Mr. Klehs' earlier suggestion that BOE sponsor legislation to pay interest to the winning jurisdiction in an allocation case on any held monies when a final decision has been made, staff would need direction from the Board Members to pursue legislation. If the Board Members made such a recommendation, staff notes that when BOE has held distributions, the funds have been placed in the local tax pooled money investment account. If legislation were passed to allow the appropriate jurisdiction to earn interest on held distributions, interest could be calculated based on the proportionate percentage of the total interest earned on the pooled money investment account.

Disclosure of Revenue Sharing Agreements

Another key issue has been whether taxpayers should be required to disclose the existence and terms of any revenue sharing agreements involving local tax distributions. In prior submissions, Mr. Vinatieri expressed his belief that the disclosure of the terms of a revenue sharing agreement is irrelevant to the determination of whether a petition for reallocation is with or without basis. Mr. Cendejas agreed that regulatory change was not needed and explained that such agreements can be obtained under the Public Records Act or by the BOE's current procedures for obtaining records from taxpayers.

Mr. Klehs and the HdL Companies explained that where a revenue sharing agreement exists, it is an important component of the overall picture and helps ensure that the Board performs a thorough investigation. In their March 1, 2011 submission (Exhibit 7), HdL states their belief that the presence of a sharing agreement does not necessarily or automatically discredit the testimony of any party to the agreement. However, taxpayers should be required to disclose sharing agreements because, "...Board investigations of local tax cases have traditionally relied completely and solely upon information provided by the taxpayer. The taxpayer is in complete control of what information is released, and even who within the company is authorized or qualified to speak to the Board. When and where a rebate agreement exists the taxpayer has a clear, obvious and often substantial financial interest in the outcome of the local tax matter before the Board. ..."

Staff agrees with Mr. Klehs and the HdL Companies that it is important for staff to have a complete and accurate understanding of a taxpayer's business activities, and that the existence and terms of an agreement can be important information when staff is investigating a suspected misallocation of local tax. Further, taxpayers should provide such agreements to staff upon request. Staff should be aware of what sharing agreements are, the different types of agreements that staff has encountered, where record of agreements can be found, and how such an agreement should be viewed in light of the entire

investigation. Staff and interested parties currently agree that this issue should be addressed in the BOE procedure manuals instead of Regulations 1807 and 1828.

Proposed revisions to BOE procedure manuals

During the interested parties process staff and interested parties noted several items that do not require Board approval for a regulatory change; rather they are more appropriate for inclusion, or discussion for inclusion, in the BOE procedure manuals. Thus, in addition to the proposed regulatory revisions, staff recommends that future revisions of the BOE procedural manuals include:

- A general ordering rule regarding the scheduling of appeals conferences,
- An explanation that participants will be notified when the final submission is received following the appeals conference, and
- A discussion of revenue sharing agreements, including an explanation of what agreements are, what types of agreements staff has encountered, where record of agreements can be found, and how such agreements should be viewed in light of the entire investigation.

As noted in the prior section, "Timeliness," MuniServices recommends several procedural changes with regard to how petitions are investigated by the AG and field audit staff. Staff will consolidate our review of these proposed changes with other pending and ongoing revisions to local tax appeal procedures, and will share proposed non-confidential guidance with interested parties for their input. As with all policy and procedure material, the guidance will be incorporated into audit and compliance manuals that are presented to the Board for approval or for discussion if the Board wishes to consider unresolved items.

VI. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, as proposed in Exhibit 3.

A. Description of Alternative 1

- Formalizes the LRAU's existing policy to give jurisdictions a 30-day extension to respond to an LRAU notification regarding the misallocation of local or district tax. The regulations currently provide that a "petition" includes an appeal from a notification from the LRAU that taxes were misallocated and will be reallocated. Jurisdictions may object to that notification, submitting a written petition to the AG within 30 days of the date of mailing of the notification.
- Adds a provision in the AG supplemental decision process to allow the petitioner or notified jurisdiction/district to request after six months that the AG issue its supplemental decision within 90 days from receiving the request, with the requester understanding the limitations it may be placing on the AG's investigation and analysis. This provision would be similar to the mechanism currently in subdivision (b)(3) with regard to the AG's initial decision.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Requires that the notice of an appeals conference be mailed to the petitioner, all notified jurisdictions/districts, and any other jurisdiction/districts that would be substantially affected if the petition were granted. Currently, if a petition is denied by the AG and the Appeals Division, a potentially affected jurisdiction/district will not be notified until the matter is scheduled for a Board hearing.

- Allows participants 30 days to provide additional information following the appeals conference, and allows the other participants 30 days to respond to that information. The current regulation provides participants up to 30 days to provide additional information and gives 15 for other participants to respond.
- Clarifies in subdivisions 1807(g) and 1828(f), "Operative Date and Transition Rules," that the proposed amendments have a prospective application. The current language in these subdivisions is specific to the 2008 revision of the regulations.

B. Pros of Alternative 1

- By formalizing the LRAU extension procedure, jurisdictions/districts avoid the issue of petitions technically filed late with the AG because the LRAU allowed additional time and the petition was filed after the 30-day deadline.
- Provides the petitioner or notified jurisdiction/district a method to control the timeline of the AG review process by allowing the petitioner or notified jurisdiction/district to request that the AG issue its supplemental decision within 90 days of receiving a request to issue a supplemental decision.
- Formalizes the current procedure of transferring files from the AG to the Appeals Division within 30 days.
- Brings potentially affected jurisdictions/districts into the appeals process starting at the Appeals Division level rather than the current Board Hearing level. By notifying more jurisdictions/districts at an earlier level, staff believes issues can be more fully discussed and possibly resolved before the Board hearing.
- Clarifies and makes consistent the time allowed to each party to submit and respond to information provided after the appeals conference.
- Allows adequate time for staff to fulfill its responsibility to all jurisdictions affected by its decision whether or not to reallocate reported local or district tax.
- As with the 2008 revisions, the current proposed revisions would be applied prospectively.

C. Cons of Alternative 1

- Does not limit the local tax appeals process to a timeframe for completion.
- Does not prohibit participants from submitting additional responses after the specified period for post-appeals conference submissions.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of regulation amendments.

E. Operational Impact of Alternative 1

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Staff believes the overall impact of its proposed amendments to taxpayers and jurisdictions is minimal.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

VII. Alternative 2

Approve and authorize publication of proposed amendments to Regulations 1807 and 1828 as proposed by Mr. Johan Klehs and supported by the HdL Companies. Proposed amendments are shown in Exhibit 4.

A. Description of Alternative 2

- Explains that a 30-day extension can be requested when a jurisdiction is responding to a notice from the LRAU.
- Adds a 90-day time limit for the AG to issue a supplemental decision.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Notifies potentially affected jurisdictions starting at the Appeals Division level, rather than only at the current Board Hearing level.
- Requires that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG.
- Establishes a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
- Reduces the request for an extension of time to prepare the D&R from 90 days to 30 days.
- Eliminates the RFR and SD&R processes.
- Requires that the Board Hearing notice be issued within 90 days of the request for hearing.

B. Pros of Alternative 2

- Including the LRAU extension procedure solves the issue of petitions technically filed late with the AG because the LRAU allowed the petitioner additional time.
- Brings potentially affected jurisdictions/districts into the appeals process at the Appeals Division level rather than the current Board Hearing level.
- Provides definitive timeframes at each level of the petition process by adding deadlines, reducing extensions, and eliminating processes. Under the proposed alternative, petitions likely would be sent to Board hearing within three years, assuming the petition was appealed to the Board Member level of review.

C. Cons of Alternative 2

- The addition of more deadlines could result in more denied petitions, and more objections to those denials, if staff does not have time to investigate and determine that a misallocation has occurred. That is, more cases may move forward in the appeals process that could have been resolved at an earlier level in the process.
- Eliminating the RFR and SD&R process and setting a deadline for scheduling the Board hearing are inconsistent with the rules for other sales and use tax appeals as provided in the Rules for Tax Appeals.
- May reduce the accuracy of reallocation decision for the sake of expediency.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, Alternative 2 does require adoption of regulation amendments.

E. Operational Impact of Alternative 2

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

F. Administrative Impact of Alternative 2

1. Cost Impact

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

The overall impact of the proposed amendments to taxpayers and jurisdictions is minimal.

H. Critical Time Frames of Alternative 2

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law. If the Board were to approve Alternative 2, staff recommends adding language to subdivision 1807(g) and 1828(f) explaining that the amendments to subdivisions (c) and (d) are operative for petitions forwarded to the Appeals Division after the effective date of these amendments.

VIII. Alternatives 3.1 and 3.2

Approve and authorize publication of amendments as proposed by MuniServices in Alternative 3.1 or as proposed in Alternative 3.2. Proposed amendments are shown in Exhibit 5.

A. Description of Alternatives 3.1 and 3.2

- Explains that a 30-day extension can be requested when a jurisdiction is responding to a notice from the LRAU.
- Adds a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
- Adds a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Notifies potentially affected jurisdictions starting at the Appeals Division level, rather than only at the current Board Hearing level.
- Limits the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
- Adds a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.
- **Alternative 3.1** – To make the proposed amendments prospective, Alternative 3.1 incorporates their proposed amendments into new Regulations 1807.1 and 1828.1, and amends current Regulations 1807 and 1828 to provide that the regulations cease to be operative on the operative date of Regulations 1807.1 and 1828.1.
- **Alternative 3.2** – To make the proposed amendments prospective, Alternative 3.2 adds language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

B. Pros of Alternatives 3.1 and 3.2

- Including the LRAU extension procedure solves the issue of petitions technically filed late with the AG because the LRAU allowed the petitioner additional time.

- Provides defined investigation timelines at the AG level as well as meeting processes between staff and jurisdictions to resolve issues with investigations.
- Brings potentially affected jurisdictions/districts into the appeals process starting at the Appeals Division level rather than the current Board hearing level.
- Limits post-appeals conference submissions and requires petitioners to justify why new factual information submitted with their hearing request was not presented at the appeals conference.

C. Cons of Alternatives 3.1 and 3.2

- Imposes a meet-and-confer process on all jurisdictions if the AG has not issued its initial decision in 270 days or its supplemental decision in 90 days.
- Adds a new, unspecified process for Board Members to rule on the admissibility of new factual information provided at the Board Hearing level.
- **Alternative 3.1** - Staff does not believe it is necessary to replace current Regulations 1807 and 1828 in order to make the proposed amendments prospective.
- **Alternative 3.2** – The language proposed in subdivision 1807(g)(3) and 1828 (f)(3) does not address future revisions to the regulations. New subdivisions with similar provisions would need to be added each time the regulations were amended.

D. Statutory or Regulatory Change for Alternatives 3.1 and 3.2

No statutory change is required. However, Alternative 3.1 does require adoption of regulation amendments and the adoption of new regulations. Alternative 3.2 requires adoption of regulation amendments.

E. Operational Impact of Alternative 3.1 and 3.2

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

F. Administrative Impact of Alternative 3.1 and 3.2

1. Cost Impact

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 3.1 and 3.2

The overall impact of the proposed amendments to taxpayers and jurisdictions is minimal.

H. Critical Time Frames of Alternative 3.1 and 3.2

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: April 12, 2011

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Item 1 – for Board action – proposed amendments to Regulations 1807 and 1828[1].	Approve and authorize publication of either:
Issue Paper Alternative 1 – Staff Recommendation Agenda, pages 2 - 17. Issue Paper Exhibit 3	Amendments proposed by staff. These revisions have a prospective application and include: • An explanation of the extension request process with regard to Local Revenue Allocation Unit (LRAU) notices; a mechanism allowing the petitioner, at its option, to request the Allocation Group (AG) issue its supplement decision; and notification of potentially affected jurisdictions beginning at the Appeals Division level.
	OR
Issue Paper Alternative 2 Agenda, pages 2 - 16. Issue Paper Exhibit 4	Amendments proposed by Mr. Johan Klehs and supported by the HdL Companies. In addition to the LRAU extension request and notification of potentially affected jurisdictions at the Appeals Division level, these revisions include: • Additional time limitations to issue decisions and schedule conferences and/or hearings at the AG, Appeals Division, and Board Hearing levels.
	OR
Issue Paper Alternatives 3.1 and 3.2 Agenda, pages 2 - 17. Issue Paper Exhibit 5	Amendments proposed by MuniServices. In addition to the LRAU extension request and notification of potentially affected jurisdictions at the Appeals Division level, these revisions include: • New processes at the AG level that include specific timeframes and meetings between staff and the petitioner • A limit on the acceptance of post appeals conference submissions • A new process requiring Board Members to rule on the admissibility of new factual information provided with the request for hearing.
Alternative 3.1	To make the proposed amendments prospective, MuniServices recommends incorporating the proposed amendments into new Regulations 1807.1 and 1828.1, and amending current Regulations 1807 and 1828 to provide that those regulations cease to be operative on the operative date of Regulations 1807.1 and 1828.1.
	OR
Alternative 3.2	To make the proposed amendments prospective, MuniServices recommends adding language that states the amendments adopted by the Board have no retroactive effect.

[1] Because the proposed revisions are substantially similar in both regulations, we have included only the proposed revisions to Regulation 1807 in this agenda. The full text of the proposed revisions for both Regulations 1807 and 1828 can be found in Exhibits 3, 4, and 5.

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Item 2 – for information – holding local tax distributions in suspense while a suspected misallocation is investigated.	During the interested parties process and in written submission, the HdL Companies commented that procedures should be included in the BOE procedure manuals explaining when distributions can be held in suspense. Staff does not believe it is necessary to develop formal procedures for holding distributions or requesting that distributions be held. This issue does not involve regulatory amendment and does not require Board action; it is included for informational purposes and possible discussion.

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
Action 1 **1807 (a)(3)(G)** **and** **1807.1 (a)(3)(G)**	**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(a) DEFINITIONS.** (3) PETITION. **(G)** "Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified. <u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u>	**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(a) DEFINITIONS.** (3) PETITION. **(G)** "Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified. <u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u>	**Regulation 1807.1. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(a) DEFINITIONS.** (3) PETITION. **(G)** "Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified. <u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u>	**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(a) DEFINITIONS.** (3) PETITION. **(G)** "Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified. <u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u>

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
	objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.	objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.	objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.	objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.
1807 (b)(2) **and** **1807.1 (b)(2)**	**(b) REVIEW BY ALLOCATION GROUP.**	**(b) REVIEW BY ALLOCATION GROUP.**	**(b) REVIEW BY ALLOCATION GROUP.** (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its	**(b) REVIEW BY ALLOCATION GROUP.** (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
			investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.	investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
1807 (b)(3) **and** **1807.1 (b)(3)**			(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition,~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~ 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.	(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition,~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~ 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

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Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
1807 (b)(6) **and** **1807.1 (b)(6)**	(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.		(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.
1807 (b)(7) **and** **1807.1 (b)(7)**		(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.	(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.	(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

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1807 (b)(8) and 1807.1 (b)(8)	(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.		(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.	(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.
1807 (b)(9) and 1807.1 (b)(9)	(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of . that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.		(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.
1807 (b)(10) and 1807.1 (b)(10)	(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30		(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30	(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30

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	days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.		days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.	days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.
1807 (c)(1) and 1807.1	**(c) REVIEW BY APPEALS DIVISION.** (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a	**(c) REVIEW BY APPEALS DIVISION.**	**(c) REVIEW BY APPEALS DIVISION.** (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a	**(c) REVIEW BY APPEALS DIVISION.** (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a

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(c)(1)	written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.		written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.	written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.
1807 (c)(2) **and** **1807.1 (c)(2)**	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.
1807 (c)(2)(B)		**(B)** If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and		

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		the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.		
1807 (c)(2)(C)		**(C)** If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.		
1807 (c)(2)(D) and **1807.1 (c)(2)(D)**	**(D)** Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	**(D)** Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	**(D)** Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	**(D)** Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal

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	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.
1807 (c)(3) **and** **1807.1 (c)(3)**	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at

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	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.
1807 (c)(4) – (c)(9)		(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals		

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		Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to ~~90~~ 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department. (5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. If no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions. ~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a~~		

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		~~timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~ ~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems~~		

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		~~necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~ ~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~		
1807 (d)(1) **and** **1807.1 (d)(1)**		**(d) REVIEW BY BOARD.** (1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.	**(d) REVIEW BY BOARD.** (1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings</u>.	**(d) REVIEW BY BOARD.** (1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings</u>.

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1807 (d)(2)		(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation. The notice of hearing will be issued within 90 days from the date of the request for hearing.		
1807 (g) **and** **1807.1 (g)**	**(g) OPERATIVE DATE AND TRANSITION RULES.** This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003). (1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the		**(g) OPERATIVE DATE AND TRANSITION RULES.** This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003). (1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive	**(g) OPERATIVE DATE AND TRANSITION RULES.** This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003). (1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive

AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
	Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect. (2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto. (3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.		effect. (2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. ~~All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation~~	effect. (2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed, and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after September 10, 2008, the operative date of this regulation. (3) The amendments to this regulation adopted by the Board on or about **[insert adoption date]** have no retroactive effect.
1807(g) **Alt 3.1 requires new sub-division (g)(3) of current 1807**			**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(g) OPERATIVE DATE AND TRANSITION RULES.** (3) This Regulation 1807 ceases to be operative on the operative date of Regulation 1807.1.	

BOARD OF EQUALIZATION
REVENUE ESTIMATE

Petitions for the reallocation of local and district taxes

Alternative 1 – Staff Recommendation

Amend Regulations 1807 and 1828 as recommended by staff. The full text of the revised regulations under this alternative is attached as Exhibit 3. The proposed amendments prospectively:

1. Explain that a 30-day extension can be requested when a jurisdiction is responding to a notice from the Local Revenue Allocation Unit (LRAU),
2. Add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request that the Allocation Group (AG) issue its supplemental decision within 90 days,
3. Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision,
4. Provide that potentially affected jurisdictions will be notified at the Appeals Division level, rather than the current practice of notification only at the Board hearing level, and
5. Clarify that participants are allowed 30 days to provide additional information following the appeals conference, and allow the other participants 30 days to respond to that information.

Other Alternatives Considered

Alternative 2

Amend Regulations 1807 and 1828 as suggested by Mr. Johan Klehs and supported by the HdL Companies. The full text of the revised regulations under this alternative is attached as Exhibit 4. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, Mr. Klehs and the HdL Companies recommend further amendments to Regulations 1807 and 1828 to include the following additional time limitations.

1. Add a 90-day time limit for the AG to issue a supplemental decision.

2. Require that the appeals conference be scheduled within six months of the Appeals Division receiving the file from the AG.
3. Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then an appeals conference should be scheduled within 90 days.
4. Reduce the request for an extension of time to prepare the Decision and Recommendation (D&R) from 90 days to 30 days.
5. Eliminate the Request for Reconsideration (RFR) and Supplemental Decision and Recommendation (SD&R) processes.
6. Require that the Board Hearing notice be issued within 90 days of the request for hearing.

Alternatives 3.1 and 3.2

Amend Regulations 1807 and 1828 as recommended by MuniServices. MuniServices believes their revisions should have a prospective application and offers the Board two options to achieve this: Alternative 3.1 – Replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or Alternative 3.2 – Add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

The full text of the revised regulations under this alternative is attached as Exhibit 5. MuniServices' recommended procedural changes are the same for both Alternatives 3.1 and 3.2. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, MuniServices recommends the following additional amendments.

1. Add a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the Compliance Policy and Procedures Manual (CPPM).
2. Add a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
3. Limit the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
4. Add a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in staff recommendation that would impact local tax revenue. Staff recommendation are only a procedural change in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Alternative 2 – Mr. Johan Klehs with support of HdL Companies Recommendation

There is nothing in the Mr. Johan Klehs with support of HdL Companies recommendation that would impact local tax revenue. As with staff recommendation, the Mr. Johan Klehs recommendations are procedural changes in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Alternatives 3.1 and 3.2 – MuniServices Recommendation

There is nothing in MuniServices recommendations that would impact local tax revenue. As with staff recommendation and Mr. Johan Klehs, MuniServices recommendations are procedural changes in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – Mr. Johan Klehs with support of HdL Companies recommendation does not have a revenue impact.

Alternatives 3.1 and 3.2 – MuniServices recommendations do not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Susanne Buehler, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of April 12, 2011.

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level

I. Petition is received by AG

↓

II. AG investigates and issues a decision[1]

MuniServices: AG has 270 days to investigate and issue its decision. If no decision is issued, AG will meet with the petitioner within 30 days to discuss the scope and timeline of further investigations, if any.

↓

III. No objection to AG decision received – decision is final

or

Objection received - AG considers the objection and issues a supplemental decision

Staff: If AG does not issue a supplemental decision within 6 months, the petitioner or notified jurisdiction may request AG to issue a decision; AG will issue a supplemental decision within 90 days.

Klehs/HdL: Establish a 90-day time limit for AG to issue a supplemental decision.

MuniServices: AG has 90 days to investigate. At the end of 90 days, AG will meet with the petitioner to discuss the scope and timeline of further investigations, if any.

At any time after the meet-and-confer meeting, the petitioner may request AG issue its decision within 30 days.

↓

IV. No objection to supplemental decision received – decision is final

or

Objection received – AG sends file to Appeals

All: AG to transfer file within 30 days.

MuniServices: At any time after the meet-and-confer meeting, the petitioner may request AG issue its decision within 30 days.

[1] If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.

Klehs and HdL: Require that the notice of the appeals conference be sent within 6 months of receiving file.

↓

VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

Klehs and HdL: Establish a 60-day time limit for AG to issue a second supplemental decision.

Klehs and HdL: If an objection is filed, require the notice of the appeals conference be sent within 90 days.

↓

VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.

MuniServices: Appeals will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

↓

VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

Klehs and HdL: Shorten the extension request to 30 days.

↓

IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

Klehs and HdL: Eliminate the RFR and SD&R process.

↓

X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

or

Request for Board hearing received in response to a D&R or SD&R

Board Hearing Level

XI. Request for Board hearing received

MuniServices: If additional factual information is sent with Board hearing request, the request must also include justification of why that information was not provided at the Appeals conference.

XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

Klehs and HdL: Require that the hearing notice be issued within 90 days of the request for hearing.

ALTERNATIVE 1:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the district so notified.

<u>The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the

Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

ALTERNATIVE 2:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

<u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, <u>within 90 days,</u> issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to ~~90~~ 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. If no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions.

~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division~~

~~before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R~~ or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation. The notice of hearing will be issued within 90 days from the date of the request for hearing.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification, <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the district so notified.

<u>The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(9) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute within 60 days, will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to ~~90~~ 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. If no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions.

~~(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the district's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution. The notice of hearing will be issued within 90 days of the request for hearing.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

ALTERNATIVE 3.1:
Adopting new regulations with new language

MuniServices proposes that the Board retire Regulation 1807 and adopt amendments in a new Regulation 1807.1. MuniServices believes this is a clearer way to address potential confusion about operative dates and the prospective effect of the amendments.

Thus, MuniServices, in this alternative, proposes to add only the underlined clause to Regulation 1807 subdivision (g)[1]:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

<u>(3) This Regulation 1807 ceases to be operative on the operative date of Regulation 1807.1.</u>

Then MuniServices, in this Alternative 3.1, proposes that the Board adopt Regulation 1807.1 as set forth beginning on page 2. The text of 1807.1 contains the text of Regulation 1807 with MuniServices' suggested amendments.

[1] Only the relevant subdivision of Regulation 1807 is shown. Other subdivisions are not being amended.

Regulation 1807.1. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition,~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~ 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings</u>.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. ~~All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.~~

MuniServices would follow the same procedure, in Alternative 3.1, for Regulation 1828.

Thus MuniServices, in this alternative, proposes to add only the underlined clause to Regulation 1828 subdivision (f)[2]:

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

<u>(3) This Regulation 1828 ceases to be operative on the operative date of Regulation 1828.1.</u>

Then MuniServices, in this Alternative 3.1, proposes that the Board adopt Regulation 1828.1 as set forth beginning on page 8. The text of 1828.1 contains the text of current Regulation 1828 with MuniServices' suggested amendments.

[2] Only the relevant subdivision of Regulation 1828 is shown. Other subdivisions are not being amended.

Regulation 1828.1. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of the 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition~~ At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified

districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. ~~All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.~~

ALTERNATIVE 3.2:

As an alternative to Alternative 3.1, MuniServices proposes amendments to subdivisions (g) and (f) of the existing Regulations 1807 and 1828 to make the proposed amendments prospective. The following text contains all of MuniServices' suggested amendments for Regulations 1807 and 1828.

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

<u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by

the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition,~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~ 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the

petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals

Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings</u>.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed, and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after September 10, 2008, the operative date of this regulation.

(3) The amendments to this regulation adopted by the Board on or about **[insert adoption date]** have no retroactive effect.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the district so notified.

<u>The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of the 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition~~ At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified

districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after September 10, 2008, the operative date of this regulation.

(3) The amendments to this regulation adopted by the Board on or about **[insert adoption date]** have no retroactive effect.

JOHAN KLEHS & COMPANY, INC.
STRATEGY • GOVERNMENT RELATIONS • ADVOCACY

HAND DELIVERED

March 3, 2011

Ms. Susanne Buehler, Chief
Tax Policy Division, Sales and Use Tax Department
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Ms. Buehler:

Thank you for the Board of Equalization's (BOE) staff assistance in facilitating the interested parties meetings regarding proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax, Petitions for Distribution or Redistribution of Transactions and Use Tax.*

Our firm represents the City of Livermore. We are offering our comments as a result of the 2nd interested parties meetings and as a submittal for the Business Taxes Committee meeting scheduled for April 26, 2011.

We recommend the Board Members utilize the chart, "Overview of the Local Tax Petition Process" (enclosed) as prepared by the BOE staff to demonstrate and clarify the various benchmarks and deadlines as a petition moves through the Regulation 1807 process. This chart is an excellent description of the process and will allow all parties to begin from the same discussion point.

We agree and support the revisions stated in "II. Staff Recommendation, Page 1 of 8" of the "Second Discussion Paper" provided for the 2nd interested parties meeting dated February 8, 2011. These recommendations have been agreed to based on discussions with the various parties from the 1st interested parties meeting that was scheduled on January 6, 2011.

Overall: Deadlines and Workload

The objective of the Regulation 1807 process should be a timely conclusion to arrive at the "right answer" and have local tax monies allocated to the correct party. However, the BOE staff still seems unwilling to insert what seems like even some of the most basic deadlines into the current process. In fact, currently a case could take longer to resolve than a two year legislative session

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or even a four year Board Member term. We believe that such a length of time is unacceptable from a "fairness to the taxpayer" or "case management" point of view.

During the interested parties meetings, the BOE staff stated their desire to continue a process without deadlines as a necessity to get to the "right answer. Good management and fairness in any public agency process provides for imposed deadlines on all affected bodies so that all sides can arrive at the most accurate outcome. If a party has chosen to game the system, not abide by deadlines, then they should abide the decision reached by the Allocation Group, Appeals Division, and ultimately by the Board Members in a formal hearing.

BOE staff acknowledged that sometimes cases "sit on the shelf for six months" before the staff can get to work on a given case. Presently, only one BOE staff person in the Appeals Division is supposedly handling *all* of the tax allocation cases. Clearly, that person does an excellent job of working on each case and is highly respected by all parties. But no case should drag on for two, four, 12, or 20 years because the BOE chooses to ignore internal workload issues. Time and aging cases work against "getting to the right answer" in any process.

The lack of timelines inserted into the process and having one staff person handling all of the cases is clearly one of the prime reasons for the ongoing backlog.

Allocation Group (AG) Level

The AG should be empowered to gather as much information and evidence up front as possible when investigating a local tax allocation case. Empowering this unit early in the process will allow the Appeals Division to have the maximum information available so they can come to an accurate conclusion at the end of the process.

A petition for tax allocation should be vetted as much as possible by the time the AG has completed its investigation and recommendation to the Appeals Division.

Appeals Division (AD) Level

Under the current process, it seems that certain parties can "game the system", holding back vital information, waiting to see what information may have come out of the AG level, and then using the appeals conference process to seek endless rebuttals to information as it comes to light in arguments during the process.

Once a case gets to the AD and an appeals conference has been scheduled, parties should only have "one bite at the apple" for rebuttal so that the AD can begin writing their decision.

Our suggested additional deadlines can be viewed in the "Overview of the Local Tax Petition Process" chart provided a part of this submission.

Overview of Local Tax Petition Process

The Roman numerals below refer to those boxes as listed on the chart provided by the BOE staff for this process.

III. Allocation Group Level

We have recommended the establishment of a 90 day time limit to issue a supplemental decision. Currently, the process can take *several years* to fully vet issues in order to arrive at an accurate conclusion. In the last interested parties meeting the staff stated that at this point in the process that cases might "sit on the shelf for six months." We feel the current timelines at this level are simply too long and open ended.

V. Appeals Division Level

Currently, the petitioner, notified jurisdictions, and the Sales and Use Tax Division (SUTD) will be notified of the appeals conference at least 45 days before the conference. Again, no deadline at this stage of the process.

We are requesting that a deadline be inserted at this level insuring that the appeals conference will be scheduled within six months of the AD receiving the case file.

VI. Appeals Division Level

Currently, a petitioner or notified jurisdiction may continue to investigate with the AG and the AG may issue a second supplemental decision. If a second supplemental decision is issued and an objection is filed by a party, then AD will schedule an appeals conference.

We believe a 60 or 90 day time limit should be established for the AG to issue a second supplemental decision. If an objection is filed by a party, then an appeals conference should be scheduled within 90 days.

VIII. Appeals Division Level

Currently, the Chief Counsel may approve an additional 90 days to prepare a Decision and Recommendation (D & R) upon request by the AD. We feel that this extension should be shortened to 30 days.

IX. Appeals Division Level

Currently, a Petitioner, notified jurisdiction, or the SUTD may appeal any D & R or Supplemental D & R (SD & R) by submitting a timely Request for Reconsideration (RFR) to the AD. This is an area is where gaming the process may take place.

Our recommendation is to eliminate this RFR and SD & R process altogether and have the parties go directly to a full Board hearing.

XII. Board Hearing Level

Currently, a notification of a Board Hearing is sent to all parties at least 75 days before a hearing. We are requesting that a hearing notice be issued within 90 days of the request for hearing.

We are grateful for the opportunity to voice our concerns about the current Regulation 1807 tax petition process.

Please feel free to contact me if I can be of any service to you in the future.

Sincerely,

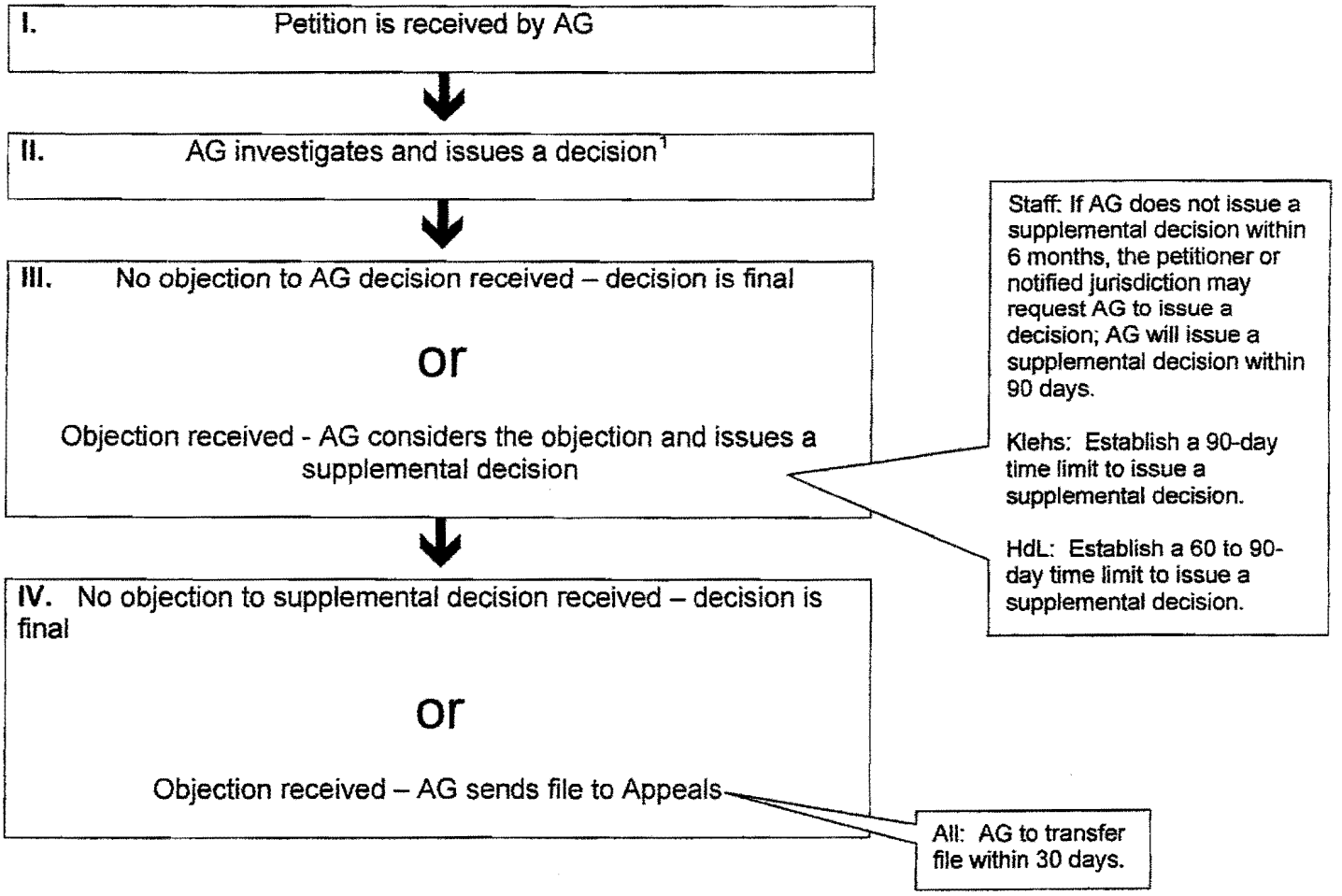
JOHAN KLEHS

Enclosure As Stated

CC: Members of the Board of Equalization
Ms. Marcy Jo Mandel, State Controller's Office
Ms. Kristine Cazadd
Mr. David Levine
Ms. Carol Ruwart
Ms. Trecia Nienow
Ms. Lynn Whitaker
Mr. John Pomidor, City of Livermore
Ms. Robin Sturdivant, HdL Companies
Mr. Matt Hinderliter, HdL Companies

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level



Klehs: Reduce allowed time to 60 days.

HdL: Reduce allowed time to 60 days, but allow staff to request a 30-day extension.

[1] If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.

Klehs and HdL: Require that Appeals schedule the appeals conference within 6 months of receiving file.

↓

VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

Klehs and HdL: Establish a 60 or 90-day time limit for AG to issue a second supplemental decision.

Klehs: If an objection is filed, require the appeals conference be scheduled within 90 days.

↓

VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.

Klehs: After the allowed 45 days, do not allow additional responses, or allow Appeals to request additional information.

HdL: After the allowed 60 days, do not allow additional responses.

↓

VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

↓

IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

Klehs: Shorten the extension request to 30 days.

Klehs: Eliminate the RFR and SD&R process.

HdL: Tighten the standards for a RFR request.

↓

X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

or

Request for Board hearing received in response to a D&R or SD&R

Board Hearing Level

XI. Request for Board hearing received

XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

Klehs: Require that either the hearing notice or a status report be issued within 90 days of the request for hearing.

Revenue Management for Local Government
Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

March 1, 2011

Suzanne Buehler, Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Ms. Buehler:

We have listened carefully to the positions presented by all sides at both the January 6, 2011 and February 17, 2011 Interested Parties meetings regarding proposed amendments to Regulations 1807 and 1828, and appreciate the opportunity to have participated. In the areas where a consensus has been reached we encourage the Business Taxes Committee to adopt the changes recommended by Staff. We also respectfully request further consideration by the Business Taxes Committee and all Interested Parties of our stance on the following:

Accuracy and Timeliness

We agree that the primary and over-riding goal of Regulation 1807 is to ensure that the *correct* conclusion is reached regarding local tax allocation, a conclusion consistent with a company's business practices and controlling Regulations. We further concur with Muniservices' suggestion that a more clearly established and refined investigative process at the Allocation Group (AG) level would significantly improve efficiency.

Additional deadlines will not on their own advance the goals of efficiency or accuracy. However, we submit that the absence of a distinct deadline at any stage in the process also does little to forward either objective. Experience clearly shows that as a case ages it becomes *more* difficult to obtain accurate information. Business activities change, personnel changes, accounting records get archived/lost/destroyed, etc... Assuming that a case is being actively and diligently pursued a timely investigation will actually help insure accuracy, not the opposite.

Staff's position seems to be that any current delays in processing are a "workload issue", and additional time limitations will not be necessary once the present backlog is cleared. However, one could argue that a historical lack of any time limitations is a primary reason for the backlog. The lack of urgency at virtually any level meant that local tax cases were often assigned a low level of priority, resources, and management attention. We have come a long way, but we need to continue to "close the loop" to insure both timely *and* accurate investigations. Even with the additional deadlines we have proposed a local tax case could still take 3 years or more to work its way completely through the administrative process. Recognizing and understanding all of the inherent difficulties of investigating local tax cases we still find it difficult to accept that this is not enough time.

When and where Staff attributes lengthy delays to a backlog and/or lack of resources, we respectfully request that the Board do what is necessary to address that problem. Cross-training could provide additional manpower on a temporary or "as needed" basis without the additional cost of new, permanent positions. Perhaps there are also areas where the process itself could be re-designed so that an inordinate level of work and responsibility does not fall on the shoulders of any one individual. A robust process, with sufficient depth to avoid any bottlenecks that may arise due to a future spike in case volume or the occurrence of a truly difficult and involved case, is a goal we believe few would argue with. If the resistance to imposing any additional deadlines is due even in part to a belief that the current process is not robust and deep enough to handle them, we believe that not taking action is effectively side-stepping the issue.

Holding Distributions in Suspense

To again clarify – HdL maintains that distributions should be held in suspense *only* if the amount involved is above a certain threshold such that a reallocation would create a substantial hardship for the losing jurisdiction, and *only* if/when there have been at least two adverse decisions against said jurisdiction. To put it another way, in response to a petition filed by City A the Allocation Group launches an investigation and concludes that City B is incorrectly receiving a large amount of local tax. City B is notified, and allowed up to sixty days to file an appeal (an automatic 30 days plus the provision for a 30 day extension). An appeal is filed, and after careful consideration of the facts and arguments offered therein the Board again concludes that City B is not the proper recipient of the local tax in question. Only at this point would a possible suspension of future local tax allocations, pending exhaustion of the administrative appeals process, be considered.

That City B might be dependent upon the allocation stream in question, and that it would be therefore unfair to suspend future distributions, we believe misses the point entirely. If there is a legitimate question as to whether City B should be receiving the funds to begin with, its reliance on them becomes a real and pressing issue for all concerned, first and foremost City B. Allowing the local tax to continue flowing to City B during a 1-2 year plus administrative appeals process only exacerbates the potential problem.

It was suggested at the first Interested Parties meeting that the sheer size of a potential reallocation may in and of itself become a reason for the Board Members to not take action. We respectfully submit that this would be inappropriate, and patently unfair to the rightful recipient. Holding distributions in abeyance preserves and protects the Board Members' discretion, and their ability to decide a local tax case solely on the merits.

It has also been suggested that the Board's failure to make distributions is "illegal and without any legal basis or authority in the Code". We respectfully disagree, and note that Board staff routinely suspends local tax distributions when a taxpayer's schedules do not balance, or when some other problem is encountered in processing a return. We submit that the suspension of future distributions as part of the appeals process in a local tax case is not only appropriate, but well within the Board's administrative purview.

Having worked closely with Board Staff and Management for over 20 years we are confident that such action would not be taken arbitrarily, and without a thorough and competent investigation. However, as a concession to those who do not share our confidence we suggest that a mechanism could be added to require Board member approval of any proposed suspension.

Required Disclosure of Revenue Sharing Agreements

We understand and respect that this is a very sensitive topic. For the record we have not questioned, and are not challenging the integrity of any participant in any current or future local tax case. Nor do we believe that the presence of a sharing agreement necessarily or automatically discredits the testimony of any party to the agreement. However, we maintain that this provision is necessary and appropriate for the following reasons:

- Board investigations of local tax cases have traditionally relied completely and solely upon information provided by the taxpayer. The taxpayer is in complete control of what information is released, and even who within the company is authorized or qualified to speak to the Board.

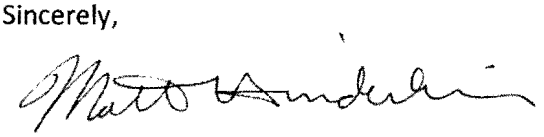
- When and where a rebate agreement exists the taxpayer has a clear, obvious and often substantial financial interest in the outcome of the local tax matter before the Board. Staff has acknowledged that the existence and terms of an agreement can be an important piece or component to the overall investigation of a suspected misallocation.

Weaknesses, inconsistencies, and gray areas in the Regulations and Annotations defining buying companies, field sales offices, master sales contracts, and title passage have allowed a few corporations to make very minor changes to their business operations in order to re-direct millions of dollars to whichever local jurisdiction offers the most lucrative rebate agreement, returning as much as 85% of the local tax dollars to the private sector. These corporations may firmly believe that they have acted within the "letter of the law", and have met the Board's minimum requirements. However, when challenged it is only natural that these firms may become defensive, guarded, and possibly less than completely candid in releasing information. While this falls short of outright fraud or falsification, there is no question that it does impact the Board's ability to obtain a complete and accurate understanding of a taxpayer's business activities.

Local tax cases have traditionally involved disputes between two or more jurisdictions, with the taxpayer remaining a neutral third party. However, as a number of cases currently working their way through the appeals process will demonstrate, the landscape has clearly changed. For 25 years HdL has prided itself on a business-friendly approach to our audit efforts, and frankly we do not enjoy or relish having a taxpayer as a direct opponent in a local tax matter. However we will continue to adapt and change as necessary in order to protect our clients' interests. We respectfully request that the Board also consider what changes to its Regulations and/or business practices may be necessary to preserve the goal of issuing fair and correct decisions in local tax cases.

Thank you for your consideration.

Sincerely,



Matt Hinderliter

cc: Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District
Senator George Runner (Ret.), Member, Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via email)

(Via E-mail)
Mr. Alan LoFaso, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Robert Thomas, Board Member's Office, Fourth District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Ms. Lynn Whitaker
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Mr. Jeffrey L. McGuire
Mr. Kevin Hanks
Mr. David Levine
Ms. Trecia Neinow
Ms. Carole Ruwart
Mr. Tom Hopkins
Mr. Leonardo Vega
Mr. Larry Micheli
Mr. Johan Klehs
Mr. Fran Mancia
Ms. Janis Varney

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March 4, 2011

Susanne Buehler, Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0092

Re: MuniServices, LLC comments and suggestions to proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax* and Regulation 1828, *Petition for Distribution or Redistribution of Transactions and Use Tax*

Ms. Buehler:

On behalf of MuniServices, we appreciate Board Staff's continued interest in considering our suggestions and comments during the interested party process for the above-noted regulations. The meetings and written correspondence have been especially beneficial in vetting the complexity of issues, and we are pleased that consensus on some of the issues have been reached through this process. At the last meeting, in addition to key staff recommendations, we raised a few concerns and suggestions to further improve the overall allocation process especially in the area of a) lengthy investigations, b) efficiency in the fact-finding process, c) commencing the compliance manual/ audit manual process related to allocations, and d) holding revenues in a "suspense" account. While we recognize the regulations set forth policy, and the manuals guide Board staff in performing their audit and investigation functions, we respectfully request the following considerations in the final draft regulations, and where appropriate the future compliance and or audit manuals:

a) Lengthy Investigations

Illustration

As early as 1998, we submitted petitions for reallocation for a number of cities where a retailer had sales offices. In 1999, the AG asked the field auditor to investigate. While the matter was under "investigation" the company was sold. The field auditor took 7 years to "investigate" and produced no new relevant facts. The auditor simply stated his mistaken opinion that telephony was a fixture or a material and thus the jobsite was the place of sale. (Regulation 1521 clearly defines telephony of this type as "machinery and equipment" not a fixture or material.) 7 years and no relevant facts were produced.

Then 4 and one-half years later, the AG finally got a tax accountant at the new owner to say that she had no knowledge of the situations before the acquisition. So, 11 and one-half years later, the investigation has produced no real results.
To put this in perspective, a child that started kindergarten at the start of this fruitless investigation would be a senior in high school when the fruitless investigation concluded.

Surrendering to uncooperative taxpayers

While such a delay is not the norm, neither is it an isolated case. And it is not always the mere length of the investigation that frustrates the hearing process. For example, in a recent case the Appeals Division ordered the Allocation Group to obtain certain factual information. After 7 months of investigation, the Allocation Group reported "Although the Department has followed-up dilligently with the taxpayer, it appears that the taxpayer is either unable, or more likely unwilling, to provide some of the information. In fact, to date, the taxpayer has responded with information to address only a fraction of the items the Department was asked to address...the Department feels at this point that allowing the taxpayer any further time to respond would not be productive."

Here, despite an appeals conference being held and the Allocation Group being charged to get specific information, the Allocation Group "gave up." We believe there is a better approach we can take to solving this sort of delay.

The key driver of delay

Our best understanding at this point is that there is one key driver of delay between submission of a petition and staff decision—length of the "investigation." As stated by staff in their Initial Discussion Paper, p.2,

> "Although staff also wants petitions to be resolved expeditiously, it does not believe an overall time limit is practical. Petitions for reallocation may require substantial investigation by AG and Appeals to determine whether a misallocation occurred...local tax disputes only involve reallocation or reported amounts; the taxpayer holding the records is not disputing a deficiency or supporting a claim for refund and thus lacks incentive to provide records. Local tax appeal cases take more time *primarily because of the delays in getting information from the taxpayers*."

What causes the length of the "investigation"?

Assuming that the length of investigations is the key driver in the length of the delay, what determines the length of the investigation? The complexity of the investigation involves how much information must be obtained and how long it will take to get it. An example of "how much" could involve the number of factual issues and number of facts in each issue, and "how long" could involve taxpayer delay, difficulty in determining where to look for evidence, staff constraints and open-ended deadlines.

When is a long investigation a "delay"?

A "delay" is not simply a function of the amount of time it takes to get answers. It is also a function of the result of the time spent. In other words, whether a long investigation is a "delay"

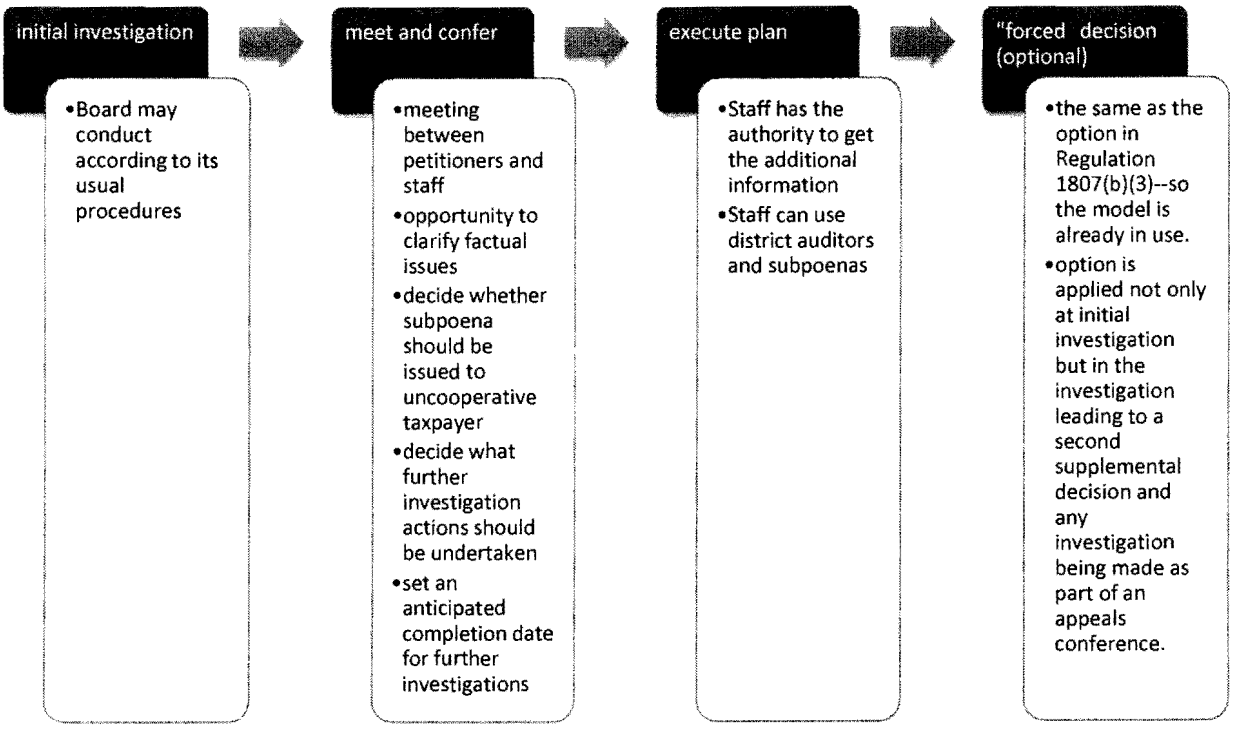
depends not only on the actual length of time but the return (measured in useful information) received from the investment (time in investigation).

Everyone wants to avoid long unproductive investigations such as the 11 ½ year investigation. Short unproductive investigations can be tolerated, if necessary, but ideally the goal is an investigation that yields a good amount of information compared to the length of time it took to get the information.

Delay must be addressed by managing the complexity and maximizing the Return on Investment (ROI). Since we cannot know for certain the full complexity or productivity of an investigation until it is over, workable solutions must be flexible enough to adapt to the reality of an investigation as it unfolds rather than being defined by our initial guesses about how the investigation will occur.

MuniServices' proposal

We propose a process with a limited initial period of time for the staff to conduct an initial investigation, followed by a meeting to determine additional investigative efforts, responses to taxpayer delay, and anticipated timelines, and supplemented with the right of the petitioner to terminate an unproductive investigation by "forcing" the decision.



This process has a number of advantages:

1. It gives an initial window for low-complexity investigations to be concluded.

2. It gives a flexible but aggressive initial investigation deadline.
3. It reduces the felt-delay because any investigation beyond the initial 270-days is agreed upon and has stated objectives. When expectations are jointly set, the same "waiting period" seems less burdensome.
4. It may also have the desirable side-effect of streamlining communications with the taxpayers because it should reduce duplicative information requests and time-wasting investigations of facts that are irrelevant to deciding the issues.
5. It allows the petitioners to end unproductive investigations.
6. It addresses the key factors driving the complexity, including taxpayer delay, investigation of irrelevant information, and difficulty in locating sources of information.

This process can be repeated at each level of the appeal except the appeal to the Board Members. Where the taxpayer is delaying in producing information in the post-appeals conference, the Appeals Division can simply refuse to receive any further information and issue the D&R based on the information that was timely produced. The taxpayer or petitioner, who wants to add to the record at that point, would be required to explain in its first briefing why the evidence was not included and the Board would need to rule on whether to allow that evidence at the Board meeting preceding the meeting at which the hearing is set.

The exact language we suggest to implement these solutions is in our attached "redline" version of Regulation 1807, which is attached as Exhibit 1.

b) Increasing efficiency in the fact finding process

In addition to the improved processes above, investigations could be made more efficient by implementing the following suggested changes that were also provided in our previous submittal of January 20, 2011.

1. Recommend that language be placed in the *Allocation Group Manual* stating that local taxpayer representatives should always be contacted first to discuss local business affairs. Presumably this would be the same person the petitioners have spoken to and they will tell the AG auditor the same thing. Once this is confirmed the AG auditor can contact corporate headquarters or tax department to discuss local tax allocation and clear up any discrepancies between what the local contact said and what the taxpayer headquarters believes.

2. Recommend that typical questions the AG auditor should ask also be placed in the *Allocation Group Manual*. Hopefully, this way everyone is assured that the correct questions have been asked and the answers can be relied upon.

3. Recommend that language be added to the Board's *Audit Manual* (*AM*) or investigations made by district office auditors. These investigations must be given a certain priority by the audit staff, similar to the priority given to a claim for refund that is referred to a district office for investigation, and not considered a side item to be considered as a minor part of an audit. The *AM* should contain language instructing auditors on what steps should be taken to verify correct local tax allocation.

4. An important part of having the petitions investigated on a timely basis is for the field auditor to take ownership of the investigation. Board Auditors currently must account for time spent on audits and claims for refunds and must explain in detail any delays in the completion of these items. Similar requirements for investigations of local tax allocations should be included in the *Audit Policy and Management Guidelines Manual (APMG)*.

5. Field Audit Supervisors (Supervisors) and District Principal Auditors (DPA's) should be required to make sure these investigations are done on a timely basis. In the past to facilitate this, copies of follow-up memos written by the AG staff to the district offices were forwarded to an increasingly higher and higher level of Sales and Use Tax Department management in the hopes that supervisors and DPA's would monitor the progress of the investigations and see to it that they are completed on a timely basis. This practice was abandoned several years ago, but should be reinstated and formalized in writing in the *APMG*. Districts are also required to send reports on the status of investigations of claims for refunds. A similar requirement should be made for districts to report the status of local tax investigations.

In expanding numbers 2 and 3 above a decision table could be placed in both the Allocation Group Manual as well the AM to assist auditors, particularly new auditors in the AG and field auditors who do not deal with local tax issues on a regular basis. The purpose of such a table would be to help guide the auditors in making a decision as to the correct allocation of local tax. The table could be similar to the one found in CPPM Section 240.035 which helps compliance personnel issue the correct kind of permit. This ties into a better investigation up front which means a better and quicker decision on a petition. Also expanding on number 5 we believe that management involvement in these investigations is crucial in streamlining the investigative process. This can help ensure that all investigations are done on a timely basis and are complete.

c) Commencing the compliance manual/ audit manual process related to allocations

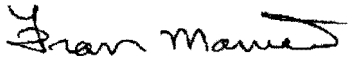
As mentioned at the second meeting for interested parties on February 17, 2011 we look forward to working with Board Staff on commencing the process for including the new regulations in the compliance/audit manuals. MuniServices on May 25, 2010 provided proposed revisions to CPPM Chapter 9 in a letter emailed to Ms. Lynn Whitaker. As mentioned at the February meeting, we look forward to participating in the future process to update the respective manuals.

d) Holding revenues in a "suspense" account

We reiterate our objection to the suggestion that monies be withheld and state again that the control over the monies should be a local matter subject to local control.

We look forward to your Formal Issue Paper and request that you take the above into consideration. Thank you for giving us the opportunity to comment and we look forward to continuing to work with the Board to find ways to continually improve the efficiency of this process.

Sincerely yours,



Francesco Mancia
Vice-president, Government Relations

Eric Myers, Esq.
Director, Local Tax Strategic Development

Robert J. Wils
Senior Local Tax Advisor

cc: Leila Hellmuth (via email)
Lynn Whitaker (via email)

MuniServices' Exhibit 1—suggested revisions to Regulation 1807

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

Reference: Sections 7209 and 7223, Revenue and Taxation Code

(a) DEFINITIONS.

...

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

...

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdictions inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

...

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

(3) ~~If the Allocation Group does not issue a decision within six months of the date it receives a valid petition~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~ 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

...

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(10~~9~~). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(10~~9~~). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(10~~9~~) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(9~~8~~), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known

by the requesting jurisdiction), and must be received by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of the receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

...

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference, ~~or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

...

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissability of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissability hearings.

...

REGULATION HISTORY

TYPE OF REGULATIONS: Uniform Local Sales and Use Tax
Transactions and Use Tax

REGULATIONS: 1807
1828

TITLE: *Petitions for Reallocation of Local Tax*
Petitions for Distribution or Redistribution of Transactions and Use Tax

PREPARATION: Lynn Whitaker/Judi Pierce
LEGAL CONTACT: Cary Huxsoll/Robert Tucker

Proposed regulatory amendments to the processes for reviewing petitions for local tax reallocations and transaction and use tax redistributions.

HISTORY OF PROPOSED AMENDMENTS:

April 26, 2011: Business Taxes Committee (BTC) Meeting
February 17, 2011: Second Interested Parties Meeting
January 6, 2011: First Interested Parties Meeting
October 8, 2010: Topic Placed on BTC Calendar

Sponsor: None

Support: Alternative 1 – Staff Recommendation
Alternative 2 – Mr. Johan Klehs; supported by the HdL Companies
Alternatives 3.1 and 3.2 – MuniServices, LLC

Oppose: N/A

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 26, 2011

BUSINESS TAXES COMMITTEE

Reported by: Juli Price Jackson

No. CSR 5214

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2 P R E S E N T
3
4 For the Board of Equalization: Betty T. Yee, Chair
5
6 Jerome E. Horton, Member
7 George Runner, Member
8
9 Michelle Steel, Member
10 Marcy Jo Mandel, Appearing for John
11 Chiang, State Controller
12 (per Government Code Section 7.9)
13
14 Diane G. Olson, Chief, Board Proceedings Division
15
16
17 ---oOo---
18 ITEM 1 STAFF
19 Susanne Buehler, Sales and Use Tax
20 Department
21 Cary Huxoll, Legal Department
22
23 Kevin Hanks, Sales and Use Tax Department
24
25 Lynn Whitaker, Sales and Use Tax Department
26
27
28

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1 ITEM 2 STAFF

2 Susanne Buehler
Sales and Use Tax
3 Department

4 Kevin Hanks.
Sales and Use Tax
5 Department

6 Steven Mercer
Budget Section
7

Bradley Heller
8 Legal Department

9 Joe Fitz
Research and Statistics
10

11 ---o0o---

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SPEAKERS ITEM ONE

---o0o---

NAME	PAGE
Johan Klehs	14
Robin Sturdivant	15
Christy Bouma	18
Eric Myers	20
Bob Cendejas	22

SPEAKERS ITEM TWO

---o0o---

NAME	PAGE
Rob Gutierrez	88

---o0o---

1 450 N Street
2 Sacramento, California
3 April 26, 2011
4 ---o0o---
5 MR. HORTON: Let us call the Board of
6 Equalization meeting to order.
7 Ms. Olson, what is our first matter?
8 MS. OLSON: Our first matter -- our first
9 matter -- can you hear me?
10 MS. MANDEL: Not really.
11 MR. HORTON: Testing, 1, 2, 3.
12 MS. OLSON: Thank you.
13 Our first order of business today is the
14 Business Taxes Committee.
15 Ms. Yee is the Chair of that Committee.
16 Ms. Yee?
17 MS. YEE: Thank you very much, Ms. Olson. Good
18 morning, Members.
19 We have two items before the Business Taxes
20 Committee this morning. The first item is the proposed
21 changes to Regulations 1807 and 1828.
22 We'll have the parties come forward. I know
23 there are several speakers to speak on this particular
24 item. I'm going to have you all, if you will, just take
25 turns and be respectful of those speaking after you.
26 Okay. Let me have the staff introduce the
27 issue.
28 Good morning.

1 MS. BEUHLER: Good morning. I am Susanne
2 Beuhler with the Sales and Use Tax Department.
3 With me today are Cary Huxsoll from our Legal
4 Department and Kevin Hanks and Lynn Whitaker from Sales
5 and Use Tax.
6 We have two agenda items for your consideration
7 this morning. Agenda item 1 includes one action item
8 for vote and one informational item.
9 In the action item we ask that the Board
10 approve and authorize for publication proposed
11 amendments to Regulation 1807, Petitions for
12 Reallocation of Local Tax, and 1828, Petitions for
13 Distribution and Redistribution of Transactions and Use
14 Tax.
15 Staff and interested parties have worked
16 together and reached agreement on several issues, some
17 involving future revisions to the Board's procedural
18 manuals and some involving regulatory change.
19 We prepared a PowerPoint overview of the local
20 tax appeals process, highlighting the regulatory
21 changes, including the alternatives before you this
22 morning and the areas where staff and interested parties
23 disagree.
24 Before we get into the presentation, however, I
25 wanted to address an informational item on the agenda
26 regarding holding local tax distributions in suspense
27 while a suspected misallocation is investigated.
28 During the interested parties process and in

1 written submission, the HdL Companies commented that
2 that procedures should be included in the BOE procedure
3 manuals, explaining when distributions can be held.
4 Staff does not believe it is necessary to
5 develop formal procedures for holding distributions or
6 requesting that distributions be held. These cases are
7 rare. And we believe staff must evaluate the facts and
8 circumstances surrounding each case to determine if it
9 is necessary to hold local tax distributions.
10 This issue does not involve regulatory
11 amendment and does not require Board action. It is
12 included for informational purposes only.
13 We have speakers on agenda item 1 and we would
14 be happy to answer any questions you may have after the
15 PowerPoint presentation.
16 I'm going to turn it over to Lynn Whitaker now
17 for that presentation.
18 MS. YEE: Okay. Please, good morning.
19 MS. WHITAKER: Good morning. I'm Lynn Whitaker.
20 I'm with the Sales and Use Tax Department.
21 Since this is a complicated issue, we prepared
22 an overview of the local tax petition process to explain
23 the alternatives before you.
24 Alternative 1 are amendments proposed by staff.
25 These revisions have a prospective application and
26 include an explanation of the extension request process
27 with regards to the Local Revenue Allocation Unit
28 notices, a mechanism allowing the Petitioner to request

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1 the Allocation Group issue its supplemental decision and
2 notification of potentially affected jurisdictions
3 beginning at the Appeals Division level.
4 Alternative 2 are amendments proposed by
5 Mr. Klehs and supported by the HdL Companies. In
6 addition to the extension request procedure and
7 notification at the Appeals level, this alternative
8 includes additional time limits to issue decisions and
9 schedule conferences and hearings at the Allocation,
10 Appeals and Board Member levels.
11 Alternative 3 are amendments proposed by
12 Muniservices. In addition to the extension request and
13 notification at the Appeals level, these revisions
14 include new processes at the Allocation level that
15 include specific time frames and meetings between staff
16 and the Petitioner, a limit on the acceptance of post
17 Appeals conference submissions and a new process
18 requiring Board Members to rule on the admissibility of
19 new factual information provided with the request for
20 hearing.
21 Muniservices' recommendation includes
22 Alternatives 3.1 and 3.2 because Muniservices proposes
23 two choices for making the revisions prospective.
24 The petition process begins when the Allocation
25 Group receives the petition. The information is
26 verified and Allocation issues its decision.
27 There isn't a time limit for Allocation to
28 issue its decision, however, if the Allocation does not

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1 issue a decision within six months, the Petitioner may
2 request a decision and Allocation will issue one within
3 90 days of the request.
4 Muniservices recommends a new process. They
5 propose that Allocation has 270 days to issue its
6 decision. At the end of this time if Allocation has not
7 issued a decision, Allocation will meet and confer with
8 the Petitioner within 30 days to discuss the scope and
9 timeline of further investigations.
10 At any time after the meet and confer meeting,
11 the Petitioner may ask Allocation to issue its decision
12 within 90 days.
13 If no objection is received in response to
14 Allocation's decision, the decision is final.
15 If an objection is received, Allocation will
16 consider the objection, including any new information or
17 evidence presented, and issue a supplemental decision.
18 The current regulation doesn't have a defined
19 time limit at this step and this is an area where staff
20 agreed with interested parties that revision was needed.
21 Staff proposes that if Allocation does not issue a
22 supplemental decision within six months, the Petitioner
23 or notified jurisdiction may request Allocation issue a
24 decision and Allocation will issue one within 90 days --
25 a process similar to that with the first decision at the
26 Allocation Group level.
27 Mr. Klehs and HdL proposed that Allocation has
28 90 days to issue their supplemental decision.

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1 Muniservices proposes that Allocation has
2 90 days to issue their supplemental decision. If no
3 decision is issued, Allocation will meet and confer with
4 the Petitioner. At that time -- any time after the meet
5 and confer meeting, the Petitioner may request
6 Allocation to issue its supplemental decision within
7 30 days.
8 If no objection is received to Allocation's
9 supplemental decision, the decision is final.
10 If an objection is received, Allocation sends
11 the file to the Appeals Division.
12 After the file has been sent to the Appeals
13 Division, Petitioner, notified jurisdiction and the
14 Sales and Use Tax Department are notified at least
15 45 days before the conference.
16 One of the changes that was initially proposed
17 by Mr. Klehs, but staff and the other interested parties
18 agreed to, is to expand notification of the Appeals
19 conference to any jurisdiction that would be
20 substantially affected if the petition were granted.
21 Currently this isn't done until a petition reaches the
22 Board Member level of appeal.
23 As with general sales and use tax appeals,
24 there is currently no time requirement of when an
25 Appeals conference may be scheduled. Mr. Klehs and HdL
26 propose that the Notice of Conference be sent within six
27 months of the Appeals decision -- excuse me, Appeals
28 Division receiving the file.

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1 After a file is transferred to the Appeals
2 Division, the Petitioner or notified jurisdiction may
3 continue to discuss the issue with the Allocation staff.
4 Based on that investigation, Allocation may issue a
5 second supplemental decision.
6 If that decision is issued and there is no
7 objection, the decision is final.
8 If there is an objection, the Appeals
9 conference is scheduled. Mr. Klehs and HdL propose
10 establishing a 60-day time limit to issue the second
11 supplemental decision. And if an objection is filed,
12 require that the Notice of the Appeals Conference be
13 sent within 90 days.
14 Next the Appeals conference is held. If during
15 the Appeals -- if during the conference a participant
16 asks to submit additional information, they are allowed
17 up to 30 days to provide additional written argument or
18 documentary evidence. And other participants are
19 allowed 15 days to respond.
20 Staff and interested parties agree to simplify
21 this by allowing 30 days for each.
22 Muniservices proposes that the Appeals Division
23 may not accept argument or evidence beyond these 30-day
24 deadlines, except upon agreement by all participants.
25 Within 90 days of the Appeals conference or
26 final submission of additional information, the Appeals
27 Division will issue its Decision and Recommendation.
28 The Chief Counsel may approve an additional

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1 90 days to prepare the D & R upon request by the Appeals
2 Division. Mr. Klehs and HdL recommend shortening this
3 extension request to 30 days.
4 The Petitioner and notified jurisdictions may
5 appeal a Decision and Recommendation or a Supplemental
6 Decision and Recommendation by submitting a request for
7 Board hearing.
8 A decision may also be appealed by submitting a
9 request for reconsideration to the Appeals Division.
10 And the Appeals Division may issue a Supplemental D & R
11 in response.
12 Mr. Klehs and HdL propose eliminating the
13 request for reconsideration and Supplemental D & R
14 processes.
15 If there is no timely request for a Board
16 hearing or request for reconsideration, the D & R or
17 SD & R is final.
18 If a request is received and additional factual
19 information is sent with the Board hearing request,
20 Muniservices proposes a new process requiring the
21 request include justification of why that information
22 was not provided at the Appeals conference and that
23 Board Members will rule on the admissibility of that
24 additional information no later that 75 days before the
25 hearing is set.
26 If a request for a Board hearing is received,
27 the Notice of Hearing is sent at least 75 days before
28 the hearing.

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1 Mr. Klehs and HdL propose adding the
2 requirement that a Hearing Notice be sent within 90 days
3 of the request for hearing.
4 There is one final issue to consider with
5 regard to the proposed amendments, it has to do with
6 making the application of the revisions prospective.
7 During the preparation of the issue paper,
8 staff realized that the operative date language in the
9 regulation was specific to the 2008 revision and that we
10 needed to clarify that any new amendments would be
11 added -- would be applied prospectively.
12 On April 4, we sent our proposed revisions to
13 the interested parties that had submitted regulatory
14 language for the issue paper.
15 Mr. Klehs and HdL didn't submit any further
16 revisions. And if the Board does approve Alternative 2,
17 staff recommends revising Subdivisions 1807(g) and
18 1828(f) to include language to make the revisions
19 prospective and that can probably be done during the
20 public hearing process.
21 There was an additional subdivision -- excuse
22 me, submission from Muniservices, although they agree
23 the proposed revisions should apply prospectively, they
24 had concerns with staff's language.
25 Muniservices proposes two options for the Board
26 to consider, Alternative 3.1, which would retire current
27 Regulations 1807 and 1828 and adopt new Regulations
28 1807.1 and 1828.1, which include their proposed

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1 amendments and prospective language.
2 As an alternative, Muniservices offers 3.2,
3 which would amend Regulations 1807 and 1828 to provide
4 that the amendments adopted by the Board on or about X
5 date would have no retroactive effect.
6 And that concludes our PowerPoint.
7 MS. YEE: Thank you very much, Miss Whitaker.
8 Questions at this point, Members, before we
9 hear the speakers?
10 Okay. Why don't we turn to the public comment?
11 If you'll introduce yourselves for the record, you each
12 have three minutes.
13 ---o0o---
14 JOHAN KLEHS
15 City of Livermore
16 ---o0o---
17 MR. KLEHS: My name -- excuse me, my name is
18 Johan Klehs. I represent the City of Livermore. I've
19 been working with HdL on this and they will speak from
20 their own perspective.
21 We want to, first of all, thank the staff for
22 doing a very diligent job in putting together an
23 excellent presentation with the appropriate charts.
24 Our main argument is that the Regulation 1807
25 process has an absence of several key deadlines that we
26 think should be placed in the process.
27 Right now there are a host of applications that
28 go back as far as 12 years. The process which allocates

1 sales tax monies to the appropriate local agencies
2 should take, frankly, less time than a two-year
3 legislative session. Having cases drag on for 12 years,
4 seven years or, in the case of one that I was involved
5 in, a fast track case taking three years, is simply too
6 much time.
7 The staff's position has been that in order to
8 get the right answer that they need to have as much time
9 as possible.
10 Our position is that we would also like to get
11 to the right decision, but we believe that if as much of
12 the deadlines are placed in the process, certainly in
13 the Allocation Group level, that we will get to the
14 right decision in a faster period of time. And the
15 sales tax monies will be allocated to the right local
16 agency in the appropriate manner.
17 And we'd be happy to comment on each of the
18 various deadlines that we're recommending.
19 Thank you.
20 MS. YEE: Thank you, Mr. Klehs.
21 Next speaker, please?
22 ---o0o--
23 ROBIN STURDIVANT
24 The HdL Companies
25 ---o0o---
26 MS. STURDIVANT: Good morning, my name is Robin
27 Sturdivant and I'm with the HdL Companies. And I
28 appreciate the opportunity to participate in today's

1 proceedings.

2 During this process we were asked how much the
3 Board of Equalization collects in administrative fees
4 for the local tax programs. And I have given some
5 exhibits to Board Proceedings this morning that show
6 that, according to the 2008-09 BOE annual report, the
7 Board of Equalization withheld over $60 million from
8 local sales tax for administrating the local tax program
9 and over 43 million for the special transaction or
10 District taxes.

11 Our goal at HdL is to see that the local tax
12 investigations are completed as quickly and as
13 accurately as possible. And we're certain that the
14 Board Members and the Board staff share that goal.

15 And I'd like to start with some facts to give
16 you an overview of HdL's case inventory. We submit an
17 average of 4500 petitions to the Board of Equalization
18 each year. We have 3,633 open or unresolved petitions
19 in front of Board staff. Of those petitions, 1,140 are
20 over two years old. The oldest dating back to 1998. Of
21 the older cases, only three petitions involving two
22 taxpayers are currently with the Appeals Division. The
23 remainder are still at the first level of review, which
24 is the Allocation Group.

25 The most recent issue paper says that the
26 Allocation Group received 6,651 petitions in fiscal
27 '09-'10 and cleared almost as many, about 340 less. And
28 that's a great number if you are just trying to keep up.

1 But that pace won't do anything to clear our current
2 backlog.
3 The majority of our older petitions, those over
4 two years old, were submitted in 2007. So, that's four
5 years in the system with no resolution.
6 The issue paper suggests that part of the
7 problem lies with the quality of the petitions and I
8 have to take exception with that. And I'd like remind
9 everyone that taxpayers are not obligated to provide
10 information to a local government agency or a
11 consultant.
12 And having said that, we make every effort to
13 ensure that the petitions we submit are accurate and
14 contain as much information as possible. In addition to
15 the name, phone number and address, we often include
16 maps, photos, copies of web pages, County Assessors'
17 information. We make purchases to show receipts,
18 shipping and tracking information.
19 I can give you specific examples where
20 petitions were submitted to the Allocation Group and had
21 20, 30 and 40 pages of documentation and yet they still
22 take years to get resolved.
23 In the cases where the taxpayer will not
24 provide information to a consultant, we must rely on the
25 Allocation Group to complete a timely and accurate
26 investigation. To insure a timely investigation, we
27 need deadlines, timelines and goals.
28 In 2006 the US Bureau of Labor and Statistics

1 published a 25-year study showing that Americans change
2 jobs, on average, every two and a half years. That
3 means that the contact person I list on the petition I
4 submit today will probably be not working at that firm
5 three years from now.
6 When petitions age, information becomes stale,
7 facts change, businesses close. Time is of the essence.
8 We need to work with Board staff to find a way to move
9 these petitions through the process in a more expedited
10 manner.
11 Thank you.
12 MS. YEE: Thank you, Miss Sturdivant.
13 Next speaker, please?
14 ---o0o---
15 CHRISTY BOUMA
16 Muniservices
17 ---o0o---
18 MS. BOUMA: Madam Chair, Members, Christy Bouma
19 representing Muniservices.
20 I just wanted to come before you, first of all,
21 to thank the Chairwoman and the Board for moving these
22 issues to the interested parties process. I think our
23 company believes that it was a very robust discussion
24 and what -- one thing that we discovered that we had
25 unanimity around during the discussion was that having,
26 you know, a process that is effective and efficient with
27 good data, everybody was focused on making sure that
28 when you ultimately end up before you and we are arguing

1 cases, that we should be arguing over the law and not
2 disputing what the facts are. And, so, everybody
3 continued to refocus on how do we get better facts?
4 So, while deadlines were central to some of the
5 communications and I think those are pivotal to
6 providing a timely process, we also saw the value in
7 trying to come up with options or alternatives to insure
8 that good data is being investigated, reviewed before
9 these cases either come up to your level, which means
10 that a lot of time has passed, or that they get disposed
11 of quickly as they should.
12 And so, to that end, Muniservices appeared
13 frequently in the slide show with many alternatives and
14 I would, frankly, just suggest to you, that because of
15 the quality of the interested parties' process,
16 particularly the second discussion generated a lot more
17 discussion about fact finding, and as active and
18 cooperative participants to allow you to deliberate on
19 what is the best way for you to conduct your business,
20 we thought it was at least our duty to continue to
21 provide alternatives, options, "How do we make sure that
22 the parties are discussing the facts that are before
23 them and how can they discover -- or continue to
24 retrieve the data that's necessary to come to a good
25 legal decision on an issue?"
26 And that is why you have lots of options before
27 you.
28 And graciously and thankfully, Eric Myers will

1 come in behind me to speak more specifically about any
2 of those should you have any questions.
3 Thank you.
4 MS. YEE: Thank you very much.
5 Okay, if you'll relinquish your seats and we'll
6 have the next set of speakers.
7 Thank you.
8 Good morning. Please?
9 ---o0o---
10 ERIC MYERS
11 Muniservices
12 ---o0o---
13 MR. MYERS: Madam Chair, thank you, Members of
14 the Committee.
15 My name is Eric Myers and I'm here on behalf of
16 Muniservices. You just heard from Christy on, I think,
17 the central point in our -- our proposal. I'd like to
18 touch briefly on the -- our proposal regarding the
19 prospective application of this -- of the amendments.
20 We agree with staff conceptually that the
21 changes to the amendments should be prospective. Our
22 concern with staff's language centers around making two
23 points clear.
24 The first is that the transition rules be
25 stated in the past tense, in this case, the past
26 perfect, and I think we agree with staff on that. I
27 think our language is essentially the same as theirs.
28 The second is to make sure that no mischief is

1 caused by language that's extraneous. In the staff's
2 proposed language amendments to Subsection (g), they
3 have characterized the 2008 amendments as being a repeal
4 and readoption of Regulation 1807.
5 We don't see the need for that language. We
6 don't see that it adds any benefit. And from our
7 perspective it invites some mischief. And, so, we would
8 ask that that language be stricken.
9 We are also, at this point, although we had
10 proposed two options, which one was to effectively
11 sunset or retire Regulation 1807, which is our
12 Option 3.1, we're more than happy to have the Board
13 proceed with just considering Option 3.2, which is an
14 amendment without the retirement of Regulation 1807.
15 And then, finally, just to note, part of what
16 we understood this interested party process to be about
17 was not a criticism of staff, but an opportunity to look
18 at ways we might improve the process.
19 While we appreciate and thank staff for their
20 diligent efforts in looking into what could be revised
21 in the process and we agree with staff as far as they
22 go, we think that there might be a missed opportunity
23 here if we don't go a little farther.
24 And that opportunity is to -- to make sure that
25 facts are developed more fully earlier in the process
26 and that we create a process that has incentives for
27 staff, who has the tools -- they have the sticks and the
28 carrots -- and to make sure that those tools are used

1 early to develop the facts fully.
2 Thank you.
3 MS. YEE: Thank you very much, Mr. Myers.
4 ---o0o---
5 BOB CENDEJAS
6 Cities of Long Beach, Ontario, et al.
7 ---o0o---
8 MR. CENDEJAS: Good morning, Mr. Chairman and
9 Members of the Board. I'm Bob Cendejas. I'm
10 representing Long Beach, Ontario and some other cities.
11 First I want to commend the staff for
12 conducting meetings that fully developed the issues and
13 for being very objective during the process. As your
14 staff has probably reported to you, they're always
15 well-conducted meetings.
16 I also want to commend Mr. Klehs, who, after
17 listening to the concerns of the City, withdrew his
18 proposal to impound disputed City revenue during the
19 appeal process. That was of utmost concern to the
20 cities I represent and other cities I heard from.
21 However, I have to break from my colleagues, I
22 support staff's alternative. The way I see it is the
23 Board collects and distributes to the cities the cities'
24 imposed local sales tax for which it charges a fee.
25 Therefore, the Cities are the Allocation
26 Group's client. And the Allocation Group's goal should
27 be to do everything it can to accommodate both sides to
28 the City dispute to arrive at the correct answer the

1 first time.

2 It should not merely kick the dispute to the

3 next level. If it is -- because it's running out of

4 time. Providing the wrong answer at this level creates

5 additional problems for each side of the dispute. As

6 you can imagine, these -- a city to get what later is

7 determined to be the wrong answer and realizes it can't

8 spend revenue or it thinks it's getting revenue that

9 it's not going to get, presents some big problems for

10 it.

11 Also at this time the staff really has limited

12 resources. It has a high number of new disputes each

13 quarter. And it has fluctuating workloads. You know,

14 this regulation being a good example. Therefore, at

15 this time, I do not believe it's prudent to impose

16 additional deadlines or eliminate procedures that would

17 help to arrive at the correct answer the first time.

18 I think Robin mentioned that we'd like it to be

19 speedy and accurate. I think most important one is

20 accurate. I think we have to get the right answer. We

21 have to get it early. We don't want it to continue with

22 bad facts.

23 So, unfortunately, sometimes that takes longer

24 than a lot of us would like. But I -- I think the most

25 important thing, considering the limited resources staff

26 has, is to make sure we get the facts right first, even

27 if it does take longer than we all would like to see.

28 Thank you

1 MS. YEE: Thank you very much, Mr. Cendejas.
2 Other speakers? Other public comment on this
3 item?
4 Okay, hearing none, Members, I wanted to first
5 compliment the staff for the thorough work that they've
6 done on this petition. I really appreciate the clarity
7 of certainly eliminating the current process and the
8 proposed changes.
9 And I wanted to see if I could maybe set the
10 stage for the discussion on this issue.
11 I was supportive of this petition in terms of
12 entertaining the deadlines just because, as you know,
13 many of the cases that this Board hears are dated. And
14 I think particularly at a time such as this, where the
15 State and local governments are so pressed for resources
16 that we really do have to examine whether there is more
17 that we can do to try to resolve these cases and the
18 proper allocation occurs.
19 Having said that, I'm mindful of limited
20 resources that this agency has. And certainly I think
21 the discussion that did take place with respect to how
22 these types of matters -- local allocation matters --
23 compare to other business tax matters that come before
24 the Board and associated time frames relative to those
25 other tax matters actually peaked my curiosity. Because
26 what I found myself thinking was, "We ought to be doing
27 better in those other business tax matters with respect
28 to having, hopefully, some better resolution, more

1 timely." And if it is a resource issue, I'd like to
2 focus it as a the resource issue.
3 But, frankly, I'd like to think about being in
4 the parties' shoes who have to rely on this -- on the
5 Board's decision on these matters and what makes sense.
6 And I think I'm -- I'm very supportive of
7 imposing some sort of time frame deadlines and
8 timelines, but I also want to address the resource issue
9 as well.
10 And I'll have questions to the staff as it
11 relates to what our current cost model provides for
12 relative to staffing.
13 But having said that, let me entertain
14 questions and discussion, Members?
15 Mr. Runner?
16 MR. RUNNER: Yeah, my observation is, I think,
17 along the same lines. And I'd like to hear some of that
18 discussion in regards to whether or not we have a
19 resource problem in the sense of staff not assigned, not
20 enough staff to deal with these issues in a -- in a way
21 that moves them through in a period of time that's
22 reasonable or whether or not we truly had any deadlines
23 in order then to make those decisions and move those up
24 into the process.
25 So, I do have questions in regards to, I guess,
26 both sides of that, No. 1.
27 If we go through some of these deadlines and
28 apply some of these deadlines, what is the cost? What

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1 is the -- what are staff requirements going to be in
2 that regard?
3 But backing up to that, I also want to at least
4 hear from -- and maybe from both sides on that issue --
5 in regards to these are services to which these local
6 governments do pay for.
7 So, I have a basic question and that is, do
8 they pay enough? Do they pay too much? Are they
9 getting -- are they basically getting the services to
10 which they are reimbursing the BOE for?
11 Because, you know, if -- if, indeed, the model
12 is something like they pay enough, but we don't hire
13 enough people in order to fill the -- for the revenues
14 that we are receiving, then that seems to be a staffing
15 problem that we have to address.
16 And, so, I'm interested in kind of some
17 observations, I think, in that regard. And it seems to
18 me that so much of what we're dealing with and some of
19 these differences all revolve around the issue of
20 deadlines. I think that is going to be the core part of
21 some of this discussion from my perspective.
22 MS. YEE: Maybe staff can respond to that
23 question with -- speaking about currently what the cost
24 model provides for relative to the amount of resources
25 we have to deal with these types of matters.
26 MR. HUXSOLL: We have Steven Mercer here from
27 budget.
28 MS. YEE: Okay.

1 MR. HUXSOLL: If you have specific questions on
2 the cost --
3 MS. YEE: Sure.
4 MR. HUXSOLL: -- model.
5 MS. YEE: Okay. Good morning.
6 MR. MERCER: Good morning, Chair, good morning,
7 Members.
8 My name is Steven Mercer and I'm with the
9 budget section here.
10 MS. YEE: Okay.
11 MR. MERCER: Currently the sales and use tax
12 allocation model looks at things at a very high level.
13 And by doing so, when you get into these fine details,
14 it doesn't necessarily address it.
15 But during the -- but in that allocation model
16 the Bradley-Burns and the special taxing jurisdictions
17 do pay for approximately one-third of the cost of the
18 sales and use tax program. The State pays the other
19 two-thirds.
20 Now, if the workload associated with the -- the
21 local governments and special taxing jurisdictions went
22 away and we lost one-third of our funding, we could not
23 maintain the current level of program activities for the
24 sales and use tax program because the State and the
25 locals both share a lot of costs together.
26 So, I think it's a mutually beneficial
27 allocation model where both pay for shared costs. But
28 we just don't get down to these direct activities to --

1 when you're looking at these, you know, detailed cost
2 shifts.
3 MS. YEE: Okay. Can you maybe just elaborate
4 on whether that one-third cost share from the local
5 jurisdictions, what does that actually support?
6 MR. MERCER: It supports all of the sales and
7 use tax program, the registration of taxpayers, the
8 auditing of taxpayers, the returns processing,
9 collection activities -- you know, all of those, and
10 also all of the administration component of the Board as
11 well that's associated with the program.
12 MS. YEE: Okay. Ms. Mandel?
13 MS. MANDEL: So, what -- I think what you're
14 saying is that the direct cost of the petition for
15 reallocation of local sales tax process is not a
16 separate nugget in there, it's part of the overall
17 administrative -- everything is just -- it's a one-third
18 across the Board?
19 MR. MERCER: That's correct, at a very high
20 level.
21 We look at those -- each of those four
22 activities -- the registration, returns processing,
23 collections and auditing -- and we -- for the three of
24 those -- the registration, collections and auditing --
25 we look at the revenue associated with each of those
26 activities. And based on that percentage, we allocate
27 the cost of those activities to the State and the
28 locals.

1 For the returns processing part -- portion of
2 it, we go a little bit further, we do a little bit of
3 workload activity. We look at what's on the return and
4 how many lines of the return are associated with the
5 State and with the local entities and we also factor the
6 revenue in that a little bit as well.
7 And then we allocate the cost of that element
8 to the State and the locals. Overall it comes out to be
9 about two-thirds, one-third, but each individual
10 activity may vary.
11 MS. YEE: And this particular, I guess,
12 activity, the local allocation piece of it, that is
13 funded out of the return processing element?
14 MR. MERCER: Yes, that's associated with the
15 returns processing.
16 MS. YEE. Okay. And my understanding is that
17 that element or local allocation is paid -- what is
18 it -- or is it return processing?
19 What's the 4753 stand for?
20 MR. MERCER: That's the returns processing.
21 MS. YEE: Okay, return processing, okay.
22 So, within that element and with respect to the
23 current workload of the Allocation Unit, are we
24 sufficiently funded?
25 MR. MERCER: I believe the allocation is fair.
26 I can't tell you exactly, you know, if they're getting
27 the bang for their buck.
28 But I believe --

1 MS. YEE: I guess the question I'm driving at
2 is, is the absence of deadlines and timelines now and
3 the way in which local allocation works, in response to
4 the available support and funding?
5 Or I guess what's driving? And then when we
6 overlay the proposed timelines and deadlines, I want to
7 know then what the impact will be?
8 MR. KLEHS: May I just interject briefly?
9 MS. YEE: Let me have -- let me see if you can
10 answer, then I'll get to you.
11 MR. MERCER: That's a very hard question to
12 answer.
13 MS. YEE: Okay, all right.
14 MR. KLEHS: So, I was going to assist you with
15 the question where, you know, there is one person who
16 handles all of these tax cases. It's an exceptional
17 lawyer, highly qualified, does a great job.
18 MS. YEE: Yes.
19 MR. KLEHS: But, perhaps, the question to ask
20 is should there be more money allocated --
21 MS. YEE: Well --
22 MR. KLEHS: -- for two or three people?
23 MS. YEE: Yeah, I am -- we'll get there.
24 Part of the problem is that we're working
25 within a cost model that is not flexible.
26 And, so, we have that challenge and I think we
27 can talk about kind of what the workload need will be if
28 we were to adopt these revisions with -- to impose

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1 timelines and deadlines.
2 I'm trying to get a sense of the current lay of
3 the land with respect to what's driving the current
4 workload and staffing. Is it because -- are we working
5 up to kind of what's available relative to the resources
6 for local allocation from this return processing
7 element, I guess, is really --
8 MR. MERCER: We don't set like targets.
9 MS. YEE: Okay.
10 MS. MANDEL: Is that a question for the budget
11 guy or a question for the staff that handles it?
12 Because I had the impression he was from the
13 budget office.
14 MS. YEE: Yeah.
15 MS. MANDEL: So, I'm am a little confused.
16 MS. YEE: But I guess to the extent that we are
17 tracking, kind of, these expenditures from each of these
18 elements, I didn't know quite how to account for --
19 MS. MANDEL: Okay.
20 MS. YEE: -- the expenditure, but I'm open to
21 hearing it from both.
22 Mr. Hanks, do you have a view?
23 MR. HANKS: Yes. Ms. Yee, I could offer the
24 staffing model that we've have got in the Allocation
25 Group and I think that's the majority of the work that
26 we're talking about here, where we've got the active
27 petitions, we've got a group of approximately ten
28 individuals that are actively engaged in working the

1 petitions that the consultants are talking about this
2 morning.
3 We believe that we have sufficient staffing,
4 actually, to handle the work flow that is given to us.
5 We actually process a number of these petitions. We're
6 actively engaged in doing that each month. We might
7 receive 500 of these cases a month. We might process as
8 many as 600 of these cases a month.
9 Now, we do have -- as has been noted
10 previously, we have approximately a thousand open
11 inquiries that are over two years. However, what's
12 significant about that is that 60 percent of those only
13 relate to six accounts, six taxpayer accounts. And, so
14 they're complicated cases that are, consequently, taking
15 more staff time to investigate and determine whether or
16 not a misallocation has occurred.
17 We're very mindful of the dates of knowledge
18 that we're operating with. We want to ensure that the
19 local tax is allocated correctly. And I think that's --
20 that's probably what leads to some of the time frames
21 that we're talking about.
22 That said, we think that there is sufficient
23 triggers, however, within the statute that can be pulled
24 that identify when our Allocation Group needs to make a
25 decision. We're mindful of that. I know that the
26 consultants would like to recommend different timelines
27 or stricter timelines, but, actually, I think when you
28 look at the current regulations, actually the time

1 frames within the current regulation are somewhat
2 parallel to some of the time frames that have been
3 suggested this morning.
4 With regard to processing more of the active
5 petitions in our Appeals Division, we have only -- we
6 have less than ten active cases in the Appeals Division.
7 A majority of the cases that are under review are
8 actually being worked and handled by our Allocation
9 Group. We're mindful of that.
10 We are in a position where we ought to
11 investigate further whether or not a misallocation has
12 occurred, whether or not we need to recommend
13 reallocations. We're mindful of that.
14 And just transferring these cases to the
15 Appeals Division after -- if we haven't thoroughly
16 investigated these cases, it isn't going to be to the
17 benefit of the locals, certainly it's not going to be
18 advantageous for our Appeals Division staff, looking at
19 undeveloped cases. So, I think that explains why some
20 of these cases are taking longer than expected.
21 But with that said, however, I've got an
22 inventory listing that identifies a number of these
23 petition cases that we close on a month to month basis.
24 In March of this year we closed 361 cases. The
25 month prior we closed 560 cases. The month before that
26 we closed 950 cases.
27 And I note that over time, actually, that
28 inventory of -- ending inventory of petition cases that

1 we have in the Allocation Group is gradually
2 diminishing. It's gradually getting smaller because
3 we've got more people now actively engaged in working
4 these petitions.
5 As the Board Members and everyone's mindfully
6 aware, there were times for nine months when we couldn't
7 retain a supervisor, even, for the Allocation Group. We
8 couldn't hire to -- to fully staff that section.
9 Now we can and the Allocation Group is staffed.
10 And we're actively involved in processing and clearing
11 these cases.
12 MS. YEE: Okay. I assume -- I'm sorry,
13 Mr. Runner, I'll be back to you, we're kind off on a
14 tangent.
15 I assume the cases you are able to clear each
16 month are the ones for which you have a lot of
17 information. They probably are, maybe, lower dollar
18 items, although not necessarily, but that -- but that
19 information is much more readily available that will
20 allow you to get rid of those cases.
21 MR. HANKS: That's correct. I'm not certain
22 about the dollar value --
23 MS. YEE: Okay.
24 MR. HANKS: -- but I think, actually, the
25 information component is another critical factor.
26 What we have determined in looking at just some
27 of the recent petitions that have been filed, within the
28 last several weeks, we note that many of those petitions

1 come to us with insufficient information for us to make
2 a determination on whether a reallocation needs to
3 occur.
4 We would comment to the consultants especially
5 that many times the cases and petitions that they're
6 processing with us are filed with us in an incomplete
7 manner.
8 And what we need is three informations, really,
9 to determine whether or not a misallocation or
10 reallocation is needed. We need the amount of the
11 transfer. We need to know who's getting the funds. We
12 need to know where the funds are coming from.
13 Oftentimes that information isn't fully
14 developed for our staff to identify that a reallocation
15 is necessary.
16 MS. YEE: Okay.
17 MR. HANKS: When that information is deficient,
18 we have to investigate and that leads to additional time
19 by staff.
20 MS. YEE: Okay. I think that it's probably
21 fair to say you see a variety of degrees of completion
22 when these petitions are filed.
23 MR. HANKS: That's correct.
24 MS. YEE: Okay. And I would think imposing the
25 timelines and deadlines would put all parties' feet to
26 the fire in terms of being sure that there's complete
27 information submitted.
28 And my last question is, elaborate a little bit

1 on the complexity of the cases and kind of how you
2 assign staff resources to them.
3 And I understand that when they're focused on,
4 perhaps, one single large taxpayer and it can be
5 complex, but those generally might be -- and I don't
6 know, just hypothetically say -- probably involve larger
7 dollar or maybe more jurisdictions?
8 MR. HANKS: Correct.
9 MS. YEE: So, how do we kind of work through
10 those, because those do tend to be the ones that are
11 dated that come before the Board and you've got many
12 jurisdictions, obviously, that are waiting for the
13 outcome --
14 MR. HANKS: Right.
15 MS. YEE: -- the proper allocation.
16 MR. HANKS: Right. We do analyze the cases
17 when they're first submitted to us. We review them, try
18 and determine their complexity, determine whether or not
19 we're looking at a taxpayer that is engaged in multiple
20 or all jurisdictions within California.
21 The simpler cases are handled by the staff that
22 have the requisite knowledge and experience to handle
23 those cases. The more experienced auditors are handling
24 the more difficult and complex cases.
25 Recently we've been involved in the one case, I
26 believe, that Mr. Klehs was discussing, extremely
27 complex matter involving different issues that we
28 haven't necessarily had to review before. We've got

1 revenue agreements that have been drafted with cities
2 that add even more complexity. We have got multiple
3 jurisdictions involved.
4 Those types of cases are handled by our more
5 senior auditors. They typically involve investigations
6 where we'll send staff from our Allocation Group out
7 into the field, out into the Districts, to observe the
8 sales activities of the businesses that are allegedly
9 involved in new business operations in new locations.
10 So, those do entail more effort, more staff time,
11 certainly more consultation with their supervisors.
12 We've just retained a new supervisor within our
13 Allocation Group, he's only been on the staff for a few
14 months now. We're very happy to have him. He's a very
15 seasoned and experienced auditor. And I'm thrilled that
16 we're able to retain him for working in our Allocation
17 Group. And I think under his stewardship that -- that
18 we're going to be working these cases and our inventory
19 is going to decrease even from the level that we see
20 today.
21 MS. YEE: Okay, all right. And any difference
22 in terms of how you work cases where the taxpayer's no
23 longer in operation?
24 MR. HANKS: Those are very difficult cases for
25 us to look at. Oftentimes we consult with our auditors
26 in the field. They are involved in doing these types of
27 investigations for us.
28 If the businesses have closed, it's extremely

1 difficult for us to obtain information from -- from any
2 of the employees, of course, they're not available to
3 talk to. Oftentimes the documentation is nonexistent at
4 that point. It's very difficult for us to obtain
5 information for businesses that have either closed or
6 just sold their operations or have relocated to new
7 locations elsewhere, out of state, in some cases. So,
8 those are particularly difficult for us to work.
9 MS. YEE: Although for those types of cases, at
10 some point, the information you have is the information
11 you have and --
12 MR. HANKS: Correct.
13 MS. YEE: -- you proceed more expeditiously?
14 Okay, Mr. Runner, I am very sorry for going off
15 on a tangent.
16 MR. RUNNER: Back up a little bit to some of
17 the finance issues just real quick.
18 MS. YEE: All right.
19 MR. RUNNER: From an overview, the
20 administrative charge that is coming in from the local
21 governments covers about a third?
22 MR. MERCER: Of the cost of the sales and use
23 tax program.
24 MR. RUNNER: Of the sales and tax --
25 MR. MERCER: Program.
26 MR. RUNNER: -- program.
27 MR. MERCER: Yes.
28 MR. RUNNER: And we don't -- well, let me -- as

1 opposed to, for instance, we don't have a connection
2 between what their costs are, what their -- what their
3 administrative charge is and the whole process of the
4 appeal and the distribution side of that?
5 MR. MERCER: Correct. We do not go down to
6 that level of detail.
7 MR. RUNNER: Let me just ask, I guess, some
8 local government reps or at least people who -- is
9 that -- is that the understanding that you have with the
10 administrative charge, that the administrative charge
11 would not be connected to the cost of the administration
12 of the allocation program?
13 MS. STURDIVANT: Well, it's the understanding
14 of the local government agency that the fee that's
15 withheld to cover the administrative costs of the sales
16 and use tax program is to cover that local tax portion,
17 the amounts that the cities get back and they use to
18 fund their vital services -- police and fire.
19 And again from the 2008-2009 annual report,
20 that that amount was combined $100 million.
21 MR. RUNNER: Okay.
22 MS. STURDIVANT: So, if it's a third, it's only
23 funding a third, So, that program in its entirety, I
24 guess, we're saying is a $300 million program?
25 MR. MERCER: That's correct.
26 MR. RUNNER: We believe that the allocation
27 program is a $300 million program?
28 MR. MERCER: I'm sorry, not -- that's the sales

1 and use tax program.
2 MR. RUNNER: The whole -- oh, okay, the
3 whole -- but we don't know what the cost is?
4 MR. MERCER: Specifically of the allocation
5 portion of it, no.
6 MR. RUNNER: Is that -- I guess I don't
7 understand how we don't know.
8 And I don't know whether I go to the program
9 people or the budget people.
10 Do we not know how many people work in that
11 area, what the -- you know, what the costs are? How do
12 we not know what a function like that costs us?
13 MR. HANKS: Senator Runner, we certainly know
14 what the staff cost within our Allocation Group, we know
15 the number of individuals that are in that section.
16 MR. RUNNER: Right.
17 MR. HANKS: I don't have the particular numbers
18 in front of me because I thought we're speaking more in
19 terms of a global budget for handling local tax matters.
20 MR. RUNNER: Okay. Well, I guess the point --
21 MR. HANKS: Definitely it's --
22 MR. RUNNER: -- a point, I guess, I'd make is
23 that it seems to me it is appropriate if you are going
24 to have a customer out there and you're collecting a fee
25 from these customers to provide a service, we ought to
26 know what the cost of that service is so that we know
27 whether they're paying enough or too much.
28 Seems reasonable to me at that point, is that,

1 at least as I would understand, maybe the relationship
2 isn't that.
3 Let me go back to issue of the covering the
4 third. So, when you say it covers a third of the total
5 program, help me understand the distribution of that
6 sales tax in terms of where it ends up going.
7 Because not a third of that sales tax goes to
8 local governments.
9 MR. MERCER: A third of the tax collected --
10 well, currently, not -- it doesn't currently now because
11 of the additional 1 percent tax that was added to the
12 State legislation -- or the legislation was put in to
13 exclude that 1 percent revenue from the cost allocation
14 model.
15 But with -- without that 1 percent,
16 approximately one-third of the revenue goes to local
17 governments, the special taxing jurisdictions.
18 And then there is also the local or local
19 revenue fund and public safety fund, which also goes to
20 local governments as well.
21 MR. RUNNER: But not the new -- not the
22 1 percent, the additional 1?
23 MR. MERCER: The additional 1 percent is
24 excluded.
25 MR. RUNNER: Okay, okay. I don't know. I'm
26 just getting a feeling like, actually, local
27 government's overpaying a bit for what it is -- the
28 services that they're receiving, just my general feeling

1 here.

2 And I guess it's unfortunate that we don't

3 exactly have that number.

4 Let me just ask then the specific question

5 because it is an issue to me, again, for service for

6 what people are paying for.

7 And in many of the discussions, as Mr. Klehs

8 has brought up, that it has come down to one of the

9 examples is a single attorney in the Appeals process at

10 that point, as an example.

11 Let me just ask, is it the opinion that -- of

12 staff that if they had more -- an additional person

13 there that we could shorten the time process that we

14 have or does it merely, in the opinion of staff, not

15 make any difference?

16 MR. HUXSOLL: There's -- in analyzing the cases

17 in Appeals right now there is adequate staffing in

18 Appeals to prevent a backlog from occurring.

19 As far as the numbers go, since 2008 Appeals

20 had an inventory of 1552 petitions with only 540

21 taxpayers. And currently all that's left in inventory

22 are cases involving 18 taxpayers. There are currently

23 only five cases that remain to be set for Appeals

24 conferences.

25 And Appeals anticipates that all the

26 conferences will be set by the end of the year.

27 And in the last three years -- in 2009, Appeals

28 received three cases. In 2010, one case to went to

1 Appeals. And in 2011 there have not been any cases that
2 have been forwarded to Appeals.
3 So, there is adequate staffing at the Appeals
4 level to handle this.
5 MR. RUNNER: Let me go back and ask the folks
6 at the other side.
7 In terms of -- do those who are in the Appeals
8 process or before the Board in certain levels feel like
9 there's adequate staff at that point?
10 MR. KLEHS: Well, speaking for the City of
11 Livermore and what I've observed in the process so far
12 and looking at the number of cases that are going back
13 to 13 years, a case shouldn't go back 13, 12 or five
14 years. It just -- it doesn't make a lot of sense.
15 And it also doesn't make a lot of sense if you
16 have one person handling all of these appeals going back
17 as far as 13 years. So, that's enough people to handle
18 the workload.
19 You would think that the Appeals Division would
20 have more than one person doing this. Because what if
21 the person got sick? Or what if they go on vacation?
22 Or what if something else happens? Then you have nobody
23 handling this.
24 It just seems -- it's a good idea to have more
25 than one person doing this job
26 MR. RUNNER: Okay.
27 MR. KLEHS: And Senator Runner, you and I were
28 both in the legislature. We know that process takes two

1 years, right?

2 But it seems to me that you can go from the

3 beginning to the end of one of these processes in about

4 a two-year period where you get as much accurate

5 information as possible for the Allocation Group, the

6 Appeals Division and the Board to make an accurate

7 decision and have the money go to the right

8 jurisdiction.

9 MR. RUNNER: Let me just ask one other question

10 then in terms of -- has there been any analysis done

11 then by staff if, indeed, these dates were implemented,

12 what would be the cost requirements, the staffing

13 requirements, in order to meet the deadlines as have

14 been presented in some of the alternatives?

15 MR. HUXSOLL: I'm not aware of that analysis.

16 MR. RUNNER: We could we put these deadlines to

17 get this done faster and it wouldn't take any more

18 staff?

19 MR. HANKS: Senator Runner, I don't believe

20 that the issue is a bottleneck of cases within our

21 Appeals Division, first and foremost.

22 I think -- I'm respectful of Mr. Klehs's

23 concern that there is only one individual currently

24 handling these cases, but I am certain that the Appeals

25 Division also has contingencies. If that attorney were

26 unavailable, the workload, of course, would be

27 reassigned.

28 MR. RUNNER: You know, I assume there's people

1 cross trained for that too, but maybe just ask that.
2 Now I'm a little confused. You mean we could
3 actually implement these deadlines, which would speed
4 the process, and there wouldn't be any staff
5 requirements on our part?
6 MR. HANKS: I think the result from my
7 Allocation Group would be if there are stricter
8 deadlines than what are currently available, I would
9 guess that probably we wouldn't be spending the
10 requisite time that we believe is necessary to
11 thoroughly investigate these cases.
12 And as a result, we would be transferring to
13 the Appeals Division cases that are likely undeveloped.
14 We could certainly deny more of these cases,
15 but that's not our intention. We're probably guilty in
16 the sense of holding some of these cases open too long.
17 But we're only mindful that we're trying to do the
18 correct thing to make sure that the local tax is
19 appropriately allocated.
20 However, when there is -- there is no
21 additional information that's coming to our Allocation
22 Group from the consultants, we do deny the petitions.
23 And it's at that point then the consultants
24 are --
25 MR. RUNNER: So, what I'm hearing --
26 MR. HANKS: -- working the cases.
27 MR. RUNNER: -- so, what I'm hearing is that
28 the decision would be to maintain at the current

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1 staffing levels and then just move items based upon
2 these deadlines and, therefore, the concern on the
3 staff's part would be they would not have the adequate
4 review and the quality of what would be done would be
5 less?
6 Is that a fair summary?
7 MR. HANKS: That's correct.
8 MR. RUNNER: Okay, I have just a couple -- one
9 or two other questions I want to get to just in regards
10 to the aspect of what slows down the process and the
11 issues of reports and responses and if deadlines really
12 accomplish anything.
13 But I'll let somebody else, I think, answer --
14 ask a couple of questions first.
15 Take a little time here.
16 MS. YEE: Thank you, Mr. Runner.
17 Mr. Horton?
18 MR. HORTON: Thank you, Madam Chair.
19 I just wanted to -- let me ask a couple of
20 questions first.
21 What is the history of the backlogs, the reason
22 for the backlogs -- and in an effort to identify what
23 the problem is, whether or not this is a systemic
24 problem, an institutional problem or whether or not it
25 is a problem that requires deadlines?
26 So, can you give us somewhat of the history of
27 why these backlogs occurred in the first place?
28 I think we're all concerned about when it takes

1 13 years or an exorbitant amount of time. Even given
2 the complexity of the transaction, that seems to be a
3 little longer.
4 So, can you share with us the history of why
5 the original backlogs occurred and where we are now
6 relative to backlogs?
7 MR. HANKS: Absolutely.
8 Mr. Horton, I think part of the difficulty that
9 our Allocation Group had was during the time of the
10 budget freeze when we couldn't hire additional staff
11 members within our Allocation Group. We were short
12 staffed. We didn't have a supervisor over the section
13 It was at that time, I think, that we had a
14 ramp up of the number of unworked cases. That was just
15 a matter of those times.
16 Fortunately, we've passed beyond that.
17 We're -- now we're staffed within the Allocation Group.
18 We have a new supervisor that's very mindful of the
19 inventory that he's got within his database. He's
20 mindful that we need to tackle that -- that history and
21 inventory of cases.
22 We currently have 4300 cases that are shown in
23 inventory. I do note, however, that the opening
24 inquiries that we have that are older than two years old
25 really relate only to six accounts, 60 percent of that
26 backlog relates to six accounts where we've got very
27 complex transactions involving multiple jurisdictions
28 throughout the State.

1 Another matter complicating our completing
2 these cases in a more timely manner is just the lack of
3 cooperation at times, frankly, from taxpayers.
4 They recognize that the local tax is a shifting
5 of the 1 percent tax from one jurisdiction to another.
6 There -- there is no impetus for the taxpayers
7 necessarily to cooperate with us and identify where
8 these sales transactions occurred because they're still
9 paying the 1 percent regardless of whether the local
10 tax goes to Sacramento County or Los Angeles County.
11 So, that's that's another difficulty that's posed in
12 completing these cases even quicker than we have today.
13 Another factor is the consultants giving us
14 inquiries where they suspect there might be a
15 misallocation, but they're not exactly sure if that
16 allocation exists.
17 So, oftentimes they will give us incomplete
18 petitions that we need to go and examine and investigate
19 to see whether or not a misallocation has occurred and
20 whether or not we recommend a reallocation.
21 For large transactions where there is
22 special -- a special allocation to the jurisdiction,
23 where the use is made for $500,000 and above type
24 transactions, we're finding that the consultants will
25 hand us paperwork showing that these sales were made for
26 amounts in excess of $500,000.
27 Well, there is no evidence that the
28 jurisdiction that received that local tax money should

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1 be reallocated to another jurisdiction. I think
2 sometimes the -- the jurisdictions are just mindful of
3 that Schedule F being filed with us and they suspect
4 there is a misallocation.
5 But, again, there's lack of complete
6 information coming to our Allocation Group to really
7 explore some of these cases to determine whether or not
8 a reallocation is necessary.
9 So, I think those are all of the factors that
10 really come together to -- to slow down this process a
11 bit. Although at the same time I want to be mindful
12 that we are clearing between 300 and 900 cases a month.
13 And we are slowly decreasing the amount of the petition
14 workload that we have within our Allocation Group.
15 MR. HORTON: Thank you.
16 So, given that the personnel matters, the
17 budget, allocation of staff and all of that has been
18 resolved, the backlog itself has been taken care of, for
19 the most part, and staff believes that they can project
20 that these backlogs won't occur as long as we keep the
21 same -- the current level of staffing, is that an
22 accurate summation?
23 MR. HANKS: Mr. Horton, I think that that's
24 accurate.
25 I mean, I would love to say that I would like
26 to have the Allocation Group double in size and we'd
27 have twice the number of staff working these cases, but
28 I don't think that it's necessary.

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1 I think that if we -- if we are able to target
2 these petitions, these open petitions, working the old,
3 backlogged cases, especially, I think we can reduce the
4 backlog to a manageable level within the current
5 staffing model we have today.
6 MR. HORTON: What can be done to address the
7 front load, the front end, where you're not receiving
8 information timely, you're not receiving adequate
9 information in order to make the decision?
10 Why not deny the petition? And I am not
11 suggesting that you do, I'm just really asking, why
12 don't we deny the petition?
13 Or why not set a deadline on the time that it
14 takes to receive the information, otherwise the petition
15 is denied or some action is taken?
16 I got to share that the concern of shifting the
17 workload from this department to the Appeals Department
18 and then ultimately to the Board and then ultimately
19 back to a 30-30-30 situation if the information is not
20 adequate, does not appear to be the solution, in my
21 mind.
22 But possibly on the front end is there anything
23 that the staff would recommend or the taxpayer's
24 representatives can recommend to address that?
25 MR. HANKS: Mr. Horton, I think that's an
26 excellent suggestion. And that's something that I'm
27 discussing with the Section supervisor as well as our
28 Local Allocation Group supervisor.

1 What I think we need to do is to revise the
2 procedures that we have for acknowledging petitions as
3 they're filed with the Allocation Group. I think within
4 the first 30 day window especially that we receive these
5 petitions, we need to review them for their
6 completeness.
7 And if they aren't complete, we need to refer
8 them back to the jurisdictions and have them submit
9 complete information that we can use to explore further
10 whether or not a reallocation is necessary. And those
11 are procedures that we're looking into today.
12 MR. HORTON: So, let's ask the representatives
13 about that 30-day deadline and that procedure.
14 MS. STURDIVANT: Again, I'd like to remind
15 everyone that a taxpayer is not obligated in any way to
16 provide information to a third party consultant.
17 Oftentimes a taxpayer considers that
18 information proprietary. And they will confirm to us
19 that there is an error on the return, that there was a
20 misallocation, there was a large use tax transaction,
21 but they're not comfortable releasing that information
22 to a third party. But they will, however, release it to
23 the Board.
24 In recent months we've been asked by the
25 Allocation Group,
26 "Could you get the amended schedules from the
27 taxpayer? Could you get a copy of the invoice?
28 Could you get a copy of the shipping

1 documents?"
2 We can certainly try, but again they're not
3 obligated to give that information to us. So, we don't
4 have the authority of the Board of Equalization behind
5 us to request that information.
6 So, to say that a petition is not complete
7 because I don't have a copy of the invoice, because the
8 taxpayer is not required to give that to me, is a little
9 unfair.
10 We need some -- we need some compromise. We
11 need some work from the Allocation Group.
12 MR. HORTON: So, let's ask the more global
13 question then, why not submit to the Board of
14 Equalization all of the information that you have, as
15 well as delineate the information that you believe is
16 necessary that is -- that you don't have the authority
17 to acquire?
18 And why can't the Board of Equalization, at
19 that point, seek out the information in order to be able
20 to answer the question whether or not there is a proper
21 allocation to get to the best answers?
22 And can that be accomplished within a timeline?
23 And what would that timeline be? And would there be a
24 requirement for additional staff on the front load in
25 order to accomplish that?
26 MS. MANDEL: Could I --
27 MS. YEE: Ms. Mandel, please?
28 MS. MANDEL: Because it seems -- I don't know

1 what these things say when they come in, but in the
2 scenario that was just mentioned where the taxpayer says
3 they -- where the consultant tried to get it but the
4 taxpayer says, "I'm not comfortable," that sounds like
5 the sort of thing that ought to be laid out in the
6 petition --
7 "That we did seek this information, we are
8 informed that the -- that the taxpayer has the
9 information. But the taxpayer is not
10 comfortable providing it to a third party and
11 that's why it's not included with this
12 petition."
13 MS. STURDIVANT: Ms. Mandel?
14 MS. MANDEL: And I don't know, maybe that's
15 what you do say now.
16 MS. STURDIVANT: In those cases, we'll -- you
17 know, in the case of --
18 MS. YEE: Hold on. Mr. Horton?
19 MR. HORTON: One second -- I think that global
20 question, if it got answered it would answer my -- both
21 my question as well as --
22 MS. YEE: Right.
23 MR. HORTON: -- Ms. Mandel's elaboration on
24 that.
25 So, possibly let's see if staff can answer the
26 question as a starting point.
27 MR. HANKS: Mr. Horton, we would welcome the
28 information that's been described if we knew who that

1 contact person was at the taxpayer's place of business
2 that the consultant was talking to, the date of that
3 conversation, specifically, you know, addressing the
4 type of transaction that's in question, I think that
5 that would speak volumes toward giving us a more
6 complete file and allowing us to investigate our cases
7 sooner.
8 But what I'm mentioning and what I'm hearing
9 from the Allocation Group is that oftentimes that level
10 of detail isn't there. And it just necessitates more --
11 more work for our Allocation Group to do these
12 investigations.
13 MR. HORTON: Well, I don't want to interrupt
14 you, but I think we all acknowledge that there are
15 situations where the level of detail isn't there.
16 So, the question is what is the solution in
17 order to get us there as quickly as possible or get us
18 to a point that we can make a decision that the
19 information is not available and we can't obtain it, the
20 Board of Equalization doesn't have the authority to
21 obtain it for whatever proprietary restrictions might
22 exist, and we either deny or begin to work on the case?
23 And the -- and the follow-up to that was, is
24 there a cost associated? Do we need additional staffing
25 on the front end?
26 And what would be a reasonable deadline to
27 provide to the taxpayer in order to give that -- provide
28 that information to the Board, given the subjective

1 ability to extend that deadline, which we all know will
2 occur?
3 MR. HANKS: Right. Mr. Horton, I'm mindful of
4 what Ms. Mandel has mentioned. And I think if that
5 level of detail were supplied in the petitions that
6 we're receiving, we'd be very happy to contact the
7 taxpayer and to thoroughly investigate the claims that
8 local taxes need to be reallocated.
9 I don't believe that we need additional
10 staffing to necessarily do that. I think that within
11 the first 30 days after acknowledging a petition that we
12 can examine the case that's been filed with us, we can
13 make a determination whether or not we need sufficient
14 -- we need additional information. And, if so, we
15 can -- we can return the petition to the consultant for
16 this additional information.
17 But I think if the consultant is mindful that
18 we need to have that level of detail as Ms. Mandel
19 described, that would be important for us.
20 MS. MANDEL: Mr. Horton?
21 MR. HORTON: Sure.
22 MS. MANDEL: I think what I'm hearing Mr. Hanks
23 answer to be is that if staff would develop more -- I
24 don't know what they are because I haven't ever filed
25 one of these petitions -- but more clear, exacting
26 guidelines as to what people should put in the petition
27 so that they may be worked promptly, then staff,
28 presumably, hopefully, will get what Mr. Hanks is

1 talking about.

2 MR. HORTON: Or, at a minimum, be able to

3 identify -- or the taxpayer to be able to identify the

4 information that they can not obtain --

5 MS. MANDEL: Right, meaning the consultants.

6 MR. HORTON: -- in negotiations.

7 MR. MYERS: If I may comment very quickly in

8 response --

9 MS. YEE: Mr. Myers, quickly.

10 MR. MYERS: -- to that?

11 Thank you, Madam Chair.

12 The regulation already requires us to provide

13 seven pieces of information when we file a petition in

14 order to establish a date of knowledge.

15 Included among those are the specific reasons

16 and evidence why the taxpayer's allocation is

17 questioned.

18 So, when we file the petition, we're already

19 required to produce what we have.

20 We remain more than open and willing to work

21 with staff if there's a process whereby we can identify,

22 you know, further information that is needed, that they

23 might immediately proceed to try to acquire that because

24 they have authority that we don't have.

25 So, if we know that there's a report but the

26 taxpayers told us -- I don't think -- I am not speaking

27 for HdL, but I think we'd be more than happy to work

28 with staff on that.

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1 The concern that I have is the description that
2 these are incomplete petitions. Now, the definition of
3 a petition is already set forth in the regulation. What
4 I hear staff saying is, "If you gave us more information
5 we could do our investigations faster."
6 Well, staff, No. 1, has the regulatory to do
7 the investigation. Once we provide the initial
8 information to set forth a petition and establish a date
9 of knowledge, then staff's duty is to do the
10 investigation under the regulation.
11 But we're more than happy to work with them on
12 trying to expedite that. But my recent experience has
13 been that that's not -- the issue hasn't been that you
14 look at a petition and don't know what to do next, but
15 that staff will give extensions after extensions to
16 taxpayers during an investigation.
17 And at the end of the day -- and this is not
18 meant as a black mark on staff at all -- but they'll
19 give extension after extension after extension to a
20 taxpayer who keeps saying, "I'll get you the documents.
21 I'll get you the documents. I'll get the documents."
22 I watched this happen for six months in a
23 recent matter. And, at the end of the day, the taxpayer
24 didn't produce the documents.
25 MS. YEE: Okay, I'm going to have you stop.
26 MR. MYERS: Yeah, okay.
27 MS. YEE: Mr. Horton?
28 MS. STURDIVANT: If I could add to that real

1 quickly?

2 MS. YEE: Ms. Sturdivant, let me get all of the

3 questions out because I think we're starting to hear

4 some things that we want to try to coalesce into how we

5 move next.

6 Mr. Horton?

7 MR. HORTON: The question of the Budget

8 Director, shall I say, I just wanted a little clarity on

9 the variables that are involved in not only verifying

10 the Bradley-Burns local tax, but also collecting and

11 administering and the whole compliance effort.

12 I don't want us to walk away perceiving that

13 this element of dealing with the local tax is the only

14 cost that the Board has.

15 I mean, this began from the beginning of

16 filling out the return -- I mean applying for a permit.

17 The taxpayer first comes in is coded and, theoretically,

18 the local tax is coded properly and goes to the right

19 place or it may not go to the right place. A number of

20 decisions are made.

21 Auditors will go out and conduct audits and may

22 very well look at the local tax allocation at that point

23 and cause a reallocation.

24 It could be very much part of the Appeals

25 process. It's certainly part of the process of the

26 Board reviewing it.

27 So, when you look at the costs associated with

28 that, it is a combination of all of the activity that

1 the Board participates in that gets us to a point where
2 we can actually begin to deliberate over whether or not
3 this information is correct.
4 And that, in and of itself, which goes on the
5 appeals to the Board, is part of the cost?
6 MR. MERCER: That is correct.
7 MR. HORTON: Okay. All right, I am -- let me
8 hear from the consultants their recommendation on how to
9 deal with the front end of -- given -- what I'm
10 presuming I'm hearing from staff is that we're really
11 dealing with the exception and not the rule.
12 And, so, I'll -- as a former legislator, I have
13 a challenge sometimes changing the law for the
14 exception, not the rule, and particularly when staff has
15 indicated that there is no backlog. They have caught --
16 they have caught up. Personnel issues have been
17 addressed.
18 But we still have those issues on the front end
19 where the taxpayer is allowed to have these delays. And
20 that, it itself causes ultimate delay.
21 So, your advice to us?
22 MS. STURDIVANT: Well, if I submit a petition
23 and include all of the information that Miss Mandel has
24 suggested, including the contact name, the return
25 period, the dollar figure, but the phone call -- the
26 first initial phone call isn't made to that taxpayer
27 until two or three years after the day I submitted that
28 petition, of course, the taxpayer is going to ask for a

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1 delay. They've got to go pull that information out of
2 an archive file or it's a different taxpayer.
3 You know, oftentimes we'll contact the Board
4 and say, "Okay, we submitted this petition in 2006. We
5 haven't heard anything from you. Can we get an update?"
6 And we'll hear, "Well, you know, we're working
7 working on it." Or, "We've sent a letter."
8 If you send me a letter and say, "Could you
9 call me?" And not give me the reason, I'm probably not
10 going to call.
11 MR. HORTON: Not to interrupt you, but I think
12 -- at least I understand the problem, I'm asking for
13 your advice on what the solution might be on the front
14 end.
15 MS. STURDIVANT: I think maybe better training
16 within the Allocation Group. It's very difficult to
17 cold call someone and be able to extract that kind of
18 propriety information.
19 Training on how to do that, guidelines,
20 perhaps, in the CC or CPPM -- this is your first step,
21 this is your second step, this is what you do next if
22 that doesn't work. You know, maybe it gets forwarded to
23 a supervisor.
24 Something so that they have a guideline. I
25 think that each auditor sort of works petitions in their
26 own way and I am not aware that there is any sort
27 uniform procedures in place on how to handle these
28 petitions.

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1 MR. HORTON: Okay. Staff, your recommendations
2 on how to address the front?
3 MR. HANKS: Mr. Horton, I like Ms. Mandel's
4 suggestion that we really modify the information that
5 we're requesting from the consultants and through the
6 interested parties process, actually, we've had
7 discussions where -- where we've made the suggestion
8 that we want to modify the short form that we're talking
9 about, modify the type of information that we're
10 attempting to obtain from the consultants.
11 Now, being mindful, though, that many of the
12 cases that the consultants provide us are complete.
13 They are complete, we have the requisite information we
14 need to determine if reallocation is necessary.
15 So, we're only talking about the cases where
16 that information is deficient.
17 It's been mentioned that we don't have a
18 procedures manual for handling these types of inquiries.
19 Actually, we do. We've got an ADRS Procedures Manual
20 for the Allocation Group that discusses this process and
21 discusses some of -- some of the procedures that you go
22 through.
23 I don't know that it's as detailed as
24 identifying that this is what you do in all of these
25 circumstances, I don't believe that it's that detailed.
26 But we do have a policy and procedures manual for
27 addressing these types of inquiries.
28 MR. HORTON: You know, Madam Chair, if I may?

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1 MS. YEE: Yes, Mr. Horton?
2 MR. HORTON: You know, I want to get to what
3 the solution is. I think I understand that there's --
4 there's a procedure manual here.
5 I really understand that there is an exception
6 and that we're dealing with the exception and not the
7 rule. And I am very mindful of the inherent danger of
8 making a law or rule around the exception, particularly
9 when it's more of a systemic or personnel matter,
10 possibly some management issues.
11 But -- and I want to say this as well, is that
12 I don't want to -- I don't want to shift the
13 responsibility to the consultant when the Board has a
14 level of responsibility, a level of compensation, in
15 order to address these exceptional transactions.
16 So, I haven't really heard a solution, but I am
17 prepared to make a recommendation without hearing one
18 from someone.
19 MR. KLEHS: May I just --
20 MS. YEE: Hold on.
21 MR. HORTON: But I'm -- I'm -- at this point
22 that concludes my --
23 MS. YEE: You want to put something on the
24 table, Mr. Horton?
25 MS. MANDEL: Ms. Yee?
26 MS. YEE: Ms. Mandel?
27 MS. MANDEL: When Mr. Horton first started
28 talking, I thought we might get an answer to a question

1 that I had because I thought it was the kind of the
2 question he asked.
3 I mean, I don't know how much of what is
4 generating the complaints are because of things that
5 happened sometime ago, that the staffing up sounds like
6 it's handling.
7 But cases may have, in the past, taken a long
8 period of time, I don't know what they're taking now.
9 What I heard being asked at the up -- at the start was
10 something about do we know -- for cases that we have
11 now, do we know what's holding them up?
12 I mean like when we have cases deferred on our
13 docket, we know that it's deferred because there's
14 litigation. We know that it's deferred because it went
15 off to settlement or whatever. We know what's holding
16 the case up. So that if a Member were to ask, "Why do
17 we have all these cases in inventory?" We -- we know
18 why and where they are.
19 And I thought that in trying to get at
20 potential systemic issues in the handling of these types
21 of cases that that was the question was that being
22 asked. Because there may be different categories. It
23 may be that a lot of cases are getting closed because
24 incredibly simple, obvious things are coming in and
25 they're all boom, boom, boom and, you know, there's more
26 complex ones and I just -- it's hard to know.
27 I know that there were a couple of cases, or
28 one or two maybe or some big case that people were upset

1 about and were mindful of not, you know, not letting the
2 last ride govern how we are going down, you know, this
3 line but staff is proposing some changes in the timing.
4 But I don't know if there are systemic types of things
5 from these cases, aside from what you've just identified
6 as some percentage of them maybe, if you had more meat
7 or more something on the front end, you'd be better off.
8 And in terms of -- in terms of things that --
9 where the taxpayer says, "Yeah, I'll get it to you.
10 Yeah, I'll get it to you." I -- backing up, I don't
11 know, you know, how quickly now the contacts are being
12 made or if it's -- or if it's old news that the
13 taxpayers were contacted, you know, a year or two down
14 the road.
15 And where the taxpayer is putting the
16 Allocation Group off, I don't know at what point there
17 is an executive decision made, you know, that the
18 taxpayers -- we're just never going to see this stuff
19 and we've exhausted our ability to try to get it.
20 I don't know what contact there is with the
21 person who filed the petition saying, "You know, the
22 guy's -- it's been like four months and we are not
23 getting any warm fuzzies that we're actually going to
24 see this stuff, what do you want to do with your
25 petition?"
26 But it was the systemic grouping that was first
27 asked about that I thought would sort of inform whether
28 something more really needs to happen.

1 MR. KLEHS: Ms. Mandel, I think the numbers
2 speak for themselves. 28 of the cases that HdL has
3 enumerated here go back to before Ms. Yee was on the
4 Board.
5 MS. MANDEL: But I don't know why.
6 MR. KLEHS: Let me finish the number.
7 MS. MANDEL: I don't know why.
8 MR. KLEHS: Another 57 go back before Ms. Steel
9 was on the Board.
10 MS. YEE: Yeah.
11 MR. KLEHS: And Mr. Hanks genuinely believes
12 that the entire backlog will be cleaned up and the best
13 way to see if that's going to happen is to schedule a
14 meeting exactly one year from today and see if the
15 numbers have changed all that much. And I bet they will
16 not have that much.
17 MS. YEE: Mr. Klehs --
18 MR. KLEHS: So, that's why we're advocating for
19 more deadlines.
20 MS. YEE: Ms. Mandel?
21 MS. MANDEL: No, but that --
22 MR. HANKS: Ms. Mandel, if I could comment?
23 I think everything that's been discussed today
24 I think will go great lengths to reduce the number of
25 cases that we're processing now.
26 I don't think there is a single solution, I
27 think it's a multi-pronged approach that's really going
28 to work this -- this inventory to a more manageable

1 level.

2 I think if we're receiving more complete short

3 forms from the jurisdictions, that's going to assist us

4 work these faster. If we have tax information bulletins

5 that identify the importance of a taxpayer's identifying

6 to us when they change locations, I think that that will

7 help.

8 We have guidelines now that we give to new

9 registrants about the importance of communicating to us

10 when they move to new jurisdictions. That isn't

11 repeated to them over time, however. I think we need to

12 get that type of information out to the public.

13 If we have 30 day reviews, we're acknowledging

14 and reviewing these petitions as they come in and

15 returning them, if necessary, for additional

16 information. I think that will speed the process.

17 I think having new staffing within our

18 Allocation Group is going to assist quite a bit.

19 And then also I would recommend that -- that we

20 have more frequent consultant meetings. The consultants

21 actually do telephone us. We meet with them quite

22 regularly. But perhaps that could be be made more

23 frequent as well where we can -- we can get together and

24 discuss their concerns regarding specific cases.

25 MS. YEE: I want to make a comment here.

26 I'm -- I guess I'm frustrated that we're hearing some

27 things maybe for the first time today about the workload

28 and how workload is addressed in Local Allocation.

1 I continue to be a proponent of the timelines
2 and the deadlines, but here's what I would like to
3 suggest: This conversation reminds me an awful lot of
4 the audit regulation that we recently had promulgated
5 relative to timely furnishing of records.
6 And I think there is a real disconnect
7 between -- a real disconnect in terms of what the
8 expectations are of the parties with respect to these
9 matters of the local jurisdictions, their
10 representatives, of the Board staff and Local
11 Allocation, of the taxpayer.
12 I mean, the fact that we're now talking about
13 putting tax information bulletins out to taxpayers
14 informing them of what they ought to be doing when they
15 change jurisdiction, we should be doing that anyway.
16 So, I think, in large part, this is -- this
17 is -- this encompasses a number of management issues
18 that I think -- I am certainly not willing to
19 memorialize a solution in a regulation, but there has
20 got to be something stronger than just kind of what you
21 just articulated, Mr. Hanks.
22 There has got to be some clear expectation of
23 what Petitioners, local jurisdictions, taxpayers can
24 expect in allocation petition matter.
25 And I don't know how you memorialize that, but
26 with -- and in terms of what the steps are, I mean, it
27 is unacceptable, at least in my view, that if a petition
28 is filed that the taxpayer isn't even contacted for two

1 years. That's just unacceptable -- regardless of how
2 much information was provided upfront.
3 We know who the taxpayer is, there ought to be
4 some contact made.
5
6 MR. HANKS: I don't know any case where we've
7 waited two years.
8 MS. YEE: That's okay, it's maybe a
9 hypothetical, but you get the gist.
10 I don't think any of us sitting up here thinks
11 that that's something that we would tolerate.
12 But I do think that there's got to be some --
13 and maybe it's guidelines coming out of your unit, but I
14 think that we've got to just be very clear about what
15 the process is, what the expectations are of a completed
16 petition.
17 And I know that the representatives believe
18 that they are filing completed petitions, but I also
19 know that they are going to be limited in terms of how
20 complete it can be because of their inability to get
21 information from the taxpayer in question.
22 So, is there -- what's the best mechanism for
23 making those expectations clear for each of the parties
24 involved in a matter like this?
25 And I want to have that articulated and come
26 back to the Board so that we have the confidence that
27 the workload is being worked through on a timely basis
28 and that there are no ambiguities with respect to what

1 to expect when a petition is filed, what to expect in
2 terms of response from the staff and what to expect with
3 response -- with respect to how a taxpayer is approached
4 and then, hopefully, will respond with information.
5 MS. MANDEL: And --
6 MR. RUNNER: Mr. Runner, then Ms. Mandel.
7 MR. RUNNER: Just real quick. I mean, I think
8 those are certainly important. I guess part of my
9 question would be -- and even some of the suggestions I
10 heard about getting together, having conversations, I'm
11 thinking, why didn't we do that before?
12 We're building up -- we clearly are building up
13 a backlog. It takes this discussion in order for us to
14 say, "Hey, maybe we ought to meet more often."?
15 MS. YEE: All right.
16 MR. RUNNER: So, I am a bit perplexed with that
17 as kind of a solution coming from staff.
18 Let me just ask, I guess -- against -- it's
19 interesting both with the Muniservices and HdL in the
20 sense that you have clients on both sides of this
21 issues. So, this isn't an issue to where, you know,
22 you've got winners and losers as to who you represent.
23 You have clients on both sides of the issues.
24 MS. STURDIVANT: Absolutely.
25 MR. RUNNER: Which is -- which is very helpful
26 to me because then it's not an issue where you're saying
27 I want to do this to benefit Client A or Client B,
28 you're just trying to figure out what the process is,

1 whether you benefit from it -- from -- sometimes from it
2 or whether you don't benefit sometimes from it.
3 Let me ask, you heard the staff's response in
4 regards to, well, if we use these deadlines, we're going
5 to have a concern with the quality of information that
6 we're going to have as this moves through the process.
7 Let me ask you -- both of you as
8 representatives of your clients, is that a concern for
9 you or your clients?
10 MR. MYERS: Sure, Mr. Runner. We -- we
11 definitely want accurate decisions. But we think that
12 some reasonable deadlines give staff a tool to use.
13 MR. RUNNER: Let me rephrase it. Let me
14 rephrase that.
15 MR. MYERS: Yes, sir.
16 MR. RUNNER: Rather than asking that, I will
17 ask more specifically.
18 Do the deadlines that are proposed create for
19 you a feeling that you will have your clients
20 disadvantaged with bad information?
21 MS. STURDIVANT: I'll take a shot at that.
22 MR. MYERS: Go ahead, Robin.
23 MS. STURDIVANT: No, because when you present a
24 petition with information, you want the Allocation Group
25 to get back to the taxpayer while that information is at
26 till fresh, while the person that you spoke to that
27 provided you the information still holds that petition,
28 where they can still access that recent sales and use

1 tax return to get the backup to provide that to Board
2 staff.
3 A longer investigation doesn't ensure better
4 investigation. And you -- what we hope, from having
5 clients on both sides, is for the losing jurisdiction
6 you want to minimize that loss. So, rather than -- you
7 know, just a year or two of back adjustments rather than
8 ten years of back adjustments.
9 MR. MYERS: And I would -- if I may,
10 Mr. Runner?
11 MR. RUNNER: Yeah.
12 MR. MYERS: Just add to that slightly -- with
13 the assumption that the investigation is starting at the
14 date of knowledge and going through the deadlines don't
15 trouble us. Maybe they could be a little bit longer.
16 We, on behalf of our clients, are flexible
17 about does it need to be 90 days? If it needs to be a
18 little bit longer, that's fine, as you saw in our
19 proposal. But we do think the deadlines give a good
20 tool. And if that needs to be done at CPPM, which I
21 know we have one coming up, in order to address this
22 front-end type of issue and what the expectations will
23 be, then we would welcome moving it to the CPPM, that's
24 fine with us too.
25 But we we need to -- you know, we're not
26 concerned that not having five years to investigate is
27 going to hurt our clients.
28 MR. RUNNER: Okay. I guess -- I guess based

1 upon -- again, knowing that we have folks here,
2 advocates who represent both sides of the issue and
3 hearing from staff in regards to what their concern is
4 with the dates, you know, I'm compelled to feel like
5 putting deadlines will, indeed, be a better process for
6 us.
7 So, quite frankly, I'm not -- I would be one
8 that would be open to dealing with some -- dealing with
9 these deadlines. And, you know, at that point I guess
10 we will learn, in a year or two, what we accomplished
11 and things can be tweaked at that point.
12 But I am -- again, if the advocates
13 representing both sides of the client over here think
14 that the deadlines do not disadvantage their clients --
15 and again that's theoretically who we're trying to deal
16 with and protect -- then it seems to me those deadlines
17 should be something we should consider.
18 MS. YEE: Thank you, Mr. Runner.
19 Mr. Horton?
20 MR. HORTON: Well, I don't know if that's a
21 fair assessment.
22 If you're on the side that is losing the
23 revenue, it's in your interest to delay the transaction
24 as long as you possibly can because you want to hold
25 on to that revenue. And, so, oftentimes they delay it.
26 And, I mean, it's just inherently natural. I
27 mean, if we were talking to city managers and we said,
28 "Well, if you know you are going to lose and

1 you are going to have to allocate $20 million
2 out of your general fund to another city,
3 how cooperative are you going to be in doing
4 that expeditiously?"
5 I would beg to differ if the answer would be,
6 "Very, very cooperative and we are prepared to
7 cut that $20 million check as soon as this
8 resolved."
9 And, so, we have mixed interests here. Even
10 though you may be representing one side or the other,
11 when you're on the winning side, you have a different
12 charge. When you're on the losing side, you have a
13 different charge. And to that degree I guess there is
14 some commonality.
15 But let me just ask the question of staff and
16 the consultants. Let's say that -- we -- you have
17 shared with us the process by which a case could be
18 denied expeditiously -- not receiving information, not
19 having enough information, conducting a timely
20 investigation to get as much information as you possibly
21 could.
22 Is there a situation where you could actually
23 allow the case, because of the lack of cooperation on
24 the side of the jurisdiction not providing information?
25 MR. HANKS: Certainly, certainly, if --
26 MR. HORTON: I mean, does that exist in the
27 CPPM? Or is there any legislative authority for the
28 Board to say,

1 "We have enough information. The consultants
2 have provided enough information that indicates
3 that there is an allocation. We can quantify
4 it based on the information that we do have.
5 However, we'd like to have the rest of this
6 information. But if we don't get we're
7 prepared to allow this."?
8 And then what that does, it drives the -- the
9 person that -- or the entity, if you will, that seeks to
10 delay the process, for whatever reason, it drives them
11 into an appeal environment to say, "Well, let me get
12 this information so that I can appeal this case."
13 And that may be a good thing on certain
14 transactions.
15 MR. HANKS: Mr. Horton, I would just comment
16 that if we have got sufficient information that a
17 reallocation needs to be processed, we'll certainly make
18 that recommendation.
19 If there's information coming from whatever
20 source that indicates that it should not, then we're
21 very comfortable in denying.
22 MR. HORTON: No, the question -- the question
23 is more along the lines if you are conducting a sales
24 tax audit -- let me draw a parallel, if you will -- and
25 the taxpayer fails to cooperate.
26 So, you know, we will issue a jeopardy
27 determination and say, "Here is how much you owe based
28 on the liability."

1 And what that does, it causes the taxpayer to
2 cooperate because they're now in a position of every
3 disputing an exact amount that is of concern to them.
4 So, in this case do we have that authority, in
5 the absence of sufficient information, not necessarily
6 from the consultants, but from the interested parties
7 after we've requested the information, we gave -- we
8 give them 30 days to comply and if they fail to comply,
9 are we in a position to now allow the -- or at least
10 notify them that we're going to allow the reallocation?
11 MR. HUXOLL: Mr. Horton, in order to -- for
12 staff to issue a reallocation, they would have to
13 demonstrate that by a preponderance of the evidence,
14 whether provided by the Petitioner or Board staff, shows
15 that there was a misallocation.
16 So, there has to be evidence that a
17 misallocation did occur, it has to be shown by a
18 preponderance of the evidence.
19 MR. HORTON: So, is the information that we
20 currently request from the consultants, is that
21 sufficient enough of information for us to make that
22 call?
23 MR. HUXSOLL: Well, as Mr. Hanks discussed
24 earlier, certainly there are cases where we receive
25 information from the consultants. He may be able to
26 speak to this more, but it outlines all of the details
27 of the --
28 MR. HORTON: Let's say they're in full

1 compliance with what we have asked them to provide.
2 They have provided all eight items, hypothetically.
3 And is that -- would -- given that that
4 information is sufficient, is that enough information
5 for us to make a determination?
6 MR. HANKS: That would be, Mr. Horton, yes,
7 yes.
8 MR. HORTON: And, so, would it be inappropriate
9 for us to notify the other party, let's say, that the
10 Board is prepared to make a determination and reallocate
11 this unless you have evidence to the contrary?
12 And can we do that expeditiously?
13 MR. HANKS: We do do that with any of the
14 substantially affected jurisdictions, they would be made
15 aware of our intention to reallocate.
16 And they'd be given a time deadline as the
17 regulation currently allows for them to either agree or
18 disagree with that decision.
19 MR. HORTON: So, so, so -- so, it sounds -- I
20 mean, just to have another analogy, it sounds like
21 the -- it sounds like the stop signs are there, the
22 police officers are there, but they're still running the
23 stop signs, they're still speeding. And that is because
24 we're not enforcing our existing policy and procedure?
25 And there's more of a management issue here,
26 which makes it -- which -- what happens is when you get
27 into this environment and what concern -- I mean, you
28 end up with Prop. 34. You end up with -- I don't want

1 to get into all the legislation, but you end up with
2 term limits, you end up with all these other things that
3 is not necessarily the real problem.
4 And I'd like for us to get to where the real
5 problem is.
6 MS. YEE: Mr. Horton, let me take a shot at
7 something?
8 MR. HORTON: Sure.
9 MS. YEE: Because I know we've spent a bit of
10 time on this.
11 I think all of the parties, including those of
12 us sitting up here, are committed to reaching a decision
13 where we're making the proper and correct allocation.
14 I think what I've heard today -- and I have to
15 concur with Mr. Runner, I still am not off the deadline
16 timeline issue yet because it suggests to me, at least
17 what I have heard today, there are some internal
18 management issues and internal judgment call issues.
19 I think the fundamental question is what
20 constitutes sufficient evidence? And it's a judgment
21 call.
22 MR. HORTON: Yeah.
23 MS. YEE: And I don't know if it's -- you know,
24 whether we need to look at that question and staff can
25 establish some comfort around that?
26 And it's a balance. And I know I personally,
27 as a Member of this Board, don't want the balance to be
28 at the expense of time, where we're seeing this, you

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1 know, a decade from now. I don't think any of us wants
2 that.
3 And, so, I am not prepared to adopt the
4 revisions before us today. I'd like to have the staff
5 go back and really clearly articulate the expectations
6 of all parties in local allocation matters, from the
7 Petitioner representing the jurisdictions, the
8 jurisdictions, the taxpayer, the Local Allocation staff,
9 Appeals -- and really coming back with just what are
10 expectations once we receive the petition and what do
11 you want to see in that petition.
12 Because, frankly, at the end of the day, we may
13 end up, in my mind, with a situation of where not only
14 are we clarifying it in the CPPM in terms of what we
15 want, I still may want to impose deadlines.
16 MS. MANDEL: Madam Chair?
17 MS. YEE: Ms. Mandel?
18 MS. MANDEL: You know, we're -- we're open to
19 the idea of deadlines. This aging report is concerning.
20 And when I say to Mr. Klehs, yeah, those are numbers,
21 but I don't know why, that's my question for staff.
22 But even when staff says we're -- you know,
23 we're getting so many in per month and we're clearing so
24 many per month, so, it's all going to, you know, be
25 happy, I still don't know why -- someone said up here
26 that could -- or maybe Mr. Klehs said it -- that could
27 be that they are clearing the easy ones and the hard
28 ones are still hanging around for a long time.

1 So, it would be nice to know what the plan is
2 to process. And this is just an aging report from HdL,
3 so, I don't know what else is out there, but is there a
4 plan to move and process what, you know, these
5 delayed -- if you want to call them delayed -- or
6 petitions over -- let's say petitions over two years
7 old, is there a plan to get them through the system and
8 get them out?
9 MR. RUNNER: At this point --
10 MS. YEE: Mr. Runner?
11 MR. RUNNER: -- again, it sounds like we're
12 going to ask staff to go back review and deal with some
13 of these issues with, I think, a clear understanding at
14 least there are a number of Members who -- who don't
15 have a passion against deadlines.
16 But let me just say that I think the front end
17 is an important issue, but some of the other deadlines
18 are deadlines in the process also. And, so, I think
19 those all -- I am not going to be satisfied with just
20 saying, how can we -- how can we help the intake side?
21 I think there is some other processes --
22 MS. YEE: Yeah.
23 MR. RUNNER: -- here that we go from 90 to
24 45 --
25 MS. YEE: Yeah.
26 MR. RUNNER: -- there's 60 to 30 that I think
27 are reasonable also.
28 MS. YEE: Yeah, and Mr. Runner, I think my

1 direction to staff in terms of articulating what the
2 expectations are really relate to the entire process,
3 from receipt of petition to Appeals. So that we can
4 see, you know, just what the expectations are at each
5 stage of the process.
6 And when it comes back, hopefully, have a
7 little better sense and tagging on Ms. Mandel's inquiry
8 about why we've got so many of these cases that are aged
9 that aren't moving through and then, at that point,
10 maybe having us here, the five Members of this Board,
11 decide whether the imposition of hard deadlines makes
12 sense or not.
13 Mr. Horton?
14 MR. HORTON: Let me clarify. I am supportive
15 of deadlines. It's just where do you place those
16 deadlines?
17 I am supportive of stop signs, the question is
18 where do you place them?
19 And then the other concern is professional
20 judgment. I believe in professional judgment. I
21 believe in managerial oversight. And I believe those
22 two components can address this issue to some degree.
23 And, so, the question that I have that I'd like
24 for us to -- for staff to consider, what happens if you
25 don't meet the deadline? You extend it? You -- I mean,
26 there is just one point, deny and accept, unless you've
27 accepted it.
28 Once you've accepted the case, it goes through

1 the process. So, you know, and there is no penalty.
2 But you're still back to professional
3 discretion, managerial oversight and those types of
4 things that will get us to where we need to be.
5 MS. YEE: Yeah, they have to exercise that.
6 MR. HORTON: So --
7 MS. YEE: Okay.
8 MR. KLEHS: Perhaps the question of the staff
9 should also be how long do they think a case should
10 take?
11 MS. YEE: Yeah, I mean I think some of the
12 qualitative questions that the Members have posed today
13 really are trying to tease out, you know, what are some
14 of the reasons for the delays?
15 And if there are some discrete reasons that are
16 common, that come up all of the time, I think we can
17 have a flavor as to how those are handled. But -- I
18 mean I think we all can appreciate that not every
19 petition is the same. Some are more complex than
20 others, but I think really -- at least, the
21 appropriateness I feel about the discussion that we've
22 had this morning is that the expectations aren't clear
23 within the unit and, certainly, outside the unit with
24 other parties and certainly with the taxpayer affected.
25 Do you have enough guidance to come back with
26 the -- okay.
27 MR. HANKS: I believe we do.
28 MS. YEE: Looking at the entire process from a

1 receipt of petition to Appeals, what the expectations
2 are of all parties.
3 And let me just talk about time frame for a
4 minute -- when's our next meeting?
5 MS. OLSON: The next meeting is May 24th.
6 MS. YEE: Okay. So, the PAN would be the 14th?
7 MS. OLSON: Uh-huh.
8 MS. YEE: It's not enough time. And June we're
9 in --
10 MS. OLSON: Culver City.
11 MS. YEE: Okay, maybe for the July Sacramento
12 meeting?
13 MS. OLSON: Our July, the PAN is the 15th and
14 the meeting is the 26th.
15 MS. YEE: Okay.
16 Mr. Chair, any objection to having this be a
17 Culver City item?
18 MR. HORTON: No, other than assuring that the
19 consultants and everyone can be available that is
20 currently participating in the discussion.
21 MS. YEE: Do you prefer it up here?
22 MS. STURDIVANT: I won't be in the country
23 during that Culver City meeting.
24 MS. YEE: Okay, well then July then. Why don't
25 we move it to July then?
26 MS. STURDIVANT: Thank you, I appreciate
27 that.
28 MS. YEE: Okay. Let me also suggest this, I

1 wouldn't wait until the July meeting if there's
2 something that you've drafted that you want to
3 circulate, please come see my office and the Committee
4 will make available any drafts that the staff wishes to
5 share.
6 MR. HORTON: Madam Chair, would it be advisable
7 or appropriate for the parties to meet outside of the
8 interested parties process so that they can share
9 their perspectives with each other?
10 MS. YEE: Okay. Let me work with the staff on
11 a calendar.
12 It sounds like there might be some schedule
13 conflicts coming up.
14 MR. HORTON: Okay.
15 MS. YEE: But we'll work it out to where
16 there's some -- there is some back and forth.
17 MR. RUNNER: And I would assume that certainly
18 in this discussion time that it would be ongoing
19 discussions with staff and those that are interested in
20 seeing the process.
21 MS. YEE: I think I'd like staff just to kind
22 of go back and really hunker down on kind of what --
23 what does this process look like?
24 Because we've heard a lot today. And as you
25 have pointed out, Mr. Runner, I think there are things
26 that we thought in the natural were already happening
27 but there are suggestions that are just being made
28 today. And, so, I will encourage and facilitate the

1 back and forth.
2 MR. RUNNER: Yes.
3 MS. YEE: I don't know that it's necessarily
4 kind of a formalized interested parties meeting, but --
5 MR. RUNNER: No, no, I don't think --
6 MS. YEE: Certainly before it comes back in
7 July.
8 MR. RUNNER: -- I don't think it needs to be a
9 formalized --
10 MS. YEE: Yeah.
11 MR. RUNNER: -- but I think there could be --
12 MS. YEE: But certainly before it comes back in
13 July, we will have had the opportunity to be sure both
14 sides have taken a look at what the staff has put
15 together.
16 Other questions or comments?
17 Staff, anything else?
18 MR. HANKS: I don't believe so.
19 MS. YEE: Okay, anything else?
20 MR. MYERS: No, thank you, Madam Chair.
21 MR. KLEHS: Thank you.
22 MS. YEE: Okay, thank you very much --
23 MS. STURDIVANT: Thank you.
24 MS. YEE: -- everyone for your patience.
25 I guess we are on the second Business Taxes
26 Committee item, which is proposed Regulation 1685.5,
27 this is the -- relates to the use tax table.
28 Mr. Heller, good morning.

1 MR. HELLER: Good morning.
2 MS. BUEHLER: For agenda item 2, staff seeks
3 your approval and authorization to publish proposed
4 Regulation 1685.5 to implement the use tax table
5 provisions of Revenue and Taxation Section 6452.1, added
6 by Senate bill 86.
7 The proposed regulation proscribes the use tax
8 table for calendar year 2011, which the Board is
9 required to forward to Franchise Tax Board by July 30,
10 2011 and proscribes the methodology the Board will use
11 to calculate the estimated amount of use tax due
12 according to a person's adjusted gross income.
13 Because Senate bill 86 was approved by the
14 Governor on March 24th, 2011 and the Board is required
15 to provide a use tax table to the Franchise Tax Board by
16 July 30th, 2011, staff was not able to hold an
17 interested parties meeting to discuss this item before
18 today.
19 I am proposing, however, that we soon begin an
20 interested parties process to discuss a use tax table
21 and potential revisions to the a regulation for 2012 and
22 subsequent years.
23 Bradley Heller has additional comments
24 regarding the rulemaking process and timeline. And we
25 would happy to answer any questions that you may have.
26 I believe we also have speakers on this issue.
27 MS. YEE: We have one speaker.
28 Let me have Mr. Heller, if you'll comment, and

1 then we'll move to the speaker.

2 MR. HELLER: Thank you, Madam Chair.

3 First of all, thank you very much for placing

4 this on the Business Taxes Committee's agenda so

5 quickly. As we indicated this was -- this legislation

6 was just enacted about a month ago. And staff's been

7 acting quickly to bring this to the Board's attention so

8 that you can give us proper direction.

9 Today -- or I should say, in addition, we've

10 also contacted the Franchise Tax Board and they have

11 indicated that they do need the format for the 2011 use

12 tax table by July 30th of this year. But that they

13 basically have a practical deadline for receiving the

14 actual use tax table of September 1st.

15 And, so, basically what we've outlined here is

16 a request for authorization to publish a proposed

17 Regulation 1685.5 and, as indicated, that would

18 prescribe the 2011 use tax table and the format for how

19 we would do the calculations for all of the subsequent

20 tables.

21 And if the Board authorizes publication today,

22 I will actually file the Notice of Action for the

23 proposed regulation with OAL today. So that the Board

24 can bring this back and hold the public hearing on the

25 proposed regulation during the -- excuse me, the June

26 meeting in Culver City.

27 Staff will then be able to submit the final

28 rulemaking file, including the June transcript, to OAL

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1 by close of business on July 1st and OAL will have until
2 August 15th to review and approve the regulation and
3 file with the Secretary of State.
4 Furthermore, staff will forward the adopted
5 2011 use tax table to the FTB by July 30th and staff
6 will notify the FTB that the 2011 use tax table is ready
7 for publication as soon as it's approved by OAL and
8 filed with the Secretary of State.
9 Board staff has proposed this expedited process
10 due to the timeline for complying with the FTB's --
11 basically with the statute and also with FTB's practical
12 deadlines.
13 And we are open to also meeting with the
14 interested parties between now and the June Board
15 meeting and then also discussing further with the FTB if
16 there's any way we can get any additional extension of
17 their practical deadline.
18 Basically, if we were to identify important,
19 substantive changes that could be made at the June Board
20 meeting and that could be accommodated by an extended
21 deadline from the FTB, then we would recommend those at
22 that time.
23 The Board could then make those changes and
24 send the regulation with the changes to the 15-day file
25 and then come back adopt the regulation in July -- or
26 the July Board meeting. And then we would be able to
27 still get OAL approval by, we think, about September
28 19th.

1 And, so, we're not sure if we'll be able to
2 make changes and still meet the FTB's practical
3 deadlines, but we're definitely still interested in
4 meeting with the interested parties to make sure we're
5 aware of any concerns they have and so that we can all
6 address them for the Board at the June meeting as
7 well.
8 MS. YEE: Thank you very much, Mr. Heller.
9 Let us hear from the speaker.
10 Good morning.
11 ---o0o---
12 ROB GUTIERREZ
13 California Taxpayers Association
14 ---o0o---
15 MR. GUTIERREZ: Good morning. My name's Rob
16 Gutierrez, I'm with the California Taxpayers
17 Association.
18 I'm just wondering if there's any way that we
19 could postpone the adoption of this and probably go
20 through an interested parties meeting a little bit
21 sooner -- just to hear from all of the public on this
22 issue and go forward with that?
23 In our short amount of time that we've had to
24 review the regulation, we have a number of policy
25 concerns that we would like to talk with staff about and
26 questions about how this will be enacted as far as
27 methodology and other things.
28 The use tax compliance is a major problem in

1 California. We recognize that. And SB 86 provided
2 taxpayers a tool that we can use to help improve
3 compliance. But the important thing is we need to get
4 this right. And we need to have the time to discuss
5 this, to deliberate it. And, to date, that hasn't
6 happened.
7 I talked to Sales and Use Tax staff almost a
8 month ago and they said this is probably something that
9 would rise to an interested parties meeting. But we
10 haven't had that yet. Hopefully, we can further discuss
11 this.
12 Thank you.
13 MS. YEE: Thank you, Mr. Gutierrez.
14 Comments, Members?
15 MR. RUNNER: Yeah, just a couple.
16 MS. YEE: Mr. Runner?
17 MR. RUNNER: Yeah, just a couple of
18 observations. Again I am going to use this as a
19 discussion to a broader discussion in regards to some
20 use tax challenges that I think we have, because I am
21 afraid that this is, to me, an example of what happens
22 with what I see as our kind of patchwork approach to
23 trying to deal with, explain and collect use tax.
24 And this is another example of a hurried up
25 issue because we have got to do something. A couple of
26 quick observations, of course, on this. The legislation
27 only required us to adopt a table, correct?
28 MR. HELLER: That is correct, each year.

1 MR. RUNNER: Not a regulation?
2 MR. HELLER: The Legal Department believes that
3 the way that the statute's written, the Board can -- the
4 Board would be required to adopt a regulation in order
5 to implement the provisions in that statute.
6 MR. RUNNER: As we would have to or FTB would
7 have to or --
8 MR. HELLER: The Board of -- well, we believe
9 that the Board of Equalization needs to adopt a document
10 regulation in order to implement the terms of the --
11 MR. RUNNER: Who's Legal? Is Legal here? Who
12 has that opinion?
13 MR. HELLER: I am here from the Legal
14 Department.
15 MR. RUNNER: Oh, okay.
16 MR. HELLER: Certainly.
17 MR. RUNNER: I'm sorry, I'm new here, okay.
18 MR. HELLER: Essentially --
19 MR. RUNNER: And what basis is that opinion?
20 MR. HELLER: And, essentially, it just has to
21 do with the terms of the Administrative Procedure Act
22 and essentially, as far as we can tell, when you --
23 well, let me first go -- a regulation is essentially
24 just a rule of general application.
25 MR. RUNNER: Right.
26 MR. HELLER: And, so, if the Board's going to
27 basically adopt a table that every taxpayer in the State
28 of California that's eligible can use to determine their

1 actual use tax liability, that would be a regulation
2 unless it's already prescribed by a statute.
3 MR. RUNNER: But this is not -- this is not
4 mandatory, right? This is --
5 MR. HELLER: No, it's not mandatory.
6 MR. RUNNER: Okay, so, it's not mandatory, it's
7 just -- it's just a tool?
8 MR. HELLER: But it does allow them, basically,
9 to report their use tax based on that table.
10 MR. RUNNER: Right.
11 MR. HELLER: If they do, then they're relieved
12 of liability for their actual use tax.
13 And, therefore, we think it is a rule of
14 general application. And then, in addition in
15 particular case, there are circumstances where the
16 Board's required to do certain calculations or estimate
17 certain amounts, but the legislature generally does a
18 pretty good job of prescribing exactly what they want us
19 to do or I should say what the Board --
20 MR. RUNNER: They do?
21 That's not my understanding usually, but that's
22 -- I'm glad you feel that way.
23 MR. HELLER: Usually we can at least decipher
24 some, you know --
25 MR. RUNNER: Okay.
26 MR. HELLER: -- some substantive direction on
27 what we're supposed to do.
28 In this particular case -- and I think this

1 goes directly to CalTax's concerns as well, is that the
2 -- is that the statute itself just basically tells the
3 Board to estimate what somebody's use tax liability
4 would be based on their adjusted gross income.
5 MR. RUNNER: Right
6 MR. HELLER: And, essentially, that really
7 doesn't prescribe any sort of formula and different
8 minds could differ on how -- what even approach you
9 might take.
10 MR. RUNNER: Okay, I get -- here's where -- and
11 I guess --
12 MR. HELLER: That's why we --
13 MR. RUNNER: -- we can talk through -- I will
14 disagree at that point in the sense that -- and, again
15 the -- what drives me to that issue is the fact of the
16 timeline.
17 And -- because it's a much easier process, it
18 seems to me, to go through the process, go ahead and
19 adopt this -- I don't agree with it -- but this
20 guideline in regards to, you know, follow the chart, see
21 where you land because that's what the legislature has
22 asked us to do, as opposed to then going through the
23 regulatory process, which takes more time, effort and
24 that we're -- what worries me is we're driving through a
25 regulatory process without public input in the kind of
26 way it should be.
27 And, so, I -- I don't like that as a procedure.
28 Let me just -- I guess I will do that in the context of

1 what I think are the challenges that we have for the use
2 tax in general.
3 You know, we have, I think, four or five ways
4 to which people can identify their use tax right now.
5 And I think most people are very confused about that.
6 And I'm not sure a table helps them out very much, you
7 know, at that point.
8 Let me just see, it's -- and, quite frankly,
9 the other issue that we've got is the process that we
10 use, they can use their line on their income tax form,
11 right? And they can go ahead and put that out.
12 And, so far, we got -- I think my records show
13 that we collected about $10 million. That's grown to
14 that about -- that amount of money on the form.
15 Then the -- to help that out, we're going to
16 use a look up table in order to help people identify
17 what that amount could be.
18 But yet I'm interested in the fact -- and I'm
19 not sure who projected it, whether it was us or the
20 legislature -- but this is booked at an additional $10
21 million.
22 So, we're going through this whole process to
23 get another $10 million, which basically works out to,
24 as we look at what we think that is out there, a 1
25 percent compliance rate.
26 So, we believe getting this table is going to
27 actually move us up to a 1 percent compliance rate,
28 which to me talks about what the real core of the

1 problem is, and that is that people don't understand the
2 use tax. And to give them a table -- and even our best
3 suggestion at that point is this will move us to a 1
4 percent compliance rate, it seems to me doesn't answer
5 the core issue and, that is, people don't understand.
6 They don't understand what their obligations are or why
7 they have obligations there.
8 You know on top of that then we have the
9 qualified purchaser program, you know, that was put in
10 place. We did a few hundred thousand -- or 100,000
11 letters last year and just did 200,000 more or something
12 in that regard, for those businesses that, you know,
13 have $100,000 gross income.
14 And again we estimated in 2010 that we're going
15 to collect $81 million and we received $24 million. So,
16 again, not a lot of -- and that was going back three
17 years that the people could do that.
18 I tried to get figures for this year's and we
19 haven't been able to because somehow we've blended
20 information. And, so, up to January -- well, actually,
21 the budget for this particular year is $183 million that
22 we're supposed to collect with the qualified purchasers.
23 Up to January we had only received $2.4 million.
24 I asked yesterday if I could get an updated
25 figure and was told, well, now our numbers are all
26 blended together and we can't pull out individual
27 figures any more. It's going to take us a few weeks to
28 do that now.

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1 So, we don't even know right now how successful
2 this program has been, actually, it's really not a level
3 of success, it's a level of failure in regards to the
4 amount of dollars that we have.
5 And the -- and the big issue there is people
6 are responding, it's just that most of them all put
7 zero. Now, that's compliance. It's zero. You may not
8 believe that they're doing it correctly, but they are
9 complying. And they are putting zero at that point,
10 Then the -- of course, then on that particular
11 issue, it's a e-file that has to be done by April 15th.
12 Now, we have other ways that people have to collect --
13 or can do their -- their use tax filing and that's where
14 we really get confusing with people because they can use
15 certain forms now that have dates of January 31st due
16 dates.
17 And, in fact, we have an instruction that we
18 had that said it was due on June 31st (verbatim) in one
19 place and another place in that same material said
20 April 15th. So, we -- and the unfortunate thing --
21 issue was that during that same period of time, we were
22 collecting penalties from people, even though we had an
23 April 15th due date. Even though people -- so, people
24 who filed on March 1st could have filed on April 15th,
25 we sent them a penalty -- we created a penalty for them
26 that they did it on March 1st.
27 MS. YEE: Many of which we're relieving.
28 MR. RUNNER: What's that?

1 MS. YEE: Many of which we're relieving.
2 MR. RUNNER: I have asked for them all to be
3 relieved.
4 And I was told that we can't do that. So, I
5 think -- I don't know why we would do some of them, we
6 ought to do all them.
7 MS. YEE: Mr. Runner, I want to -- I'm just
8 looking at the hour, can you -- can you -- do you have a
9 view about the proposal before us?
10 MR. RUNNER: Well, I know I want to -- again,
11 yes, in the context of the total discussion of use tax.
12 Because again I think we have to be able to
13 deal with use tax in its -- in the success of us helping
14 people understand use tax. And my -- my opinion is that
15 having a table, even our estimates the success of
16 putting a table in is a 1 percent compliance rate.
17 So, my point would be the table clearly isn't
18 done correctly or it doesn't help us with compliance.
19 And, in conclusion, I think what our goal
20 should be is this Board needs to figure out a way to
21 adequately educate people on their use tax requirements
22 and their -- and on the law.
23 I think the challenge that we have with use
24 tax -- and, again, if -- there has been lots of articles
25 written about use tax and issues and who should pay it
26 and I'll tell you one of the most fascinating issues for
27 me is when you see one of those articles, just read the
28 comments after the articles. Read the comments that the

1 readers are saying.
2 Because, see, here's our problem, our problems
3 is people don't even think they owe it. Because they
4 have this philosophy that says -- they have the thing,
5 oh, the internet's tax free. They don't understand the
6 issue between the difference between a transaction tax
7 that they have and a tax on the internet.
8 And, as a result of that, they think that there
9 shouldn't be a tax and that this is a new tax. They
10 don't understand the implication of the use tax and
11 their responsibilities at that point.
12 I believe it's an obligation for -- if we're
13 going to be successful at increasing the amount of use
14 tax collection, one of our primary responsibilities
15 should be education of that, of helping people
16 understand.
17 And that means not sending them a notice.
18 Believe me, education by sending people who earn --
19 gross $100,000 and say, "You now owe a use tax," isn't
20 education. Because they still don't know why.
21 So, I'm concerned that what we're doing is
22 doing piecemeal approaches that are going to get us very
23 little real money in the door that we have missed by far
24 the targets that we have even set for these.
25 And, so, those are my concerns. Let me speak
26 specifically to the table. Why did we pick the number
27 that we picked on the table?
28 MS. BUEHLER: Joe Fitz is joining us from the

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1 Research and Statistics Section.
2 And he can comment on that for you.
3 MR. FITZ: Yes, the reason the 0.7 percent is
4 really the result of three calculations. One is we take
5 the percentage of electronic shopping and mail order
6 houses spending, collected by the Census Bureau, divide
7 that by income. That gives us a percentage of 2.2
8 percent for 2010.
9 Then we have estimated here at the Board in
10 prior research that approximately 37 percent of the
11 sales are purchases made by California households over
12 the internet and through mail order are from companies
13 that are -- that are not registered with the Board and
14 then we take our sales tax rate, which is a blended rate
15 of 8.61 percent statewide average, which includes
16 through June 30th and then after June 30th the rate
17 changes, as you know.
18 So, you take those percentages, multiply them
19 together and you get 0.7.
20 MR. RUNNER: How do you factor in drop
21 shippers?
22 MR. FITZ: I have not factored in drop
23 shippers.
24 MR. RUNNER: Because those would be individuals
25 who bought something in California, they were buying
26 from it an out-of-state and the out-of-state then uses a
27 California drop shipper then who pays the sales tax,
28 correct?

1 MR. FITZ: That's my understanding, yes.
2 MR. RUNNER: So -- so -- so, could that rate be
3 high then? If you don't factor in drop shippers?
4 MR. FITZ: Well, that's an individual
5 situation that I really don't have any data to be able
6 to estimate the drop shippers.
7 MR. RUNNER: So -- but there are drop shippers?
8 MR. FITZ: There are drop shippers. I do not
9 know --
10 MR. RUNNER: We dl know that there are drop
11 shippers. You didn't recognize drop shippers, so,
12 wouldn't that make that number higher?
13 I realize you don't know how far to take it
14 down, but if you didn't factor in drop shippers, that's
15 an overestimate?
16 MR. FITZ: Yes.
17 MR. RUNNER: Okay, thank you.
18 MS. YEE: Thank you, Mr. Runner.
19 Other comments, Members?
20 MS. YEE: Let me say this, I am disturbed that
21 we didn't have sufficient time for an interested parties
22 meeting, that we are under the deadlines as proscribed
23 by the Franchise Tax Board.
24 I appreciate staff's recommendation about
25 establishing an interested parties process going forward
26 for the subsequent years and I would wholeheartedly
27 support that.
28 Mr. Runner, I would agree with you with respect

1 to use tax compliance. It is a very, very tough area
2 this Board has to deal with and I hope that each of us
3 as Members of this Board are doing our due diligence
4 with respect to outreach and education to taxpayers
5 about use tax compliance.
6 But I would maintain -- and you and I are on
7 different sides of this issue -- the only way we're
8 going to get really a great degree of compliance is to
9 have the online retailers be responsible for the
10 collection of the tax.
11 With that, I'd like to move the revised staff
12 recommendation that Ms. Buehler put forth.
13 Is there a second?
14 MR. HORTON: Second.
15 MS. YEE: Second by Mr. Horton.
16 Further --
17 MS. MANDEL: It was to rebut?
18 MS. YEE: Well, it was to authorize
19 publication, but to --
20 MS. MANDEL: -- oh, to have --
21 MS. YEE: -- have interested parties meeting
22 going forward, right, so that we can still comply with
23 the immediate Franchise Tax Board deadline.
24 Okay.
25 MS. MANDEL: Can I ask one question?
26 MS. YEE: Ms. Mandel, please?
27 MS. MANDEL: You know, the tables -- a lot of
28 these things are legislatively mandated, so, you know,

1 we have to do them.
2 I assume you'll be writing instructions that
3 will go with the table in the booklet or wherever -- on
4 the web, wherever people are now getting the
5 information?
6 MS. BUEHLER: Ms. Mandel, yes, you're correct,
7 we are currently drafting those instructions.
8 MS. MANDEL: Okay. And in the course of the
9 interested parties meeting, will there be discussion of
10 the potential instructions?
11 I mean I -- I just happened to notice that if
12 this table had been in place this year and I had chosen
13 to use the table, you would have got less use tax from
14 me than the fact that I went through all those receipts.
15 But mine are not internet, mine are
16 out-of-state purchases brought back. And I don't know
17 if a regular person would have a sense of what these use
18 tax numbers equate to to decide whether they wanted
19 to -- and this would be one of the taxpayer's issues,
20 you know, they are protected if they use the table.
21 They are protected, which is a big benefit, even if --
22 even if they might overpay by a dollar or two, it's a
23 big benefit.
24 But I -- and I don't know how tables are
25 portrayed in other states, whether they give an
26 indication of if you were at the -- you know, the use
27 tax liability level of X dollars, that's essentially
28 equivalent to X dollars of purchases. Because then the

1 taxpayer has, you know, the choice, do they want the
2 protection of the table or do they want to go through
3 all their receipts and find out that they really only
4 had $5 of tax that they owed?
5 So, I -- I don't want to suggest one way or
6 another whether that's the right way to do it or a wrong
7 way to do it, but if I would -- I was amused that I
8 would have been protected at a considerably lower level
9 and I also discovered that I spent way too much money
10 last year.
11 MS. YEE: To cancel you out, I might be paying
12 more, so --
13 MS. MANDEL: Oh, okay, there you go, it's all
14 in the family then.
15 MS. YEE: All right. But I think the
16 instructions are going to be really really important to
17 guide the filing.
18 MS. BUEHLER: We agree.
19 MR. RUNNER: Just for my information, what does
20 it mean to be protected?
21 If somebody puts in $63 in that line item
22 because that's where they fall on the chart, what does
23 that mean that they're protected?
24 MS. MANDEL: That was my understanding, that
25 the -- that there was something in the statute.
26 MR. RUNNER: Well, I think no -- I think they
27 said that.
28 I just don't know what that -- and I'm kind of

1 trying to figure out what "protected" means.
2 MR. HELLER: Basically just means that if we
3 were to go and audit that taxpayer, which -- which based
4 on my answer we would not do -- but if we were, we
5 basically could not -- we could not assess them for
6 additional tax over the amount required by that chart.
7 MR. RUNNER: And how do we -- how do we audit
8 somebody on -- again, these are individuals, this isn't
9 a company.
10 So, how do you -- how do you audit an
11 individual in regards to -- when you are going to do an
12 audit, how -- what would you ask for if you were
13 auditing somebody on their online purchases?
14 What would you ask them to bring forth?
15 MS. BUEHLER: It would typically be their
16 purchase records.
17 MR. RUNNER: So, you think people out there
18 keep -- individuals, their purchase records?
19 MS. BUEHLER: Some individuals might, but we'd
20 also be using the data that we receive as far as our
21 normal data mining processes, the things that we would
22 find from other companies, where we can see the
23 purchases that are made by individuals.
24 MR. RUNNER: We have information that shows
25 individual purchases that they make on the internet?
26 MS. BUEHLER: I don't know that they would be
27 internet purchases, per se, no.
28 MR. RUNNER: Well, let me ask, we know

1 individual purchases that -- which people make that they
2 owe use tax on?
3 MS. BUEHLER: In some instances, yes.
4 MR. RUNNER: How do we get that data?
5 MS. BUEHLER: That data is obtained through our
6 sources that we have via audit of other companies.
7 In the past we have also subpoenaed companies
8 for information on equipment purchases. Farming
9 equipment, for example, was done previously.
10 MR. RUNNER: But this -- these are individuals
11 now, we're not -- I get the --
12 MS. BUEHLER: Right, with the --
13 MR. RUNNER: -- we're talking about just going
14 Joe Taxpayer out there now.
15 MS. BUEHLER: Right.
16 MR. RUNNER: Because we don't normally allege
17 do this, this is -- this is like a whole new area for
18 us, right?
19 MS. BUEHLER: Yes, internet --
20 MR. RUNNER: We normally do businesses.
21 MS. BUEHLER: Right.
22 MR. RUNNER: So, this is a whole new area that
23 we're dealing with?
24 And, so -- again I am just -- so, what I'm
25 hearing you tell me is that what we will do is --
26 actually, there was a little bit of distinction there,
27 one said we won't audit and it sounded like the other
28 one said we would audit.

1 MS. BUEHLER: We have not audited individuals
2 at this point.
3 MR. RUNNER: But I guess -- I guess if they
4 didn't put a number in there the answer to that is we
5 could audit them?
6 MR. HELLER: That is correct.
7 MS. BUEHLER: Correct.
8 MR. RUNNER: So, basically, what we're saying
9 you put a number in there, even if they put zero then we
10 won't audit them? They're protected? They put zero and
11 they're protected?
12 MR. HELLER: No, they're not -- we can -- if a
13 taxpayer reports zero and we were to audit them and
14 determine that they had a liability in excess of zero,
15 then we could audit -- we could go ahead and assess that
16 liability, because that amount wouldn't be from our --
17 from the -- least the use tax table being recommended
18 today, which doesn't have a zero liability for anyone.
19 MR. RUNNER: Oh, okay. Since they didn't use a
20 number.
21 MR. HELLER: If they used one of the numbers
22 from the chart, though, then they would be protected
23 from being audited.
24 MR. RUNNER: So, the BOE believes that
25 everybody right now in the State of California should
26 keep all their purchase records for all their out of
27 state purchases?
28 Now, again, the problem is, as we talked about,

1 drop shippers -- the problem is that if they put the
2 wrong number down and one of their issues with a drop
3 shipper, our number's wrong for them, right?
4 Because we -- we have overestimated this chart,
5 correct?
6 MR. FITZ: Yes.
7 MR. RUNNER: why would do -- well, let me do
8 this -- why would we overestimate the chart?
9 Why would -- if we don't know the number, why
10 would we automatically assume that the number is zero
11 and charge people a higher tax?
12 MR. HELLER: Senator Runner, there was
13 definitely no plan to overestimate anyone's liability.
14 The real issue here, and one of the main
15 reasons we're in front of the Board today -- and this
16 wasn't just a mathematical calculation that Joe could
17 just go ahead and do and send off to the Franchise Tax
18 Board, is that we're really trying to get this estimate
19 of everyone in a certain class so that large groups of
20 people can use this to determine their estimated use tax
21 based on adjusted gross income.
22 And you can understand how there's probably
23 lots of people in the pool who may not have any
24 purchases where there was a drop shipper involved.
25 MR. RUNNER: Yeah.
26 MR. HELLER: There may be some that have every
27 purchase that's like that.
28 MR. RUNNER: And they don't know.

1 MR. HELLER: There's really no --
2 MR. RUNNER: They don't know.
3 MR. HELLER: -- there's really no way -- we
4 still have to create an estimate that's sort of an
5 average.
6 MR. RUNNER: Okay.
7 MR. HELLER: And, so, I don't think it was an
8 intention to not account for it, it was, as Joe is
9 saying --
10 MR. RUNNER: Yeah.
11 MR. HELLER: -- or as Joe was saying before, it
12 was really data that was going out.
13 MR. RUNNER: I get the problem. And I'm not --
14 I wish -- I think we need to figure out how to solve it.
15 I'm -- I don't think it's solved. As the
16 Members said that we need to just go out there and do
17 ourselves, educate people.
18 I think we need to really review to see what
19 people even understand about the use tax. I think it
20 ought to be a total Board obligation, not an individual
21 Board Member obligation.
22 MS. YEE: I think it is. I hope it is.
23 MR. RUNNER: Well, but I haven't seen it.
24 We've never had a program.
25 MS. YEE: Oh, we have.
26 MR. RUNNER: No, we haven't.
27 MS. YEE: We have had public awareness
28 campaigns funded. You've put money in the budget to do

1 it, we've done it.
2 MR. RUNNER: But again --
3 MS. YEE: This is where we are.
4 MR. RUNNER: -- again here -- no, but what
5 we've done is we've -- we've paid to tell people what
6 their obligations are, we have not done a program in
7 regards to helping people understand the issue of use
8 tax.
9 But to that -- just in closing, I think the
10 issue that -- that we deal with here is that all of this
11 effort, all of this issue about potential audits, all of
12 the issue about putting the number down, our goal is a
13 1 percent compliance rate. That's what we -- that's we
14 estimate, a 1 percent compliance rate.
15 MS. YEE: A lot of dollars, a lot of dollars.
16 MR. RUNNER: No, it's $10 million more.
17 MR. HORTON: Madam Chair, if I may?
18 MS. YEE: Mr. Horton?
19 Let me remind you, we do have a motion and a
20 second on the table.
21 MR. HORTON: Sure, the uniqueness of drop
22 shipping generally implies that it would actually go the
23 other way, in my opinion.
24 Because drop shipping is so unique, it would be
25 offset and probably have more taxpayers without drop
26 shipping than you do in this situation than you actually
27 do.
28 So, in that case, the number would actually be

1 higher if you put it in there. So, I would beg to
2 differ about the estimate, about it being lower.
3 And since our inception in 1879 ongoing
4 education has been the goal and objective.
5 I concur with Mr. Runner and Mrs. Yee that
6 there should be some formalized effort, how we define
7 that -- certainly, we should spend some time discussing
8 that and maybe we'll bring it back an agenda as item
9 somewhere down the road or set up a process to allow
10 that to happen.
11 The cost benefit analysis that measures success
12 is just that. In this case the revenue generated far
13 outweighs the actual cost of generating that revenue.
14 So, therefore, we're successful.
15 So, what staff and what the legislature is
16 doing, even though it's not generating billions,
17 10 million is a lot of money and it is a successful
18 project because of the cost benefit analysis. The
19 actual cost of doing this is minimal.
20 The other thing that I'd like for us to be
21 cognizant of is that the Board of Equalization is not a
22 -- is certainly perceived by some as a taxing agency,
23 but there are others who see the agency as a compliance
24 agency.
25 And if you look at the numbers, the majority of
26 the revenue generated by the Board of Equalization is
27 through compliance which -- which occurs as a result of
28 education, an element of enforcement, as well, and a

1 huge element of cooperation that exists.
2 And, so, you've got to have something in
3 play -- in place, a regulation in place, a chart of
4 some -- some sort of guidance in place in order to begin
5 to educate about -- the taxpayer in order to enhance
6 self-compliance.
7 The dollars generated by the Board of
8 Equalization conceivably would not be sufficient, I
9 believe the Board generates some $700 million relative
10 to historical $53 billion that it's collected.
11 So, it's a very small percentage of the money
12 that we actually generate. So, I would encourage us to
13 measure our success to include the compliance element.
14 It is unfortunate that -- that the chart
15 couldn't have been given more taxpayer's participation,
16 I mean -- but this is the intersection we find
17 ourselves, unfortunately.
18 MS. YEE: Okay. I think we want to balance
19 that, though, against not having this tool available
20 immediately, so --
21 MR. HORTON: Yeah.
22 MS. YEE: -- we've had -- and I think Cal-Tax
23 actually has been a proponent of the tax table that -- I
24 would agree, I wish the time could have allowed for more
25 public input.
26 Thank you. We have a motion and second to
27 adopt the revised staff recommendation to publish --
28 authorize publication, and to proceed with an interested

Electronically signed by Juli Jackson (001-065-206-4972) 62e3e343-0432-4a4b-a84f-69dbbdc6d418

1 parties meeting for use of the tax table going forward.
2 Please call the roll.
3 MS. OLSON: Ms. Yee?
4 MS. YEE: Aye.
5 MS. OLSON: MR. Horton?
6 MR. HORTON: Aye.
7 MS. OLSON: Ms. Steel?
8 MS. STEEL: No.
9 MS. OLSON: Mr. Runner?
10 MR. RUNNER: No.
11 MS. OLSON: Ms. Mandel?
12 MS. MANDEL: Aye.
13 MS. OLSON: Motion carries.
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1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, JULI PRICE JACKSON, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 April 26, 2011, I recorded verbatim, in shorthand, to
10 the best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding pages 1
13 through 111 constitute a complete and accurate
14 transcription of the shorthand writing.

15

16 Dated: July 1, 2011

17

18

19

20 JULI PRICE JACKSON

21 Hearing Reporter

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Electronically signed by Juli Jackson (001-065-206-4972) 62e3e343-0432-4a4b-a84f-69dbbdc6d418

BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: AUGUST 23, 2011, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Amendments to the Cigarette and Tobacco Products Licensing Act Regulations

Issue/Topic:

Whether the Board should initiate an interested parties process to promulgate the proposed adoption of a new regulation and amendments to existing regulations under the Cigarette and Tobacco Products Licensing Act of 2003.

Committee Discussion:

Staff presented the issue explaining the need to initiate discussions with interested parties regarding amendments to the provisions of the Cigarette and Tobacco Products Licensing Act through promulgation of a new regulation, *Transfers of Cigarette and Tobacco Products between Retail Stores Owned by the Same Person*, and the amendment of existing regulations 4601, 4603, 4604 and 4605. A speaker representing the California Distributors Association addressed the Board, expressing concerns that the intent of AB 71 (Horton) does not authorize the transferring of tobacco products from location to location.

Ms. Yee stated this matter should move forward to the interested parties (IP) process to provide clarity and determine if the Board has statutory authority to allow such transfers or whether the Board may need to seek statutory authorization. Senator Runner was supportive of the IP process to resolve the ambiguities and provide clarity regarding the transfer of tobacco products between locations. Ms. Steel was also supportive and requested that staff pursue outreach efforts to provide notification to smaller family owned business. Mr. Horton raised concerns with the blending of tax paid and ex-tax tobacco product inventory, the accounting challenges it will present and the potential for criminal acts. Ms. Mandel requested staff look into the original basis for the existing suspension periods covered by regulations 4603, 4604 and 4605.

In closing, Ms. Yee reaffirmed her request for providing clarity on this matter through the IP process and for staff to address the varied statutory provisions involving sales of cigarette and tobacco products through a consolidated publication.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Steel, the Committee unanimously referred the matter to the interested parties process.

Agenda Item No: 2

Title: Technology Transfer Agreements – Regulation 1507

Issue:

Approval sought to conduct a study that would evaluate the feasibility of developing an optional percentage to reasonably estimate the fair market value of tangible personal property in technology transfer agreements involving prewritten software transferred on tangible storage media pursuant to subdivision (c)(10)(C) of sections 6011 and 6012 of the Revenue and Taxation Code.

Committee Discussion:

Mr. Horton expressed his desire that staff expand outreach to include software industry executives to determine whether a safe harbor provision should be included in the regulation. Ms. Yee agreed that staff would consult with industry on the study.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Mandel, the Committee unanimously authorized staff to conduct a study to evaluate the feasibility.

Agenda Item No: 3

Title: Proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax* Filing and Processing Local Tax Petitions – Regulation 1807

Issue:

Request approval and authorization to publish proposed revisions Regulations 1807 and 1828 to improve the local and district tax appeals process.

Committee Discussion:

Staff presented proposed amendments to Regulations 1807 and 1828. Interested parties addressed the Board expressing their support of the staff recommendation and their interest in continuing to discuss and work with staff on the non-regulatory issues included in the staff expectations report included in the informal issue paper. Ms. Yee directed staff to address these issues through the interested parties process to incorporate the procedures into Board manuals and bring the proposed manual revisions to the BTC for discussion and approval.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Mandel, the Committee unanimously approved and authorized for publication Alternative 1 – Staff Recommendation. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. Copies of proposed Regulation 1807 and Regulation 1828 are attached.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions

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to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants,

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arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

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(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the

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petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

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(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING AGENDA

HONORABLE BETTY YEE, COMMITTEE CHAIRWOMAN
450 N STREET, SACRAMENTO - ROOM 121
AUGUST 23, 2011 – 10:00 A.M.

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1. Amendments to the Cigarette and Tobacco Products Licensing Act Regulations

   Approval sought to begin the process with interested parties to discuss the need for amendments to the Cigarette and Tobacco Products Licensing Act's penalties and fines regulations, and promulgate a new regulation regarding cigarette and tobacco product transfers.

2. Technology Transfer Agreements – Regulation 1507

   Approval sought to conduct a study that would evaluate the feasibility of developing an optional percentage to reasonably estimate the fair market value of tangible personal property in technology transfer agreements involving prewritten software transferred on tangible storage media pursuant to subdivision (c)(10)(C) of sections 6011 and 6012 of the Revenue and Taxation Code.

3. Proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax* Filing and Processing Local Tax Petitions – Regulation 1807

   Request approval and authorization to publish proposed revisions to improve the local tax appeals process.

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Item 1 – for Board action – proposed amendments to Regulations 1807 and 1828[1].	Approve and authorize publication of either:
Informal Issue Paper Alternative 1 – Staff Recommendation Agenda, pages 2 - 6. Informal Issue Paper Exhibit 2	Amendments proposed by staff and supported by Mr. Johan Klehs and The HdL Companies. These revisions have a prospective application and include: • An explanation of the extension request process with regard to Local Revenue Allocation Unit (LRAU) notices; a provision allowing a submitting jurisdiction 30 days to perfect their petition; a mechanism allowing the petitioner, at its option, to request the Allocation Group (AG) issue its supplemental decision within 60 days; and notification of potentially affected jurisdictions beginning at the Appeals Division level. **OR**
Informal Issue Paper Alternative 2 – MuniServices Recommendation Agenda, pages 2 -6. Informal Issue Paper Exhibit 3	Amendments proposed by MuniServices. MuniServices' proposed amendments are the same as staff's except: • Subdivision 1807 and 1828 (b)(8) – Supplemental decision by the AG. MuniServices recommends that when a petitioner or notified jurisdiction requests the AG to issue a supplemental decision, the AG provide that decision within 30 days. • Subdivisions 1807(g) and 1828(f) – Transition rule. Although MuniServices agrees with staff that the current proposed amendments should apply prospectively, they propose language different from staff's to accomplish this application.

[1] Because the proposed revisions are substantially similar in both regulations, we have included only the proposed revisions to Regulation 1807 in this agenda. The full text of the proposed revisions for both Regulations 1807 and 1828 can be found in Exhibits 2 and 3.

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
Action 1 **1807 (a)(3)(G)**	**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** **(a) DEFINITIONS.** (3) PETITION. **(G)** "Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified. <u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>	**Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.** *[SAME LANGUAGE AS PROPOSED BY STAFF]*

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
1807 (b)(1)	**(b) REVIEW BY ALLOCATION GROUP.** (1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*
1807 (b)(6)	(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*
1807 (b)(8)	(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.	(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.
1807 (b)(9)	(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
1807 (b)(10)	(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*
1807 (c)(1)	**(c) REVIEW BY APPEALS DIVISION.** (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.	*[SAME LANGUAGE AS PROPOSED BY STAFF].*
1807 (c)(2)	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
1807 (c)(2)(D)	**(D)** Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*
1807 (c)(3)	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.	*[SAME LANGUAGE AS PROPOSED BY STAFF]*

AGENDA — August 23, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 2)	Regulatory Language Proposed by MuniServices (Exhibit 3)
1807 (g)	**(g) OPERATIVE DATE AND TRANSITION RULES.** This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003). (1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect. (2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto. (3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.	**(g) OPERATIVE DATE AND TRANSITION RULES.** This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. ~~It is~~ This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003). (1) The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect. (2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto. (3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

☐ For Information
☐ For Discussion
☒ For Decision Making

BOARD OF EQUALIZATION

INFORMAL ISSUE PAPER

Petitions for the reallocation of local and district taxes

Issue

Should the process for handling local and district tax petitions be changed, including amending Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*?

Background

Staff's Issue Paper (http://www.boe.ca.gov/meetings/pdf/1807-1828IP.pdf) on proposed revisions to Regulations 1807 and 1828 was presented at the April 26, 2011 Business Taxes Committee (BTC) meeting. Following discussion at the meeting about the process of investigating petitions, the cause of delays, and whether additional deadlines would resolve those delays, the Committee directed staff to develop guidelines explaining what is expected of all parties involved in the local tax petition process. Staff's view of these expectations is included in the attached report, Filing and Processing Local Tax Petitions, Exhibit 1. While developing the report, staff recognized the need for improvement and clarification of our processes at the Allocation Group (AG) level. Changes to the AG processes, including additional proposed revisions to Regulations 1807 and 1828, are discussed in the next section.

The attached report was provided to several of the interested parties on August 4, 2011, along with additional changes to staff's revisions to Regulations 1807 and 1828. MuniServices' comments on the report and its revised alternative regulatory language are provided in Exhibit 3. Mr. Johan Klehs and The HdL Companies (HdL) are now in agreement with staff's proposed regulatory revisions. HdL's submission, including their comments on the non-regulatory issues presented in the staff report, are included in Exhibit 4. Mr. Klehs' comments are provided in Exhibit 5. Although he did not provide a submission, staff also spoke with Mr. Robert Cendejas, who indicated his support of staff's proposed regulatory changes.

Discussion of the Issue

Since the April BTC meeting, staff has been working with several of the interested parties to improve how petitions are reviewed, tracked, and followed up on by the AG. Staff's proposed new procedures are found under "Future Improvements" in Exhibit 1 (see pages 1 and 2). Except as noted below, these procedures are intended for incorporation into BOE's forms and procedural manuals (e.g., the Compliance Policy and Procedures Manual, Audit Manual, and the AG Procedures Manual). Staff will take the comments received from MuniServices and HdL under consideration as the forms and manuals are revised. Staff will also continue to work with interested parties to get their input as the proposed form and manual changes go through the revision and approval process.

AG Level - Proposed regulatory changes. In addition to the revisions to Regulations 1807 and 1828 proposed at the April BTC meeting, staff recommends two additional revisions:

- Subdivision (b)(1) - Allow a submitting jurisdiction 30 days to provide additional information when their original submission does not contain the elements of a "petition" as provided in subdivision (a)(3). If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge.

  Staff believes this revision clarifies how staff will treat incomplete submissions, while allowing the submitting jurisdiction time to correct their submission without losing its date of knowledge. Interested parties did not note any objection to this new provision.

- Subdivision (b)(8) - Reduce the timeframes of the trigger provision at the AG supplemental decision level so that after three months the petitioner or notified jurisdiction may request the AG issue a supplemental decision. When such a request is made, the supplemental decision will be issued within 60 days. Staff's prior recommendation was that a petitioner or notified jurisdiction could make such a request after six months and the AG would issue its supplemental decision within 90 days. However, after re-evaluating the work to investigate petitions at this step, staff believes the shorter timeframes allow sufficient time for staff to investigate new facts and arguments that are frequently presented as the basis for objecting to the AG's previous decision.

  As noted in Alternative 2, MuniServices believes the AG supplemental decision should be issued within 30 days.

Exhibit 6 provides an updated overview chart of the current local tax petition process and the main revisions proposed by staff and interested parties.

Appeals Division and Board Member Level. Staff does not propose any new changes to the staff recommendation presented at the April BTC meeting with regard to the Appeals Division and Board Proceedings Division processes.

In their submission, HdL noted its continued concern regarding the undefined timeframe at the Appeals Division level of review. Page 2 of its submission provides in part:

> "There are currently no deadlines under Regulation 1807(c) for:
>
> - The Appeals Division to notice a conference.
> - The AG to issue a second supplemental decision should the Sales and Use Tax Department exercise its option under Section (c)(2)(A) to refer the case back to AG for further investigation.
>
> HdL shares the Appeals Division's desire to maintain flexibility in scheduling so as to accommodate the schedules and workloads of all participants involved. We have further been assured that previous lengthy delays were due to extenuating circumstances which are not likely to repeat. Should further delays occur over the next 12 to 18 months, we would appreciate the opportunity to bring the issue back before the Business Taxes Committee for reconsideration."

Mr. Klehs, representing the City of Livermore, made similar comments explaining that he reserves the right to come back to the Board and continue to tighten up the deadlines in the regulations if he feels that petitions are not proceeding through the process in a timely manner. Staff agrees that this is a reasonable approach.

Alternatives

Alternative 1 – Staff Recommendation

Approve and authorize publication of staff's proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax* (see Exhibit 2). Staff's proposed amendments:

- Formalize the LRAU's existing policy to give jurisdictions a 30-day extension to respond to an LRAU notification regarding the misallocation of local or district tax. The regulations currently provide that a

"petition" includes an appeal from a notification from the LRAU that taxes were misallocated and will be reallocated. Jurisdictions may object to that notification, submitting a written petition to the AG within 30 days of the date of mailing of the notification.

- Allow a submitting jurisdiction 30 days to provide additional information when their original submission does not contain the elements of a "petition" as provided in subdivision (a)(3). If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge.
- Add a provision in the AG supplemental decision process to allow the petitioner or notified jurisdiction to request after three months that the AG issue its supplemental decision within 60 days from receiving the request, with the requester understanding the limitations it may be placing on the AG's investigation and analysis. This provision is similar to the mechanism currently in subdivision (b)(3) with regard to the AG's initial decision, but with shorter timeframes.
- Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Require the notice of an appeals conference be mailed to the petitioner, all notified jurisdictions, and any other jurisdiction that would be substantially affected if the petition were granted. Currently, if a petition is denied by the AG and the Appeals Division, a potentially affected jurisdiction will not be notified until the matter is scheduled for a Board hearing.
- Allow participants 30 days to provide additional information following the appeals conference, and allows the other participants 30 days to respond to that information. The current regulation provides participants up to 30 days to provide additional information and gives 15 for other participants to respond.
- Clarify in subdivisions 1807(g) and 1828(f), "Operative Date and Transition Rules," that the proposed amendments have a prospective application. The current language in these subdivisions is specific to the 2008 revision of the regulations.

Pros

- By formalizing the LRAU extension procedure, jurisdictions avoid the issue of petitions technically filed late with the AG because the LRAU allowed additional time when the petition was filed after the 30-day deadline.
- When a submission sent to the AG does not contain the elements of "petition," jurisdictions are allowed 30 days to provide additional information. If the necessary information is provided within 30 days, the date of receipt of the original submission will be considered the date of knowledge. This provision allows the submitting jurisdiction time to perfect its submission with a date of knowledge based on the date of receipt of the original submission.
- Provides the petitioner or notified jurisdiction a method to control the timeline of the AG review process by allowing the petitioner or notified jurisdiction to request that the AG issue its supplemental decision within 60 days of receiving a request to issue a supplemental decision.
- Formalizes the current procedure of transferring files from the AG to the Appeals Division within 30 days.
- Brings potentially affected jurisdictions into the appeals process starting at the Appeals Division level rather than the current Board Hearing level. By notifying more jurisdictions at an earlier level, staff believes issues can be more fully discussed and possibly resolved before the Board hearing.
- Clarifies and makes consistent the time allowed to each party to submit and respond to information provided after the appeals conference.
- Allows adequate time for staff to fulfill its responsibility to all jurisdictions affected by its decision whether or not to reallocate reported local or district tax.
- The current proposed revisions would be applied prospectively.

Cons

- Does not limit the local tax appeals process to a timeframe for completion.
- Does not prohibit participants from submitting additional responses after the specified period for post-appeals conference submissions.

Alternative 2 - MuniServices

Approve and authorize publication of proposed amendments to Regulations 1807 and 1828 as proposed by MuniServices (see Exhibit 3). MuniServices' proposed amendments are the same as staff's except for the following:

- Subdivision 1807 and 1828 (b)(8) – Supplemental decision by the AG. MuniServices recommends that when a petitioner or notified jurisdiction requests the AG to issue a supplemental decision, the AG provide that decision within 30 days.
- Subdivisions 1807(g) and 1828(f) – Transition rule. Although MuniServices agrees with staff that the current proposed amendments should apply prospectively, they propose language different from staff's to accomplish this application. MuniServices' transition rule language refers to the regulatory changes in 2008 as amendments; staff's recommendation explains that in 2008 the regulations were repealed and readopted.

Pros

- Requires the AG to issue its supplemental decision within 30 days instead of the 60 days proposed by staff.
- Addresses MuniServices' concerns with staff's proposed transition rule language.

Cons

- The 30 day deadline may not provide for adequate review of the AG supplemental decision. Staff had considered a 30 day deadline to issue the supplemental decision, but concluded that 60 was more appropriate due to the time required to complete additional investigation and the levels of review involved in issuing a supplemental decision.
- Staff believes its proposed transition rule language more accurately reflects the 2008 regulatory changes. In 2008, the titles and entire texts of the regulations were revised. The California Code of Regulations indicates that the regulations were repealed and readopted in 2008.

Recommendation

Staff recommends the Board approve Alternative 1 to approve and authorize publication of proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, as proposed in Exhibit 2.

Critical Time Frames

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

Preparation and Reviews

Tax Policy Division, Sales and Use Tax Department

Current as of: August 10, 2011

Filing and Processing Local Tax Petitions

I. INTRODUCTION

At the April 26, 2011 Business Taxes Committee meeting, the Committee directed staff to explain what is expected of the parties involved in the local tax petition process.

II. EXPECTATIONS AT THE ALLOCATION GROUP (AG) LEVEL

The procedures described below include existing practices as well as new practices intended to make the petition process more efficient for all parties.

A. Jurisdictions are expected to file petitions that meet the requirements of Regulation 1807(a)(3). Jurisdictions and their consultants typically submit petitions in weekly batches. The number of petitions submitted at one time can range from just a few to hundreds. The greatest number is received at quarter end, and it is not unusual for over 1,000 petitions to be submitted in those months. Petitions are generally submitted on BOE-549 forms:

- BOE-549-S, *Claimed Incorrect Distribution of Local Tax – Short Form* - used for simple tax reallocation questions having to do with taxpayers' business addresses or other less complex matters

- BOE-549-L, *Claimed Incorrect Distribution of Local Tax – Long Form* - used for complex local tax reallocation issues such as sales tax vs. use tax, place of sale, or other complex issues where more information is needed

Future improvements: Currently, most petitions are filed using the short form. To speed up identifying and resolving simpler requests, staff plans to limit the use of the short form to Tax Area Code changes and use the long form for all other inquiries. This change will be added to the form instructions and updated in the AG procedures manual.

Staff is also revising the BOE-549 forms to improve the quality of information provided with submitted petitions. Staff is reviewing the information requested on the long form and will add fields for other items that may assist in investigations. For example, a box is being added for the contact person's email address, since staff has found that they receive more timely responses when they contact taxpayers by email rather than by telephone.

Petitions that do not meet the requirements of 1807(a)(3) will be returned to the petitioner. Staff proposes amending Regulation 1807 to allow the petitioner 30 days to resubmit the petition with additional information. If all requirements of 1807(a)(3) are met with the resubmitted petition, the original date of submission will be considered the date of knowledge. If all requirements of 1807(a)(3) are not met within 30 days, a date of knowledge will be established when a petition meeting all requirements of 1807(a)(3) is submitted.

After Regulation 1807 is amended, the form instructions will be revised to include a statement that a petition may be returned if the required information is not included.

B. Jurisdictions are expected to provide as much information as possible to support a reallocation. To make a reallocation, staff needs to know: the amount of the transfer, where the funds should be allocated to, where the funds are being allocated from, and why

the reallocation should be made. The AG estimates that currently 10% of petitions include all of this information along with sufficient supporting documentation that the AG can make a reallocation without further verification.[1] An estimated 30% include all of the information, but still require the AG to verify information with the taxpayer.[2] The remaining petitions are missing information, and while they may be complete enough to be considered valid petitions under the provisions of Regulation 1807(a)(3), they may require substantial investigation by the AG.

C. **Jurisdictions are expected to use the deadline trigger provisions in Regulation 1807(b)(3).** If after six months the petitioner believes the AG is taking too long to issue its decision, the petitioner should request that the AG issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the AG will issue a decision based on the information in its possession.

Future improvements: In the recent 1807 Issue Paper, staff proposed an identical trigger provision at the AG supplemental decision level. However, staff has re-evaluated this proposal, and now recommends reducing the time so that after three months the petitioner or notified jurisdiction may request the AG issue a supplemental decision. When such a request is made, the supplemental decision will be issued within 60 days. The combination of the two trigger provisions gives the petitioner and notified jurisdictions a mechanism to define the timeframe of the AG review process. Staff believes this is preferable to imposing hard deadlines at the AG level, because it provides staff the flexibility to investigate petitions without a strict time limit, while still allowing petitioners and notified jurisdictions to impose deadlines when they believe it is necessary.

D. **The AG must acknowledge and review petitions timely.** When petitions are received, the AG logs them in, sends acknowledgement letters to the petitioners, classifies the petitions based on difficulty, and assigns the petitions to appropriate staff based on classification.

Future improvements: To improve responsiveness to petitioners, staff will begin reviewing petitions for completeness within 30 days of receipt. Petitions that do not meet the requirements of 1807(a)(3) will be returned to the petitioner as explained in section A above.

In addition, while the AG staff maintains case notes for actions taken on a petition, staff plans to begin using general field audit form BOE-414-Z, *Assignment Activity History*, to record the status of work done (e.g., calls made, emails sent) on petitions at the AG level. Staff believes that using the BOE-414-Z will make it easier to respond to a petitioner's requests for status updates, as well as make it easier for supervisors to review how an investigation is progressing.

Staff is also standardizing how the AG lead and AG supervisor review the status of petitions as petitions age. There will now be monthly follow-ups with staff for any aged

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[1] For example, no additional verification is required for a reallocation related to a change on a taxpayer's Schedule F, *Detailed Allocation by City of 1% Combined State and Uniform Local Sales and Use Tax*, when the petition includes the related sales invoice or a revised schedule bearing the same signature as was on the original return.

[2] Although a reallocation petition may include a spreadsheet or other explanation of why a reallocation is warranted, staff must contact the taxpayer and verify that the taxpayer gave the jurisdiction or consultant the information and that the information is correct.

assignments over 180 days. The AG lead will follow up on assignments aged 180-270 days, and the AG supervisor will follow up on assignments aged greater than 270 days.

The AG has also reviewed its procedures for preparing and following up on information requests to taxpayers and is updating the AG procedure manual to formalize guidelines for contacting taxpayers. Cases where the taxpayer is uncooperative in providing records, or where investigation determines that records do not exist, will be evaluated by the AG auditor and discussed with the AG lead and/or AG supervisor. The auditor will then decide how to proceed, such as whether to deny the petition, contact the petitioner for assistance, forward the case to a field office for investigation, or issue a subpoena for records.

Procedures for sending information requests to field offices have also been reviewed. Cases will be discussed with the AG supervisor and the petitioner will be notified prior to the case being referred to the field office. Referrals will include specific instructions to field staff for the information sought. Procedures for follow up with the field office auditor and the auditor's supervisor have also recently been modified. These modifications include shortening the follow-up time with field offices (30 days for in-state offices and 60 days for out-of-state offices). Staff will review these procedures periodically to determine whether future changes are needed.

The current threshold for manually processing fund transfers is $50 per quarter. This current threshold has been in place since 1990 and was supported by Government Code section 13943.2 which sets the dollar amount that state agencies are not required to collect. Although the amount in section 13943.2 was recently raised to $500, staff proposes raising the threshold to $250 per quarter, to be consistent with the Local and District Tax thresholds and reallocation policies applied to field audits since July 2010. The AG estimates 5% of fund transfers processed are for amounts below $250.

The exception to the proposed threshold would be for registration changes. In cases where the investigation results in a change to the taxpayer's registration, BOE's computer system will continue to automatically process fund transfers for periods that have been funded within two quarters prior to the date of the registration update regardless of whether the threshold was met in those quarters.

E. **Taxpayers are expected to timely respond to information requests.** Taxpayers are required to make their records available for examination by the BOE. However, taxpayers often place a low priority on responding to requests to provide records since local tax disputes only involve reallocation of reported amounts and do not result in any change to the taxpayer's liabilities. As explained above, when the taxpayer is uncooperative, the AG auditor, lead, and supervisor will determine how to proceed with the case.

III. EXPECTATIONS AT THE APPEALS DIVISION LEVEL

The information below describes current procedures in the Appeals Division.

A. **The Appeals Division is expected to timely schedule cases for conference.** When an AG supplemental decision is appealed, the AG forwards the file to the Appeals Division. The Appeals Division conference holder schedules conferences after considering the holder's workload and availability of the conference participants. For example, two conferences have been noticed and the conference holder anticipates noticing the remaining four in inventory (two of which were received in May 2011) promptly upon

coordinating with all participants. On average, an appeals conference is noticed within three and a half months (and held within 5 months) of receipt of a file that is ready for conference.

The petitioners and notified jurisdictions are sent the notice of conference at least 45 days prior to the scheduled date of the conference. Since there is no authority in the regulation to grant postponements, and because there are typically numerous jurisdictions participating in each conference, the conference holder normally contacts the participants or their representatives to determine availability prior to setting the conference date.

B. **The Appeals Division must timely issue a D&R.** The Appeals Division holds the appeals conference allowing participants the opportunity to explain their respective positions. Participants may submit written information prior to the conference, and the conference holder may allow participants to submit additional information following the conference. The Appeals Division issues a written Decision and Recommendation (D&R) within 90 days after the final submission of information following the appeals conference, or within 180 days if additional time is approved by the Chief Counsel. Copies of the request to the Chief Counsel for additional time to prepare the D&R and the Chief Counsel's response are provided to the petitioner, notified jurisdictions, and the Sales and Use Tax Department (SUTD). On average, D&Rs are completed within about 120 days after the final submission of information.

A copy of the D&R is sent to the petitioner, all notified jurisdictions, any other jurisdiction that will be substantially affected by the D&R, and the SUTD.

C. **Jurisdictions must submit information timely.** Appeals conference participants should submit all facts, law, argument, and other information in support of their position at least 15 days before the appeals conference. If the conference holder allows a participant to submit additional information following the conference, the participant must submit that information, with copies to all other participants, within the time allowed by the regulation (usually 30 days). Participants responding to that additional information are currently required to submit their response, with copies to all other participants, within 15 days (staff and interested parties propose changing this to 30 days). Participants may request additional time to submit argument and evidence; however, such requests are not granted unless approved by the Assistant Chief Counsel of the Appeals Division.

IV. EXPECTATIONS AT THE BOARD PROCEEDINGS DIVISION LEVEL

The Board Proceedings Division is expected to timely schedule cases for hearing. Currently, when the Board Proceedings Division receives a timely request for hearing, it will notify the SUTD, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer whose allocations are the subject of the petition, that the petition for reallocation is being scheduled for hearing. The notice of hearing is sent at least 75 days prior to the scheduled date of the hearing. Staff estimates that a notice of hearing is sent to all parties to the appeal about one to two months after the date a request for hearing is received.

V. OTHER ISSUES

In addition to the information discussed in the preceding sections, the Committee discussion included asking staff to clarify whether additional staffing was needed and to report on the status of the AG cases over two years old.

Is additional staff needed? Under the current provisions of Regulation 1807 and under staff's proposed changes, the AG does not believe it needs additional permanent staff to address workload issues. The AG has recently added a Tax Technician II position and has tentatively been approved for an additional Associate Tax Auditor position (who will be responsible for the initial review of petitions and who will also work cases).

Historical inventory data shows that the AG is catching up with the backlog of petitions. On June 30, 2010, the AG had 5,656 total petitions in inventory. As of June 28, 2011, the AG had 4,174, a reduction of approximately 26%. Based on historically achieved hours per case, the number of petitions submitted over the last nine months, and the number of positions, it appears that AG staff should continue to complete more petitions than it receives. Staff estimates that if the number of submitted petitions remains consistent, AG staff should clear the backlog in 24 months. Additional temporary staff might be helpful in reducing the backlog; however, staff notes that in the short-term, adding staff will decrease production as trainers (usually the highest producers) will have less time to work cases.

The Appeals Division also believes that under the current provisions of Regulation 1807 and under staff's proposed changes, the Appeals Division can continue to meet its current workload without requesting additional staff. We note that since September 2008, of the 1,555 petitions (involving 542 taxpayers) in inventory, the Appeals Division has closed 1,349 petitions (involving 522 taxpayers), including 99.8% of the Mass Appeals cases.

With regard to the deadlines proposed by Mr. Klehs, the AG believes that if the proposed changes were applied immediately, the AG would likely deny hundreds of cases without full investigation. If the deadlines were applied prospectively (i.e., only to cases filed under the new rules), the AG is unsure if there would be a significant increase in cases denied by the AG and appealed to the Appeals Division. AG staff notes, however, that current inventory would need to be prioritized over aged inventory to meet the new deadlines. The Appeals Division believes that it would need additional staff if there was a significant increase in the number of cases appealed to the Appeals Division. It notes, however, that adding staff will temporarily decrease production as current staff trains new staff.

AG cases over 2 years old. At the April 2011 committee meeting, interested parties raised the issue of aged cases greater than 24 months at the AG level. At that time, there were approximately 1,030 petitions aged greater than 24 months pending at the AG level. Of those 1,030, approximately 60% were related to six taxpayer accounts. Since April, AG has reduced the total number of petitions aged greater than 24 months by just over 5%; however, none of the six accounts that make up the majority of this aged inventory have been fully resolved. Before the August 2011 committee meeting, the AG hopes to resolve the petitions related to at least two of these six accounts, which will result in a substantial reduction to AG's aged inventory

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

<u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and

includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice

of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional

time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the district so notified.

<u>The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

From: Myers, Eric
To: Whitaker, Lynn
Cc: Varney, Janis; Mancia, Fran; Wils, Robert
Subject: Regulation 1807 and 1828-response from MuniServices
Date: Friday, August 05, 2011 4:35:41 PM
Attachments: 1807-1828 Aug BTC - Regs - MuniServices 080511.docx

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Ms. Whitaker,

We have reviewed the changes to Regulation 1807 and would like to submit the attached version as our version. It contains some changes to section (g) to avoid any unintended mischief and a change to section (b)(8) to shorten the time for issuing the supplemental decision—since it is supplemental it should not require a full 60-days to finish after having the matter for 3 months.

We have also reviewed the staff report. While we commend the Board's Staff for many of its recommendations, we were told that we would be given a draft of this report to review. We never were. Thus, while we commend the Board's staff for the informal process and the communication with the parties that took place, we must protest that this document presents only the Board Staff's position.

We have some concerns with some of the positions taken in the report and would like the opportunity to address them, here, in writing. We are aware that most of these will be addressed in the changes to the CPPM or internal guidelines but we want our concerns noted for the record.

1. There are a number of changes that are proposed to be made to the CPPM or internal guidelines, for example changes to the petition forms (II.A), the follow-up process (II.D), and the process for getting information from uncooperative taxpayers (II.E). These changes, at whatever level made, should only be made after meaningful consultation with and input from the jurisdictions and their representatives/consultants.
2. Staff, in section II. B, seem to be implying that the jurisdictions or their representatives have somehow not performed an obligation if the Board Staff has to do what it is paid to do—investigate a valid petition. We remain willing to give information that we have to help in the investigation but the line should not be blurred between submitting a valid petition and conducting the investigation.
3. We are concerned with the idea that we are "expected" to use the deadline trigger. We are willing to use that trigger if necessary. But this trigger is only valuable if it is preceded by thorough and timely investigation by Staff.
4. We appreciate the detail Staff provided in section V. We would like to point out that while staff believes it will soon resolve 600 or so claims that are more than 2 years old, that still leaves 400 claims that are more than 2 years old. We are cautiously optimistic that the changes proposed by staff will help reduce that number further but if not, we will return to the Board asking for firm deadlines with penalties for missed deadlines.
5. The paragraph on the threshold should be completely removed. The discussion of a threshold increase was never part of the interested party proceedings and this change has not been duly noticed under the Administrative Procedures Act. This should not be part of the discussion for this Board meeting to amend regulation 1807. We note, for the record, that if this matter is discussed we will oppose it and we further note that the Government Code section provides no authority for such a threshold.

Sincerely yours,

Eric Myers

MuniServices, LLC

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Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and

includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified

jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax

Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. ~~It is~~ This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below</u>. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the district so notified.

<u>The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. ~~It is~~ This regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as amended in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Revenue Management for Local Government

Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

August 8, 2011

Lynn Whitaker, Policy Program Specialist
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

Re: Regulation 1807/1828

Dear Ms. Whitaker:

Thank you for the opportunity to respond to the proposed changes to Regulation 1807 and 1828. We are in agreement with the revisions and appreciate the opportunity to work with both the Allocation Group and Appeals Division.

We have reviewed the staff report for improvements to the Local Tax Petition Procedures, and have outlined our suggestions and comments below:

EXPECTATIONS AT THE ALLOCATION GROUP (AG) LEVEL

Jurisdictions are expected to file petitions that meet the requirements of Regulation 1807(a)(3).

FUTURE IMPROVEMENTS (BOE-549S AND BOE549-L)

- There are other simple registration issues, aside from boundary errors, for which the short form would be more appropriate. For example, where a taxpayer has moved from City A to City B or an incorrect registration to an owner's home address or an accountant's office has been made. We recommend using the short form for **all** registration issues involving a simple change of business address or Tax Area Code.

- Both the short form and the long form should include a field for the taxpayer's email address, as well as contact information for the person or entity filing the petition.

- Although it may not always be known, a field should be added to specify which jurisdiction the funds are currently being misallocated. HdL generally includes this information in the "Reason for Questioning the Allocation" section.

- The HdL Companies would appreciate being included in the process for revising forms BOE-549S and BOE-549L.

1340 Valley Vista Drive | Suite 200 Diamond Bar, CA 91765

Jurisdictions are expected to provide as much information as possible to support a reallocation.

- The petitioner may not always know the amount of the transfer. For example, a retailer with multiple outlets may consolidate their local tax payment to one jurisdiction. In this case, the petitioner would have no way of determining how much each jurisdiction should have received.

The AG must acknowledge and review petitions timely.

- The AG currently sends out acknowledgements for petitions (i.e., "*we acknowledge the receipt of 132 petitions on 6/30/2011*"). We suggest future acknowledgement include a case number or account number.

THRESHOLD FOR FUND TRANSFERS

- We believed that this change is unnecessary as it will have a negligible impact on the AG workload. The impact to the petitioning jurisdiction should also be considered. We often see cases involving a taxpayer that, while correctly registered, is reporting local tax incorrectly. Under the proposed threshold of $250 per quarter, a petition that takes 18 months to resolve would result in that petitioning jurisdiction not receiving the benefit of any amount under $4,500.

- We suggest raising the quarterly threshold to $100 for cases other than registration.

EXPECTATIONS AT THE APPEALS DIVISION LEVEL

There are currently no deadlines under Regulation 1807(c) for:

- The Appeals Division to notice a conference.
- The AG to issue a second supplemental decision should the Sales and Use Tax Department exercise its option under Section (c)(2)(A) to refer the case back to AG for further investigation.

HdL shares the Appeals Division's desire to maintain flexibility in scheduling so as to accommodate the schedules and workloads of all participants involved. We have further been assured that previous lengthy delays were due to unique and extenuating circumstances which are not likely to repeat. Should further delays occur over the next 12 to 18 months, we would appreciate the opportunity to bring the issue back before the Business Taxes Committee for reconsideration.

OTHER ISSUES

Since January 1, 2011 HdL has filed 2,114 petitions, and BOE has sent 2,302 responses. While our net inventory dropped by 188 cases over 7 months, we are unsure if it will be possible for BOE staff to clear our current backlog in the next 24 months. However, we believe that the proposed procedural changes will have a substantial positive impact.

Thank you for your consideration.

Sincerely,

Robin Sturdivant
Local Government Advocate

RLS:ppl

From: Johan Klehs [mailto:johanklehs@comcast.net]
Sent: Tuesday, August 09, 2011 11:34 AM
To: Whitaker, Lynn
Cc: Troy Brown; John Pomidor; 'Robin Sturdivant'; 'Cristina Valdivia'
Subject: RE: BOE - Local Tax Petitions - Regulations 1807 & 1828 to be presented at August BTC

Lynn:

After discussions with the City of Livermore this morning, we have decided to join HdL and the staff in supporting the new changes to the Regulation 1807 process.

We will have no other official submission at this time. I will make sure we send a formal letter to each of the Board Members and will cc you. Finally, we will reserve the right to come back to the BOE and continue to tighten up the deadlines in Regulation 1807 if we feel that petitions are not proceeding through the process in a timely manner.

I hope this helps. Thank you for your partnership.

Johan Klehs
Johan Klehs & Company Inc.
1415 L Street, Suite 620
Sacramento, CA 95814
(916)551-1881, Telephone
(510)409-5292, Cell
(916)444-7114, FAX
E mail: johanklehs@comcast.net
www.klehs.com

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level

I. Petition is received by AG

All: Allow a submitting jurisdiction 30 days to provide additional information when their original submission does not contain the elements of a "petition" as provided in subdivision (a)(3).

↓

II. AG investigates and issues a decision[1]

↓

III. No objection to AG decision received – decision is final

or

Objection received - AG considers the objection and issues a supplemental decision

Staff: If AG does not issue a supplemental decision within 3 months, the petitioner or notified jurisdiction may request AG to issue a decision; AG will issue a supplemental decision within 60 days.

MuniServices: If AG does not issue a supplemental decision within 3 months, the petitioner or notified jurisdiction may request AG to issue a decision; AG will issue a supplemental decision within 30 days.

↓

IV. No objection to supplemental decision received – decision is final

or

Objection received – AG sends file to Appeals

All: AG to transfer file within 30 days.

[1] If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.

↓

VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

↓

VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.

↓

VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

↓

IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

↓

X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

or

Request for Board hearing received in response to a D&R or SD&R

Board Hearing Level

XI. Request for Board hearing received

XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

August 23, 2011

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

Electronically signed by Kathleen Skidgel (601-100-826-6264)

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1 P R E S E N T

2

3 For the Committee: Betty T. Yee
Chair

4

Michelle Steel
5 Member

6 Jerome E. Horton
Member

7

George Runner
8 Member

9 Marcy Jo Mandel
Appearing for John
10 Chiang, State Controller
(per Government Code
11 Section 7.9)

12 Diane G. Olson
Chief
13 Board Proceedings Division

14

15 ---oOo---

16 ITEM 1 STAFF

17

Susanne Buehler
18 Sales and Use Tax Department

19 Richard Parrot
Special Taxes and Fees
20 Division

21 Phillip Bishop
Special Taxes and Fees
22 Division

23

24 ---oOo---

25 ITEM 2 STAFF

26 Susanne Buehler
Sales and Use Tax Department

27

28

1 ITEM 3 STAFF

2 Susanne Buehler
Sales and Use Tax Department

3

Cary Huxsoll
4 Legal Department

5 Kevin Hanks
Sales and Use Tax Department

6

7 ---oOo---

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SPEAKER ITEM 1

NAME	PAGE
Dennis Loper	6

---oOo---

SPEAKER ITEM 2

NAME	PAGE
(No speakers for this item)	

---oOo---

SPEAKERS ITEM 3

NAME	PAGE
Johan Klehs	19
Robin Sturdivant	20
Christy Bouma	21

---oOo---

1 AGENDA ITEM 1
2 450 N STREET
3 SACRAMENTO, CALIFORNIA
4 August 23, 2011
5 ---oOo---
6 MR. RUNNER: Good morning.
7 MR. HORTON: Good morning. Try that again. Good
8 morning.
9 MR. RUNNER: Good morning.
10 MR. HORTON: Let us call today's Board of
11 Equalization meeting to order.
12 Ms. Olson, before we, uh -- before we take you, I
13 want to welcome Ms. Kathy Skidgel --
14 MS. SKIDGEL: Yes.
15 MR. HORTON: -- as our new court reporter. Glad to
16 have you here. And we will do our best to be as clear as
17 possible, okay?
18 Ms. Olson, what's our first matter?
19 MS. OLSON: Our first item on today's agenda is the
20 Business Taxes Committee. Ms. Yee is the Chair of that
21 committee.
22 Ms. Yee.
23 MS. YEE: Thank you very much, Ms. Olson.
24 Good morning, Members.
25 MR. HORTON: Good morning.
26 MS. YEE: We have three items before the Business
27 Taxes Committee. And let me introduce the first item,
28 which is Proposed Amendments to Cigarette and Tobacco

1 Products Licensing Act Regulations. And we have one public
2 speaker on this matter.
3 Mr. Loper, do you wish to come forward? And I'll
4 have staff introduce the matter as you do so.
5 Good morning.
6 MS. BUEHLER: Good morning. I am Susanne Buehler
7 with the Sales and Use Tax Department.
8 We have three agenda items for your consideration
9 this morning. For agenda item one, Mr. Richard Parrot and
10 Mr. Phil Bishop from our Special Taxes and Fees Division
11 are with me today.
12 Staff seeks your approval to initiate an interested
13 parties process to discuss the proposed adoption of a new
14 regulation and amendments to existing regulations under the
15 Cigarette and Tobacco Products Licensing Act of 2003.
16 We would be happy to answer any questions you may
17 have after the speaker's presentation.
18 MS. YEE: Okay. Very well. Thank you very much.
19 Good morning, Mr. Loper. If you'll introduce
20 yourself for the record formally. You'll have --
21 ---oOo---
22 DENNIS LOPER
23 California Distributors Association
24 ---oOo---
25 MR. LOPER: Dennis Loper, representing the
26 California Distributors Association.
27 Um, we have -- we have concerns about, um, the
28 issue that would allow -- or would codify the practice of

1 transferring product from one retailer to the other. We
2 would argue that that was never envisioned in AB 71. And
3 as the proponents of the bill, um, our members feel very
4 strongly that this is very and away from what the original
5 intent of the law was.
6 Uh, we understand that we'll have to deal with this
7 in committee, but I would argue that -- that the regulation
8 in itself, if we only speak to the regulation, presumes
9 that the practice itself is legitimate. And that's our
10 concern.
11 Thank you.
12 MS. YEE: Okay. Thank you very much, Mr. Loper.
13 Um, in light of that concern, let me -- let me try
14 to respond to this. Um, what I'd like to do, uh, Members,
15 is to have this issue, um, go to an interested parties
16 process.
17 I think, um, there are several issues embedded in
18 what Mr. Loper has just described. Certainly going back
19 to, uh, the original statute enacted by Assembly Bill 71 by
20 our esteemed Chairman Mr. Horton, um, who authored the
21 bill. Although there weren't expressed prohibitions in the
22 bill with respect to, um, I think, retailers selling to
23 another unrelated retailer, um, there might be some
24 specific requirements that may have to be met.
25 And I just wanted to kind of get staff's
26 perspective with regard to where you believe we have
27 authority to move in this area, just for the Board's
28 informational purpose today. And what I'd -- I'd like to

1 do is to, with the BTC staff, help structure the discussion
2 in the IP meeting so that, um -- I think there may be some,
3 um, provisions of AB 71 if we were to look at this whole
4 transfer issue, it may require further statutory action.
5 But, uh, that's my own gut sense at this point. But if
6 staff could respond to, um --
7 MR. BISHOP: I'm Phillip Bishop with the Special
8 Taxes and Fees Division, and --
9 MS. MANDEL: Can you speak up?
10 MR. BISHOP: Yes. There is a -- Phillip Bishop
11 with the Special Taxes and Fees Division.
12 There is a statutory, um, provision in the R and T
13 Code that says that a retailer can only buy from a licensed
14 distributor or wholesaler. So there -- so there's a
15 prohibition against purchasing from another retailer. And
16 therefore, a retailer selling to another retailer, it's the
17 retailer that buys the product that has, um, violated the R
18 and T Code. And they, again, don't have evidence in the
19 Business and Professions Code under AB 71 to document that
20 they have paid tax to a wholesaler or a distributor because
21 that retailer they purchased the product from is not a
22 wholesaler or distributor.
23 And the wholesaler or distributor is required by AB
24 71 to issue a license or issue an invoice that includes the
25 license of every, um, retailer that they sell their product
26 to, and to include their license so that when, um, the
27 product is inspected, they know it's tax-paid, especially
28 the tobacco products as opposed to the cigarettes.

1 Cigarettes are stamped, but the tobacco products requires
2 going back to the invoice to find out if the taxes were
3 paid on it.
4 So although there's not a prohibition against, um,
5 necessarily selling to another retailer, there is a
6 prohibition by a retailer from buying from another
7 retailer.
8 But, uh, that's our statutory scheme.
9 MS. YEE: Okay. All right.
10 Um, are there questions by Members? I want to --
11 Mr. Runner, please.
12 MR. RUNNER: Again, that's not the issue here
13 though, is it?
14 MR. BISHOP: Well, true. The issue is retailers
15 purchasing in bulk --
16 MR. RUNNER: Right.
17 MR. BISHOP: -- multiple locations, and moving the
18 product from one location to another.
19 MR. RUNNER: Right.
20 MR. BISHOP: And when there are, um, our ID staff
21 or BOE staff that, um, inspects the location, is looking
22 for tax-paid -- a tax-paid product, they don't have
23 necessarily the invoice that accompanied that original
24 purchase.
25 MR. RUNNER: Right. Okay.
26 MR. BISHOP: Right. So this --
27 MR. RUNNER: The core of this issue is the issue of
28 transfer in regards to a -- in terms of, uh, stores that

1 are owned by the same individual, correct?

2 MR. BISHOP: Correct. Correct.

3 MR. RUNNER: Okay. And I guess my -- I mean, I

4 think it should -- I think the interested parties is a good

5 direction to go to clarify this issue.

6 Um, I think the problem that we have is, uh, we

7 have been a bit ambiguous in regards to how we're handling

8 this issue. And so I guess regardless of one direction

9 we're going go, whether it's going to say, hey, this is

10 beyond what the statute allowed, or it isn't, either way

11 we've got to create some clarity, I think --

12 MS. YEE: Yeah.

13 MR. RUNNER: -- for these cases coming forward.

14 MS. YEE: I think, Mr. Runner, my sense of, uh, a

15 key focus of the interested parties process will be how we

16 can provide better guidance to retailers.

17 I think certainly we've seen, um, enough cases to

18 suggest that there's not clear direction or guidance. And,

19 uh, that would be, at a minimum, um, you know, one of the

20 things that I'd like to have come out of the interested

21 parties process.

22 But I do think, with respect to the authority

23 issue, whether it's statutory or regulatory, um, that we

24 need to come to grips with that. And I'd like to have a

25 fairly, um, thorough examination of that through the

26 interested parties process. I'm not convinced that, uh,

27 given the unwieldiness of the AB 71 statute, through no

28 fault of the Chairman, but certainly at the time that we

1 had the statutes enacted, and now having had them in
2 practice, uh, I think we've seen where there have been some
3 holes and in this particular issue on transfers. I'd like
4 to have a further exploration with respect to what latitude
5 this Board really has on that issue.
6 MS. STEEL: Just question.
7 MS. YEE: Ms. Steel.
8 MS. STEEL: How we going to invite these people,
9 like especially mom and pop stores, for interest parties?
10 MR. BISHOP: Well, we -- we did send to any
11 retailer that has multiple locations, we derived a
12 registration list and an address list out of our sales and
13 use tax database for -- we sent them a special notice
14 advising them how they could transfer product that we
15 would -- and document it -- that we would accept upon
16 inspection.
17 So we do have that group that we could invite.
18 There are also a number of associations, which Mr. Loper is
19 a representative of, that represent a number of these small
20 or other -- you know, whether it's a distributor or
21 retailer association. So we do have a list of associations
22 that we will -- we plan on inviting, most definitely.
23 MS. YEE: Okay. Other questions or comments?
24 Mr. Horton.
25 MR. HORTON: Um, part of the concern that I'd like
26 for us to address in the process is, is that when you're
27 transferring product from one entity to another, you run
28 the risk of what -- of blending occurring and the

1 commingling of legitimate product with illegal products.
2 And so the challenge that the agency has from a
3 auditing and control perspective is, unless you can go in
4 and control the inventory of both locations,
5 simultaneously, then as those -- as that product is
6 transferred from one spot to the other, and if that invoice
7 travels with that product, the difficulty becomes how do
8 you control the inventory, uh, to make sure that you don't
9 have, uh, the commingling of illegal products flowing in
10 and out?
11 In the absence of a -- of some stamp of some sort,
12 it is very challenging for the agency, uh -- and so now in
13 doing so we open up a, um -- we open up an opportunity for
14 criminal acts to occur. And therein is the major concern,
15 uh, when we do that.
16 But I look forward to trying to see if we can
17 address that. But I would say it's going to be extremely,
18 extremely challenging. But look forward to it.
19 MS. YEE: Okay. Thank you very much, Mr. Horton.
20 Um --
21 MS. MANDEL: I have another different kind of
22 question.
23 MS. YEE: Yes, Ms. Mandel, please.
24 MS. MANDEL: Um, my question -- and I suppose staff
25 will be going back and reviewing this as well. My question
26 had to do with the, um, penalty, suspension period
27 reduction ones. And I suppose through interested parties
28 you'll go back and be talking about as well. There were

1 some reasons, I vaguely recall, as to why there were set
2 dates originally -- set periods originally in the
3 regulations of what things could be reduced to, and there
4 may have been some concerns about ensuring consistency and
5 where the Board is delegating. I just don't remember
6 everything.
7 And I know, of course, that was when we first
8 started with it. And so maybe now with experience you'd
9 have more experience in terms of what it ought to be. But
10 I would suggest that as part of that we go back and look at
11 what we were given as to why it was appropriate or in terms
12 of putting set periods in there. Just, you know, as sort
13 of historical background and education.
14 Thanks.
15 MR. BISHOP: Sure.
16 MS. YEE: Thank you, Ms. Mandel.
17 Before we take action on this, I want to go back
18 and further address the point that Mr. Runner had raised
19 with respect to, um, clarity.
20 One of the things I actually would like to see in
21 this whole tobacco and -- cigarette and tobacco products
22 area is perhaps a consolidated publication that speaks to,
23 um, those licensees or permittees that have any touch with
24 cigarette and tobacco products and, uh, what provisions
25 apply to them.
26 I think part of what we have been seeing in the
27 appeals that we've heard is there may be a particular
28 intent at the moment that a potential licensee comes in by

1 which they are seeking a license. But in practice, the
2 practice may be broader than being a retailer. But I do
3 think, um, having all of those provisions in one place for
4 anyone doing business that has any interaction with
5 cigarette and tobacco products may be appropriate. Okay.
6 All right. Without any further discussion, is
7 there a motion?
8 MR. HORTON: So moved.
9 MS. YEE: Okay. Motion by Mr. Horton to move this
10 item to the interested parties process.
11 Is there a second?
12 MS. STEEL: Second.
13 MS. YEE: Second by Ms. Steel.
14 Without objection, such will be the order. Thank
15 you very much.
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1 AGENDA ITEM 2

2 MS. YEE: Our next item in the Business Taxes
3 Committee is relating to Technology Transfer Agreements.
4 I'll look to Ms. Buehler and Mr. Ferris to introduce the
5 issue.

6 MS. BUEHLER: Thank you. For the second item staff
7 seeks your approval to conduct a study and cooperation with
8 industry. This study would be to determine the feasibility
9 of developing an optional percentage which can be used in
10 estimating the fair market value of tangible personal
11 property in Technology Transfer Agreements involving
12 prewritten software transferred on tangible storage media.

13 I don't believe we have any speakers. So if you
14 have any questions, we'd be happy to answer them.

15 MS. YEE: Okay.

16 Questions, Members? Mr. Horton.

17 MR. HORTON: Just a statement, Member.

18 I would encourage the Department to -- to expand
19 the interested parties meeting, to actually go out to the
20 various different areas. I know in San Diego County there
21 are a number of industries that would very much be
22 interested in providing some input into the process, and we
23 might increase the participation by doing so.

24 So I would ask that you consider that. I know
25 Oracle, HP, and a few others are located down in that area.
26 There are other areas --

27 MS. YEE: Yeah, Silicon Valley.

28 MR. HORTON: -- particularly in Silicon Valley and

1 so forth.

2 So this might be a discussion that we need to take

3 directly to the executives and chief financial officers of

4 the various corporations that could be impacted by this.

5 Because I personally would like to know that the interest

6 rises above the accountants in determining whether or not

7 we should establish a safe harbour and minimize the burden

8 and address the potential 17200 issue.

9 So that interest would be important to me. If the

10 interest is not there, I sort of hesitate to really engage

11 and establish a safe harbour that may create a windfall or

12 may not. So it's very important that we make that

13 determination at the highest level possible.

14 MS. YEE: Thank you, Mr. Horton.

15 I think what I would -- and I'm sure the staff is

16 mindful of this. But certainly in pursuing the study, the

17 study's not going to be done in a vacuum with respect to

18 the perspectives of the entities you've described. And I

19 think that can pretty much be done on a consultative

20 process as the study's being developed. And as we then

21 have the study concluded, um, they certainly are welcome to

22 also participate in the interested parties process with

23 respect to whether we proceed with using this optional

24 percentage.

25 But I would hope the staff -- and they're nodding

26 their heads --

27 MS. BUEHLER: Yes.

28 MS. YEE: But I know we've had conversations

1 before. The industries will definitely be consulted.
2 MS. BUEHLER: Yes, they will.
3 MS. YEE: Yes. Thank you.
4 Other questions, Members?
5 Hearing none, is there a motion?
6 MR. HORTON: Move adoption.
7 MS. YEE: Motion by Mr. Horton to approve, uh,
8 directing staff to conduct the study.
9 Is there a second?
10 MS. MANDEL: Second.
11 MS. YEE: Second by Ms. Mandel.
12 Without objection, such will be the order.
13 Thank you very much.
14 ---oOo---
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1 AGENDA ITEM 3

2 MS. YEE: Okay. And our third item before the
3 Business Taxes Committee are proposed amendments to
4 Regulation 1807 relating to Petitions for Reallocation of
5 Local Tax, and Regulation 1828 relating to Petitions for
6 Distribution or Redistribution of Transactions and Use Tax
7 Filing and Processing Local Tax Petitions.
8 Thanks. Okay. Let me have staff introduce the
9 issue, please.
10 MS. BUEHLER: For agenda item three, Mr. Cary
11 Huxsoll from our Legal Department and Mr. Kevin Hanks from
12 the Sales and Use Tax Department are with me today.
13 MS. YEE: Great.
14 MS. BUEHLER: Staff seeks your approval and
15 authorization to publish proposed amendments to Regulations
16 1807, Petitions for Reallocation of Local Tax, and 1828,
17 Petitions for Distribution or Redistribution of
18 Transactions and Use Tax.
19 This issue is a continuation from the April 26,
20 2011 Business Taxes Committee meeting where the item was
21 sent back to staff.
22 Since the April meeting, staff has been working
23 with several of the interested parties to review and
24 clarify the petition process. As part of this review,
25 staff recognized the need to improve some of the processes
26 at the allocation group level. Most of the changes
27 proposed by staff will be included in future revisions to
28 the Board's procedural manuals. However, two are included

1 in the staff recommendation -- recommended revisions to
2 Regulation 1807 and 1828.
3 With regard to the regulation revisions, both
4 Mr. Johan Klehs and the HdL Companies have indicated that
5 they now support the staff recommendation.
6 With regard to the form and procedure manual
7 changes, staff will continue to work with interested
8 parties as the proposed changes go through the revision and
9 approval processes.
10 We have speakers on agenda item three, and we would
11 be happy to answer any questions you may have after their
12 presentations.
13 MS. YEE: Thank you very much, Ms. Buehler.
14 We do have three public speakers on this item. I
15 will ask each of you to introduce yourselves formally for
16 the record, and you have three minutes each.
17 ---oOo---
18 JOHAN KLEHS
19 City of Livermore
20 ---oOo---
21 MR. KLEHS: My name is Johan Klehs. We represent
22 the City of Livermore.
23 We support the staff recommendation. And we thank
24 the Board Members and their staff and the senior BOE staff
25 of moving the process along and inserting more deadlines
26 into the process.
27 Second of all, we would like if the Board would
28 just somehow acknowledge how they plan to handle the

1 expectations -- Exhibit 1, pages 1 through 5 -- excuse me,
2 1 through 5, yes, in the process here.
3 And third, we had mentioned that we wanted an
4 additional staff person assigned to handle the potential
5 backlog that might take place. Chief Counsel Randy Ferris
6 has told us that the Board is cross-training someone for
7 that purpose, so we're thankful for that.
8 And I'd be happy to answer any questions.
9 MS. YEE: Thank you very much, Mr. Klehs.
10 Next speaker, please.
11 ---oOo---
12 ROBIN STURDIVANT
13 HdL Companies
14 ---oOo---
15 MR. SCHUTZ: Good morning, Members. My name is
16 Robin Sturdivant with the HdL Companies.
17 And first of all, um, I'd like to say that we
18 really appreciate the time that staff and both the
19 Allocation Group and the Legal Department, um, took to meet
20 with us and sort of hash over the issues. And we are in
21 support of the proposed regulatory changes.
22 Um, we do have some concerns about the informal
23 issue paper, the staff reported on, on expectations. Um,
24 again, we'd like clarification on how those procedures and
25 policies will be implemented.
26 Um, we were a little concerned that a couple of
27 items mentioned in here were sort of slipped in, um, after
28 the interested parties process, and we weren't really

1 afforded the opportunity to discuss them.

2 Um, there's -- there's some concerns with it, the

3 revisions of the forms that we use to submit those

4 allocations. We'd like to be involved with staff, um, when

5 they're going through that process. We have suggestions

6 that we think would be useful for both sides.

7 Um, and we'd also like to, um, really have more

8 time discussing the threshold, um, issue that's mentioned.

9 Um, in the past it was $50. Staff has proposed raising it

10 to 250. We think that's a little excessive. We understand

11 that it would mirror, um, the audit process. But it is a

12 little bit different in that the audit process you're

13 looking to collect that 250.

14 Um, in this case the money's already been paid by

15 the taxpayer; it's just been paid to the wrong person. So

16 it's not a matter of collecting. So we do think that 250's

17 a bit high. We think a hundred is more reasonable.

18 MS. YEE: Okay.

19 MS. STURDIVANT: Um, and again, we thank the staff

20 and the Board Members for their time on this issue. Thank

21 you.

22 MS. YEE: Thank you, Ms. Sturdivant.

23 Next speaker, please.

24 ---oOo---

25 CHRISTY BOUMA

26 Muniservices

27 ---oOo---

28 MS. BOUMA: Madam Chair, Members, Christy Bouma

1 representing Muniservices Company.
2 We'd just like to come before you and thank you
3 for the time and staff commitment, um, that you
4 demonstrated when this issue came before you in the spring.
5 I know that we sort of concurred with the general
6 feeling of the Board that the process governed by
7 Regulation 1807 was, I would say, dramatically revamped and
8 that, um, some of the indictments about backlogs maybe
9 didn't belong to the revised process, that maybe just
10 needed more time to operate under that process, which is
11 what was required.
12 But, um, as the Board continues to do, demonstrate
13 an interest in continuing the conversations we participated
14 in the process, had an opportunity to share and vent a lot
15 of ideas. And I think the improvements recommended by
16 staff are just that, improvements.
17 And we look forward to continuing to work on the
18 revisions that are now being pushed to the Procedures
19 Manual.
20 And, again, thank you for your time and staff's
21 efforts.
22 MS. YEE: Thank you, Ms. Bouma.
23 Let me just add also, very appreciative of all
24 parties working together on this. I think we have a much
25 improved process with, um, prescribed deadlines.
26 Um, I want to echo the sentiment of several of the
27 speakers with respect to the, um, expectations about future
28 improvements. Um, to the extent that you all are getting

1 along so well now, um, I would encourage that the
2 discussions about some of these expectations, um, do take
3 place in an interested parties process before, um, these
4 items are addressed in a manual or elsewhere.
5 I think there should just be clear understanding.
6 We've made some great headway with respect to streamlining
7 this process. One of the areas that I'm particularly
8 concerned about has to do with the furnishing of
9 information.
10 Uh, there's a lot of expectations, kind of
11 front-loaded in this process. To the extent that we want
12 petitions to be robust when we receive them, uh, I think
13 one of the areas I can still see being a little bit of a
14 concern is how much information is enough? And if there
15 isn't enough information, particularly as it relates to the
16 amounts -- and on occasion we're dealing with a taxpayer
17 that may have multiple locations, and so that may not be
18 clear. But some articulation, or perhaps even a question
19 from the petitioning -- of the petitioning entity that
20 speaks to what attempts have been made to try to get this
21 information so that the staff, by the time you get the
22 petition, know pretty much where things have been left off
23 and can pick up the petition, rather than having this
24 back-and-forth process start over again with the rejection
25 of the petition outright.
26 So things like that, which I think can really be
27 addressed easily. But I would like all those expectations
28 to be discussed further in an interested parties process so

1 that we're all very clear about what they are.
2 Okay. The other thing is, um, I'll raise this
3 after the discussion, but we have a number of pending cases
4 and I wanted to just kind of get staff's perspective as it
5 relates to how the proposed reg. may overlay on the pending
6 cases that are in the pipeline.
7 Okay. But let me entertain questions first.
8 Mr. Runner.
9 MR. RUNNER: Yeah, I concur with Member Yee on that
10 issue in regards to clarity in regards to expectations.
11 And, um, I'm assuming that as we go ahead and move through
12 the staff recommendation and vote to approve the staff
13 recommendation, if that's how this goes, um, that then the
14 understanding is that in the expectation issues those
15 will -- will kind of be used then and put forward to an
16 interested parties meeting before any of those then would
17 be implemented. So that we -- not only those who are
18 concerned about some of those issues and talked through
19 those can be done, but also that we might be able to
20 reflect back on those as they would be implemented.
21 Is that kind of the understanding that you're
22 hearing?
23 MS. BUEHLER: Yes. As we incorporate items into
24 our manuals, they are open for public comment. And we can
25 certainly do that in an interested party format.
26 MR. RUNNER: And, therefore -- and as a result of
27 that, let me just clarify then.
28 MS. BUEHLER: Mm-hmm.

1 MR. RUNNER: When you say they're going to be in --
2 before they go to an interested party or are input, before
3 they go into the manual, remind me of what are -- how is
4 the Board then reviewing those?
5 MS. BUEHLER: I -- I -- it's my understanding that
6 they are, um, sent to the Board Members and posted to the
7 web for comment.
8 MR. RUNNER: Okay. So these --
9 MS. BUEHLER: And they are given a certain amount
10 of time for comment, and then we come back and make
11 revisions. And if necessary, repost again.
12 MR. RUNNER: Okay. So my understanding, just to
13 clarify, is that -- I don't know whether it's the three-day
14 review or the --
15 MS. BUEHLER: No.
16 MR. RUNNER: -- 24-hour review or which review
17 process that is. But just for clarity then, before any of
18 those issues of expectations would be implemented, uh, that
19 would then be done through the interested parties
20 process --
21 MS. BUEHLER: That's correct.
22 MR. RUNNER: -- and then reported back to Members
23 within that review process so that we can make comment or
24 withhold on those.
25 MS. BUEHLER: Right.
26 MR. RUNNER: Okay. Thank you.
27 MS. YEE: Okay. Thank you, Mr. Runner.
28 MS. STURDIVANT: Excuse me, Ms. Yee.

1 MS. YEE: Yes.

2 MS. STURDIVANT: Ms. Yee. When those are posted on
3 the Board's website, is there any notification that goes
4 out to any of the interested parties, or do we just need to
5 check daily?

6 MS. YEE: Well, actually, what I'm going to suggest
7 with respect to these expectations is that it be part of
8 how we normally do the interested parties process so that
9 there is notification.

10 I don't think this is going to take very long. I
11 mean, these are all issues that you're all familiar with.
12 I think it really is about coming to agreement about what
13 the practice will be.

14 So I think, Mr. Runner, this is going to look very
15 much like a traditional interested parties process. I
16 anticipate probably one meeting can really resolve a lot of
17 the lack of clarity, and that we would have this back to us
18 for approval pretty quickly.

19 MR. RUNNER: Thank you.

20 MS. YEE: Okay. Thank you.

21 Other questions, Members?

22 MS. MANDEL: Um, I just have one.

23 MS. YEE: Ms. Mandel. Yes.

24 MS. MANDEL: And it maybe really has more to do
25 with the way that this regulation shows on our website and
26 in the Business Taxes Law Guide. And it came to my
27 attention because of the staff say -- on the transition
28 rules saying it's repealed and readopted. And Muniservices

1 was wanting to say that it was amended back in 2008.
2 And I did get an explanation that although the
3 Board had written in its rulemaking file that it was
4 amending the regulation in 2008, that when OAL approved the
5 regulation -- because it was a complete strike-out of the
6 old reg. and a complete -- you know, lots of words new,
7 that OAL approved it as a repealer and new section filed.
8 And that's why the staff recommendation has "repealed and
9 readopted".
10 My question is, on our website, when I look at that
11 regulation and go to the bottom and it gives me the
12 history, it says "amended", so -- which may be why they
13 picked up and said it should say "amended".
14 And I'm just wondering if -- if OAL winds up saying
15 it's a repealer and a new section, why do we say "amended"
16 in our material that we publicly post? Is that --
17 MR. HANKS: I'm not positive other than it could
18 have been an oversight due to the fact that the initial
19 notice in the rulemaking file indicated that it was being
20 amended, but the final official version does say repealed
21 and new section filed. So we could look into whether we
22 need to change the history on our website in the law
23 guide.
24 MS. MANDEL: Okay. So can you just look into that?
25 Because I think that's where that misunderstanding probably
26 came up.
27 MR. HANKS: Okay.
28 MS. YEE: Thank you, Ms. Mandel. Good point.

1 Thank you.

2 Mr. Hanks, can you comment on my earlier question?

3 So we have these proposed amendments. We have pending

4 cases. Is there -- what's the feasibility of actually

5 applying some of these provisions to our pending cases, if

6 appropriate?

7 MR. HANKS: Right. Ms. Yee, we look forward,

8 actually, to implementing some of the changes and

9 modifications in our procedures that we've been able to

10 jointly discuss with the consultants. We're thinking that

11 this is going to streamline our process, and in so doing

12 reduce a backlog that we have of aged petitions.

13 We note that within the past year 13 percent of

14 those aged petitions have been eliminated. We're

15 anticipating, with the hiring of a new Associate Tax

16 Auditor as a gatekeeper, that that person's going to assist

17 us and triage these cases too, assigning them to the

18 correct persons. And I think through this entire process

19 we're going to be able to manage that backlog, reduce it to

20 a manageable level. And we're anticipating seeing actually

21 a large reduction in the numbers of cases within the next

22 year. That's our goal.

23 MS. YEE: Okay. All right. All right. Thank you.

24 I really appreciate the attention to the resources to

25 facilitate this improved process. And what we may do is

26 ask for an update then with respect to what our caseload

27 looks like in a few months. Thank you.

28 Other questions, Members?

1 Hearing none, may I have a motion, please?
2 MR. HORTON: So moved.
3 MS. YEE: Motion by Mr. Horton.
4 Is there a second?
5 MS. MANDEL: Second.
6 MS. YEE: Okay. We have a motion by Mr. Horton to
7 approve the amendments and authorize publication. Second
8 by Ms. Mandel.
9 Without objection, such will be the order. Thank
10 you very much.
11 MR. HANKS: Thank you.
12 MS. BUEHLER: Thank you.
13 MS. YEE: Thank you, staff.
14 That adjourns the Business Taxes Committee. Thank
15 you.
16 ---oOo---
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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on August 23, 2011 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 29 constitute a complete and accurate transcription of the shorthand writing.

Dated: August 30, 2011

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter

ESTIMATE OF COST OR SAVINGS RESULTING FROM PROPOSED REGULATORY ACTION

Proposed Amendment of Sales and Use Tax Regulations 1807, *Petitions for Reallocation of Local Tax* and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

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

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

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

Statement Prepared by _____ Date August 28, 2011
Regulations Coordinator

Approved by _____ for RF Date 8-29-11
Acting Chief Counsel

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

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: **SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

Board Proceedings Division
10/7/05

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

EPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
State Board of Equalization	Rick Bennion	916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Title 18, Section 1807, Petitions for Reallocation of Local Tax		Z

ECONOMIC IMPACT STATEMENT

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

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

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) No significant adverse economic impact on business or employees,small business,jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

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

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

Explain: _____

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

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

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

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

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

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

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

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

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

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

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

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

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

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

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

Explain: _____

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

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

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

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

Regulation:	Benefit: $ _____	Cost: $ _____
Alternative 1:	Benefit: $ _____	Cost: $ _____
Alternative 2:	Benefit: $ _____	Cost: $ _____

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

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

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

.. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

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

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the curren year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section

_____ of the _____ Code;

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

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

☐ 3. Savings of approximately $ _____ annually.

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

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

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

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☐ 4. Other.

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

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

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

☐ 4. Other.

SIGNATURE		TITLE Regulations Coordinator
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE		DATE 9/12/2011
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER Exempt under SAM section 6660	DATE

1. *The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.*

STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2011-0913-02		

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

SEP 13 '11 SEP 23 '11

Office of Administrative Law

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: State Board of Equalization

AGENCY FILE NUMBER (If any):

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Petitions for Reallocation of Local Tax	18	1807	September 23, 2011

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Richard E. Bennion	(916) 445-2130	(916) 324-3984

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[ ] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND

TITLE(S)

REPEAL

3. TYPE OF FILING

[ ] Regular Rulemaking (Gov. Code §11346)

[ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

[ ] Emergency (Gov. Code, §11346.1(b))

[ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

[ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

[ ] Emergency Readopt (Gov. Code, §11346.1(h))

[ ] File & Print

[ ] Other (Specify) _____

[ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

[ ] Print Only

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

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

[ ] Effective 30th day after filing with Secretary of State

[ ] Effective on filing with Secretary of State

[ ] §100 Changes Without Regulatory Effect

[ ] Effective other (Specify) _____

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

[ ] Department of Finance (Form STD. 399) (SAM §6660)

[ ] Fair Political Practices Commission

[ ] State Fire Marshal

[ ] Other (Specify) _____

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investigation of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC §7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15-17, 2011, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to

Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the

Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be

accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its

investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the

Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the

requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date~~ it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, September 23, 2011 10:40 AM
To: Alonzo, Mary Ann (Legal); Anderson, Karen E.; Barnett, Louis; Bartolo, Lynn; Bennion, Richard; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Boring, Dilara; Carey, Lynne; Cazadd, Kristine; Chung, Sophia (Legal); Creager, Bernice; Davis, Toya P.; Delgado, Maria; Duran, David; Epolite, Anthony (Legal); Evans, Regina; Ferris, Randy (Legal); Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Dolores; Goehring, Teresa; Gore, Anita; Hale, Mike; Hall, Gail; Harrison, Ryan; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Hughes, Shellie L; Ingenito, Robert; Jacobson, Andrew; Kinkle, Sherrie; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Maddox, Ken; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Olson, Diane; Pales, Karen; Ralston, NaTasha; Riley, Denise (Legal); Ruwart, Carole (Legal); Scott, Megan; Shah, Neil; Singh, Sam; Singh, Sam; Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Thomas, Robert; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Vasquez, Rosalyn; Vasquez, Rosalyn; Wallentine, Sean; Whitaker, Lynn; Williams, Lee; Worley, Tabitha; Zivkovich, Robert
Subject: State Board of Equalization - Announcement of Regulatory Change 1807 and 1828

The State Board of Equalization proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, to improve the Board's processes for reviewing local sales and use tax and district transactions and use tax petitions. A public hearing regarding the adoption of the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 09:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, November 15, 2011.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link: http://www.boe.ca.gov/regs/reg_1807_1828.htm.

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

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

Please DO NOT REPLY to this message, as it was sent from an "announcement list."

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Technical Problems: If you cannot view the link included in the body of this message, please contact the Board's webmaster at webmaster@boe.ca.gov

Bennion, Richard

From: Bennion, Richard [Richard.Bennion@BOE.CA.GOV]
Sent: Friday, September 23, 2011 1:08 PM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1807 and 1828

The State Board of Equalization proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, to improve the Board's processes for reviewing local sales and use tax and district transactions and use tax petitions. A public hearing regarding the adoption of the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 09:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, November 15, 2011.

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

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ECONOMIC IMPACT AND BUSINESS ASSESSMENT

Based on the Department's findings it is anticipated that the proposed action will have no economic effect on the creation of new jobs and new businesses within the state, nor on the expansion of businesses currently doing business within the State of California. The Department has also determined this proposed action will not eliminate jobs or existing businesses.

The Department has determined that the proposed regulations will not have: 1) a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, or 2) a significant effect on housing cost. The Department is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the pubic hearing.

CONTACT PERSONS

General and substantive inquiries concerning the proposed action may be directed to:

Department of Developmental Services
Community Rate Section
1600 Ninth Street, Room 310
Sacramento, CA 95814
Attention: Jeffrey Greer
Phone: (916) 654-2201
Facsimile: (916) 654-1578
E-mail Address: jeff.greer@dds.ca.gov

If the above person is unavailable, you may also contact Greg Saul, Branch Manager, Program Operations Branch at (916) 653-3749.

AVAILABILITY OF RULEMAKING DOCUMENTS

The Department has prepared and has copies ready for public review, an Initial Statement of Reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the exact text of the proposed regulations.

Copies of the Notice, Initial Statement of Reasons and text of the proposed regulations will be made available through the Department's website at www.dds.ca.gov. All other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact persons at the above address. Upon completion, the Final Statement of Reasons will be made available by either contacting the persons above or through the Department's website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After close of the comment period the Department may adopt the proposed regulations as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before the Department adopts the regulations as revised. Requests for the modified text should be made to the contact person named above.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investiga-

tion of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC §7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30–day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post–conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15–17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.
Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley–Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley–Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h).) Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley–Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions)

for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11–004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staffs, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30–day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post–conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that

the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistibutions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15–17, 2011, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The

text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO SECTION 25705 SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK: IMAZALIL

SEPTEMBER 23, 2011

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for imazalil and amend Title 27, California Code of Regulations, section 25705.[1]

PUBLIC PROCEEDINGS

Any written statements or arguments concerning this proposed action, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on **November 7, 2011**, the designated close of the written comment period.

Written comments can be sent by e-mail, mail or fax addressed to:

Monet Vela
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P.O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 324-1786
Telephone: (916) 323-2517
monet.vela@oehha.ca.gov

Comments sent by courier should be delivered to:

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

It is requested but not required that hard-copy statements or arguments be submitted in triplicate.

On request only, OEHHA will schedule a public hearing to present oral comments. The request must be submitted in writing to OEHHA at the address listed above no later than **October 21, 2011**, which is 15 days before the close of the comment period. OEHHA will mail a notice for any scheduled public hearing to interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days before the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or monet.vela@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Monet Vela, in writing at the address given above, or by telephone at (916) 323-2517. Fran Kammerer is a back-up contact person for inquiries concerning processing of this action and is available at (916) 445-4693.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter Proposition 65 or the Act), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code section 25249.5).

For chemicals known to the state to cause cancer, an exemption from the warning requirement is provided

[1] All further regulatory references are to Title 27 of the California Code of Regulations unless otherwise indicated.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
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BETTY T. YEE
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SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

September 23, 2011

To Interested Parties:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

Proposed to Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and

Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investigation of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC §7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department

within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited

against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

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petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in

2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

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There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

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

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

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15-17, 2011, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information

on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

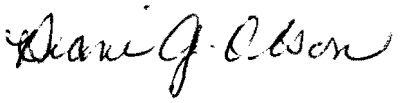
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

SPECIFIC PURPOSE AND NECESSITY

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. (RTC § 7201.) Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC §7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC §7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Klehs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed

his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website.

At the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board agreed with Board staff, Mr. Klehs, the HdL Companies, and MuniServices, LLC that the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation improved the review processes prescribed by both regulations and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, and comments made during the Board's discussion of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, in deciding to propose the amendments to Regulations 1807 and 1828 described above.

ALTERNATIVES CONSIDERED

The Board considered four alternatives to the proposed amendments to Regulations 1807 and 1828 during its April 26, 2011, Business Taxes Committee meeting, which are described in detail in Formal Issue Paper 11-004. Alternative 1 was recommended by Board staff, alternative 2 was recommended by Mr. Klehs and supported by the HdL Companies, and alternatives 3 and 4 were recommended by MuniServices, LLC.

All four alternatives recommended that Regulations 1807 and 1828 be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written

objection to a notification of misallocation; (2) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (3) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (4) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Therefore, all of these amendments were included in staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, and the Board voted to propose these amendments to Regulations 1807 and 1828 at the conclusion of its August 23, 2011, Business Taxes Committee meeting.

Alternative 1 recommended that the Board amend Regulations 1807 and 1828 to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 90 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within six months after receiving a timely written object to its original decision. Alternatives 2 recommend that the Board amend Regulations 1807 and 1828 to require the Allocation Group to consider an objection to its original decision on a petition and issue a supplemental decision on the petition within 90 days. Alternatives 3 and 4 recommended that the Board amend the regulations to require that the Allocation Group complete any supplemental investigation within 90 days after the Allocation Group receives an objection to its original decision on a petition and then meet and confer with the parties. Alternatives 3 and 4 also recommended that the amendments to both regulations allow a jurisdiction or district to request, any time after the parties meet and confer, that the Allocation Group issue its supplemental decision on a petition within 30 days after receiving such request and based upon the information in the Allocation Group's possession. The similar procedures embodied in the four alternatives regarding the issuance of supplemental decisions were combined into staff's revised recommendation in the Informal Issue Paper dated August 10, 2011, that both regulations be amended to allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision. The interested parties subsequently concurred with staff's revised recommendation, except that MuniServices, LLC, recommend that staff change 60 days to 30 days. The Board voted to propose the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation because, in some cases, the Allocation Group does need 60 days to prepare its supplemental decisions.

Alternative 1 also recommended that the Board amend the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to clarify that the 2002 versions of the regulations were repealed and new versions of the regulations were adopted in 2008, clarify the effect of the adoption of the 2008 regulations on petitions

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the regulations apply to procedures occurring after their effective dates and are not retroactive. Alternative 3 recommended that the Board adopt Regulations 1807.1 and 1828.1 containing the provisions of Regulations 1807 and 1828 as recommended to be amended in alternative 3, and amend Regulations 1807 and 1828 so that they cease to be operative when Regulations 1807.1 and 1828.1 become operative in order to make it clear that the provisions of new Regulations 1807.1 and 1828.1 are not retroactive. Alternative 4 simply recommended amending Regulations 1807 and 1828 to provide that the 2011 amendments have no retroactive effect. In its revised recommendation in the Informal Issue Paper dated August 10, 2011, Board staff continued to recommend that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be clarified as originally recommended by staff in alternative 1. However, MuniServices, LLC, recommend that the transition rules be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. The Board voted to propose to amend the transition rules in the manner recommended by staff because the Board agreed that staff's recommended amendments were consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations, and the Board determined that staff's recommended amendments clarified the regulations' existing transition rules without creating unnecessary confusion.

Alternative 2 also recommended that the Board amend Regulations 1807 and 1828 to: (1) limit the time the Allocation Group has to prepare a second supplement decision after it receives an objection to its original supplemental decision; (2) require the Appeals Division to schedule an appeals conference within six months after receiving a petition file from the Allocation Group, and require the Appeals Division to schedule an appeals conference within 90 days after the Board receives an objection to a second supplemental decision; (3) reduce the additional time the Board's Chief Counsel can grant the Appeals Division to prepare its Decision and Recommendation (D&R) regarding a petition to 30 days; (4) eliminate the procedures for the parties to a petition to request that the Appeals Division reconsider its D&R and issue a Supplemental D&R; and (5) require the Board to issue a notice of hearing within 90 days after a party to a petition files a timely request for a Board hearing. The Board did no vote on whether to propose any of these amendments because they were no longer being recommended by Mr. Klehs or the HdL Companies at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Alternatives 3 and 4 also recommended that the Board amend Regulations 1807 and 1828 to: (1) impose a 270-day limit on the Allocation Group's initial investigation of a petition, require the Allocation Group to meet and confer with the petitioner regarding the status of its investigation if it has not issued a decision on the petition within that period, and allow the petitioner to request that the Allocation Group issue its decision within 30 days after it has met and conferred with the petitioner without regard to the status of the investigation; (2) prohibit an appeals conference holder from accepting post-conference submissions outside of the 30-day periods provided in the regulation, except upon the agreement of all the parties to a petition; and (3) require a party to a petition to provide a justification as to why that party is presenting new evidence to the Board prior to a Board

hearing that was not previously provided during the Appeals Conference process, and require the Board to rule on the admissibility of the new evidence based upon such justification, at least 75 days prior to the Board hearing. The Board did no vote on whether to propose any of these amendments because they were no longer being recommended by MuniServices, LLC, at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

No reasonable alternative to the proposed amendments to Regulations 1807 and 1828 has been brought to the Board's attention that would be as effective in carrying out the purposes for which the amendments are proposed and that would lessen any adverse impact on small business, if any, from the proposed regulatory action and the Board has not rejected any such alternative.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant adverse economic impact on business, including small business.

The proposed regulation may affect small business.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the

Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be

accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its

investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the

Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the

requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulations: 1807 and 1828

Title: 1807, *Petitions for Reallocation of Local Tax*,

and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Preparation: Brad Heller
Legal Contact: Brad Heller

Board proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax,* to clarify the Board's review of local sales and use tax and district transactions and use tax petitions.

History of Proposed Regulation:

November 15-17, 2011	Public Hearing
September 23, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 13, 2011	Notice to OAL
August 23, 2011	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on September 23, 2011, 53 days prior to the public hearing.

November 16, 2011

Richard Bennion
Regulations Coordinator
State Board of Equalization

Bennion, Richard

From: Robin Sturdivant [RSturdivant@hdlcompanies.com]
Sent: Friday, November 04, 2011 10:53 AM
To: Bennion, Richard; Olson, Diane
Subject: Comments on Draft - Regulation 1807
Attachments: Proposed Changes to 1807.docx

Mr. Bennion/Ms. Olson:

Please find attached additional proposed changes to Regulation 1807. I understand that the matter is scheduled for Public Hearing on November 15, 2011.

The changes I have suggested are minor and will serve to clarify the regulation. I am not proposing any changes to the process. I have discussed these suggestions with three of the five Board Members, and will discuss with the remaining two next week. I've also sent my suggestion to the other interested parties (MuniServices LLC and Robert Cendejas). If you have any questions or would like the background for my suggestion, please do not hesitate to contact me.

Robin Sturdivant

Local Government Advocate
(909) 861-4335
(951) 217-3848 – cell
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HdL COMPANIES

Text of Proposed Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*

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Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

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Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Allocation Group.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The

written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the ~~Allocation Group~~ Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~ Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~ Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~ Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the ~~Allocation Group~~ Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the ~~Allocation Group~~ Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~ Sales & Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of ~~the Allocation Group~~Sales & Use Tax Department, the petitioner or any notified jurisdiction may request that the ~~Allocation Group~~ Sales & Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~ Sales & Use Tax Department will issue its supplemental decision based on the information in its possession.

(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~ Sales & Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales & Use Tax Department is final as to the petitioner and all notified jurisdictions.

(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide

a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the ~~Allocation Group~~Sales & Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~ Sales & Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~ Sales & Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~ Sales & Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales & Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the

Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision ~~of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along

with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be

accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 1530 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 1530 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the

Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

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(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

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(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ItThe readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that arewere governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approvedapproval by the Office of Administrative Law and forwardedforwarding to the Secretary of State) and itthere shall havebe no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation,Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after thatits operative date or that of any amendments thereto.

(3) All such petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and

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November 14, 2011

The Honorable Jerome Horton
Chair, State Board of Equalization
450 N. St.
Sacramento, CA 94279-0080

Re: Public Notice dated September 23, 2011 of Proposed Amendments
To Regulation 1807: **Suggestion to Clarify Proposed Amendments.**

Dear Mr. Horton,

In reviewing the above notice which is to be considered by the Board at the Meetings of November 15-16, 2011, I noticed that Board Staff is proposing to revise the written historical records on its website of the proceedings conducted by the Board in 2008 to revise the 2002 version of Regulation 1807. The September 23 notice contains the following language:

> " . . . MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g) and Regulation 1828, subdivision (f) be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. . . .
>
> ". . . the Board agreed [however] with Board Staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008, because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially 'amended' in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices. LLC's concerns . . . and the Board directed staff to correct the Board's website."

As the former Special Tax Counsel to MuniServices who represented it during the 2007-2008 proceedings to revise Regulation 1807 and 1828, I am surprised that the secondary record of the events that occurred in 2008 contained in the Barclay's California Code of Regulations would be granted recognition by the board over the actual Agenda for the Public Hearing and other contemporaneous official records of the proceedings leading up to the revisions that were

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11/15/11

made which show that the intent and the action taken was to "amend" and not to "repeal" the 2002 regulations. Attached is a sampling of those records showing amendments were proposed and duly adopted and nothing repealed. In any event, I urge the Board Members to reconsider the directive to Staff expunge the historical records showing amendments were adopted and nothing repealed.

Reversal of that directive would seem to be appropriate in light of the proposed language of the current proposed amendment stating that it is to have no "retroactive effect."

I further propose that the latter language be clarified by adding to it the following phrase:

> "on any intervening proceedings under the version of regulation 1807 that became effective September 10, 2008, including, but limited to, any in which Board Member hearings were granted or petitioners exhausted their administrative remedies."

I thank you in advance for any consideration you may give to this suggestion and I apologize for bringing it to your attention at a late hour. However, I believed you would want to be fully informed on this matter.

Yours very truly

Albin C. Koch

CC: The Honorable John Chiang, State Controller
The Honorable Betty T. Yee, Member, State Board of Equalization
The Honorable Senator George Runner, Member State Board of Equalization
The Honorable Michelle Steel, Member State Board of Equalization

Ms. Marcy Mandel, Deputy Controller
Diane G. Olson, Chief, Board Proceedings Division

Enclosures:

2008 Minutes of the State Board of Equalization for May 28, 2008.
Notice and Agenda State Board of Equalization Meeting, Proposed Amendments to SBE Regulations 1807 and 1828 May 28, 2008.
Business Taxes Committee Minutes, January 31, 2008.

STATE OF CALIFORNIA

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Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
May 28-29, 2008
NOTICE AND AGENDA
Meeting Agenda (as of 5/23/08, 11:43 a.m.)

Agenda Changes

Webcast Audio on Wednesday, May 28, 2008

Wednesday, May 28, 2008

9:30 a.m. Board Committee Meeting Convenes*
Board Meeting Convenes upon Adjournment of the Board Committee Meetings**

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair, Dr. Chu, may modify the order of the items on the agenda. Items may be postponed to a subsequent day; however, items will not be moved to an earlier day.

Board Committee Meetings*

Property Tax Committee+..... Ms. Steel, Committee Chair

1. Discussion of Biopharmaceutical Industry Business Property Assessment Practice Guidelines

Customer Services and Administrative Efficiency Committee+..... Mr. Leonard, Committee Chair

1. Update regarding the Board of Equalization's release of security deposits and a revised action plan for the security program
2. Update on Citation Process for the Statewide Compliance and Outreach Program (SCOP) Budget Change Proposal

Board Meeting**

Oral Hearings

There are no items for these matters:
A. Homeowner and Renter Property Tax Assistance Hearings
B. Corporate Franchise and Personal Income Tax Hearings

C. Sales and Use Tax Appeals Hearings
(Contribution Disclosure forms required pursuant to Gov. Code § 15626.)

C1. Janice Diana Samsing and Mildred Kaunas, 356928 (UT)
For Petitioner: Mildred Kaunas, Taxpayer
For Department: NaTasha Ralston, Tax Counsel

C2. Foster Poultry Farms, 77405, 265656, 304306 (KHE)
For Petitioner/Claimant: Brian Grant, Taxpayer
Rich Carlson, Representative
For Department: Bradley Heller, Tax Counsel

C3. Matt Lababedy, 89002316680 (KH)
For Petitioner: Matt Lababedy, Taxpayer
Don McKaughan, CPA
Bruce Locke, Attorney
For Department: Kevin Hanks, Hearing Representative

There are no items for these matters:
D. Special Taxes Appeals Hearings
E. Property Tax Appeals Hearings

F. Public Hearings
These items are scheduled for the afternoon session.

Chief Counsel Matters

J. Rulemaking
These items are scheduled for Thursday, May 29, 2008.

K. Business Taxes
There are no items for this matter.

L. Property Taxes
These items are scheduled for Thursday, May 29, 2008.

M. Other Chief Counsel Matters

M1. Adoption of Formal and Memorandum Opinions+.....Mr. Heller

Memorandum regarding the adoption of Formal and Memorandum Opinions and the publication of Dissenting and Concurring Opinions

G. Tax Program Nonappearance Matters – Consent
(Contribution Disclosure forms not required pursuant to Gov. Code § 15626.)

G1. Legal Appeals Matters ..... Mr. Levine

- Hearing Notices Sent – No Response
  1. Synpep Corporation, 329381 (CH)
  2a. Jamal A. Mahgoub, 356195 (CH)
  2b. AMT Solutions, Inc., 356197, 392072 (CH)
  3. Kenneth Darryl Beecham, 393632, (KH)
  4. Weston James Coolidge, 386899 (CH)
  5. Simmons Duplicating Supply Company, Inc., 347724 (OH)
- Petition for Release of Seized Property
  6. Hany M. Abuelrous, 433967 (ET)

G2. Franchise and Income Tax Matters ..... Ms. Kelly

- Decision
  1. Jack Larson, 329112

G3. Homeowner and Renter Property Tax Assistance Matters ..... Ms. Kelly

- Decision
  1. Gloria M. Williams, 387273

G4. Sales and Use Taxes Matters ..... Ms. Henry

- Redeterminations
  1. Nissan North America, Inc., 272698 (OHA)
  2. Panasonic Corporation of North America, 422116 (OHB)
  3. 4 S Casino Party Suppliers, LLC, 299497 (BH)
  4. Specialty Salvage Limited, 283580 (KH)
  5. Union Pacific Railroad Company, 326246 (OHA)
- Denial of Claim for Refund
  6. Govstor, LLC, 417205 (JHF)

G5. Sales and Use Taxes Matters – Credits, Cancellations, and Refunds ..... Ms. Henry

- Refunds
  1. Target Corporation, 360870 (OHA)
  2. Lighthouse Worldwide Solutions, Inc., 373666 (CH)
  3. Birchwood Cabinets of California, Inc., 389873 (KH)
  4. Pentax of America, Inc., 403453 (OHB)
  5. Daimler Chrysler Corporation, 436898 (CHA)
  6. Mercedes–Benz USA, LLC, 426403 (KH)
  7. Qualcomm, Inc., 404369 (UT)
  8. KII Acquisition Company, 342751 (FH)
  9. Vertis, Inc., 396782 (OHB)
  10. Consolidated Electrical Distributors, Inc., 287507 (AC)
  11. TSK America, Inc., 417773 (OHA)
  12. Freight Systems, Inc., 395248 (OHA)
  13. Watsonville Hospital Corporation, 381029 (GHC)

G6. Special Taxes Matters
There are no items for this matter.

G7. Special Taxes Matters – Credits, Cancellations, and Refunds ..... Mr. Gau

- Refunds
  - 1a. Equiva Trading Company, 254407, (MT) – "CF"
  - 1b. Equiva Trading Company, 208034, (MT) – "CF"
  - 2. Nella Oil Company, LLC, 345962 (MT)
  - 3. Midland National Life Insurance Company, 427043 (ET) – "CF"

There are no items for these matters:
G8 Property Tax Matters
G9 Cigarette License Fee Matters
G10 Legal Appeals Property Tax Matters

H. Tax Program Nonappearance Matters – Adjudicatory
(Contribution Disclosure forms required pursuant to Gov. Code § 15626.)

H1. Legal Appeals Matters ..... Mr. Levine

- Hearing Notices Sent – No Response
  - 1. Rajinder Singh Garcha, 30060 (KH)
- Cases Heard But Not Decided
  - 2a. Don Ricardo's Restaurant, Inc., 42025 (AP)
  - 2b. Padrino's, Inc., 42029 (AC)
  - 3. John Richard Dudley, 253691 (KH)

H2. Franchise and Income Tax Matters ..... Ms. Kelly

- Opinion
  - 1. Affiliated Funding Corporation, 317945
- Decisions
  - 2. Bruce H. Erfer and Lynn N. Erfer, 294534
  - 3a. Stanley W. Gribble, 354879
  - 3b. SWG Management Company, 354880
  - 4. Ronald C. Nelson and Marie J. Nelson, 329716
  - 5. Teresa Rothman, 380556
  - 6. Catherine Wimby, 354090
  - 7. Constance Zorn, 317272
- Opinion on Petition for Rehearing
  - 8. Larry Geisel and Rhoda Geisel, 358724
- Matter for Board Consideration
  - 9. Daniel V, Inc., 342609

H3. Homeowner and Renter Property Tax Assistance Matters ..... Ms. Kelly

- Decision
  1. Savann Nhem, 379885
- Petition for Rehearing
  2. Sajjad Riyaz, 349075

H4. Sales and Use Taxes Matters ..... Ms. Henry

- Relief of Penalty/Interest
  1. Messer Griesheim Industries, Inc., 435576 (OHB)
  2. PCS Leasing Co, L.P., 431274 (OHA)

H5. Sales and Use Taxes Matters – Credits, Cancellations, and Refunds ..... Ms. Henry

- Refund
  1. Owens & Minor Distribution, Inc., 306485 (OHB)

H6. Special Taxes Matters

This matter is scheduled for Thursday, May 29, 2008.

There are no items for these matters:

H7 Special Taxes Matters – Credits, Cancellations, and Refunds
H8 Property Tax Matters
H9 Cigarette License Fee Matters
H10 Legal Appeals Property Tax Matters

I. Tax Program Nonappearance Matters

(Contribution Disclosure forms not required pursuant to Gov. Code § 15626.)

I1. Property Taxes Matters ..... Mr. Gau

- Audits
  1. CallTower, Inc. (7960) – "CF"
  2. IP Networks, Inc. (7995) – "CF"

I2. Offers-in-Compromise Recommendations ..... Ms. Ogrod/Ms. Fong

1. Sharp Image Electronics, Inc.
2. Fassel Mahmoud Elder
3. Management Insultants L.P.
4. James Steven Slack
5. Fadel Mohammed Elwalani and Marina Elwalani
6. Angie Wilder

1:30 p.m. Board Meeting Reconvenes**

Special Presentations

Superior Accomplishment Awards Program

C. Sales and Use Tax Appeals Hearing
(Contribution Disclosure forms required pursuant to Gov. Code § 15626.)

C4a. Norman P. Shockley, Jr., 306953 (GH)
C4b. Acclaim Technology, Inc., 341204 (GH)
For Petitioner/Claimant: Norman Shockley, Jr., Taxpayer
For Department: Cary Huxsoll, Tax Counsel

F. Public Hearing

F1. Proposed amendments to Sales and Use Tax Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*; and, adoption of Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*+.....Mr. Levine

Regulations 1807, *Process of Reviewing Local Tax Reallocation Inquiries,* and 1828, *Process for Reviewing Transactions and Use Tax Distributions,* are proposed to be amended to institute regulatory changes to the processes for reviewing petitions for local tax reallocations and transition and use tax distributions.

Administrative Session
The following items are scheduled for Thursday, May 29, 2008.
N. Consent Agenda
O. Adoption of Board Committee Reports and Approval of Committee Actions
P. Other Administrative Matters

Q. Closed Session
These items are scheduled for Thursday, May 29, 2008.

Adjourn - The meeting will reconvene on Thursday, May 29, 2008, at 9:30 a.m.

If you wish to receive this Notice and Agenda electronically, you can subscribe at www.boe.ca.gov/agenda.

If you would like specific information regarding items on this Notice and Agenda, please telephone (916) 322-2270 or e-mail: MeetingInfo@boe.ca.gov. Please be advised that material containing confidential taxpayer information cannot be publicly disclosed.

The hearing location is accessible to people with disabilities. Please contact Claudia Madrigal at (916) 324-8261, or e-mail Claudia.Madrigal@boe.ca.gov if you require special assistance.

Diane G. Olson, Chief
Board Proceedings Division

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** Public comment on any agenda item, other than a Closed Session item or an item which has already been considered by a Board Committee, will be accepted at that meeting.

\+ Material is available for this Item.

++ Material will be available at a later date.

"CF" Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
(916) 322-2270 • FAX (916) 324-3984
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BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
May 28-29, 2008
NOTICE AND AGENDA
Meeting Agenda (as of 5/23/08, 11:43 a.m.)

Agenda Changes

Webcast Audio on Thursday, May 29, 2008

Thursday, May 29, 2008

9:30 a.m. Board Meeting Reconvenes**

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair, Dr. Chu, may modify the order of the items on the agenda. Items may be postponed to a subsequent day; however, items will not be moved to an earlier day.

Board Meeting**

Board Member Annual Photograph

Special Presentation ..... Dr. Chu

- Presentation of Retirement Resolution

  Joseph D. Young

State Assessed Properties Value Setting

Property Tax Matter++ - "CF" ..... Mr. Siu

Board sets unitary values of state-assessed properties annually, on or before May 31. The Board is required to value and assess all the taxable property within the state that is to be assessed by it, pursuant to section 19 of Article XIII of the Constitution and any legislative authorization there under.

H. Tax Program Nonappearance Matters – Adjudicatory
(Contribution Disclosure forms required pursuant to Gov. Code § 15626.)

H6 Special Taxes Matters ..... Mr. Gau

- Denial of Relief of Penalty
  1. Republic Indemnity Company of California, 298649 (ET) – "CF"

Oral Hearing

C. Sales and Use Tax Appeals Hearing

(Contribution Disclosure forms required pursuant to Gov. Code § 15626.)

C5. Princess House, Inc., 380967 (OHB)

For Petitioner:	Daniel L. Murphy, Taxpayer
	Michael R. Carchedi, Taxpayer
	Stacey Matthew, CPA
	Scot Grierson, CPA
	Rex Halverson, Representative
	Andrew Wilson, CPA
For Department:	Cary Huxsoll, Tax Counsel

Chief Counsel Matters

J. Rulemaking

J1. Proposed Amendments to *Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5000 et seq.)*+ ..... Ms. Scott

Proposal to adopt Section 100 changes to *Rules for Tax Appeals* regulations, which correct grammatical errors in specified sections.

L. Property Taxes

L1. State Assessee Property Tax Appeals Procedures+ ..... Mr. Ambrose

Alternative proposals for distribution of unsolicited late materials and revision of hearing summaries

Administrative Session

N. Consent Agenda ..... Ms. Olson

N1. Retirement Resolutions+

- Maria Socorro L. Concepcion
- Thomas A. Gonzales
- Sharon A. Hamilton
- Galen G. Hardin
- Loretta R. Lopez
- Mabel Mar
- Marco W. Morales
- Larry D. Rackley
- Spencer B. Stallings, Jr.
- Patty Taylor
- Victoria T. Winter

N2. Approval of Board Meeting Minutes+
- March 18-19, 2008
- April 8, 2008

N3. Adoption of 4-R Act Equalization Ratio for 2008-09+

O. Adoption of Board Committee Reports and Approval of Committee Actions

O1. Property Tax Committee
O2. Customer Services and Administrative Efficiency Committee

P. Other Administrative Matters

P1. Executive Director's Report .....Mr. Hirsig+

a. Headquarters Building Remediation Update

b. Headquarters Planning Effort Update

c. Report on time extensions to Butte, Kern, Mariposa, Monterey, Placer, Santa Cruz and Tulare Counties to complete and submit 2008-09 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155+

d. Report on suggestions submitted at 3/18/08 Business Taxpayers' Bill of Rights Hearings – refund claims filed by hospitals+ .....Mr. Gilman

P2. Chief Counsel Report
There are no items for this matter.

P3. Deputy Director's Report

a. Sales and Use Tax.....Ms. Henry

1. Enhancing BOE Collections+

b. Property and Special Taxes
There are no items for this matter.

c. Administration.....Ms. Houser

1. Interagency Agreement Contracts Over $1 Million+
   - California Department of Toxic Substances Control+
   - California Department of Motor Vehicles+
   - California Department of Technology Services+
   - Bank of America+
   - Hygiene Technologies International, Inc.+
2. Purchases Over $1 Million
   - Dell Marketing+
3. Update on Proposed Fiscal Year 2008-2009 Budget++

Announcement of Closed Session ..... Ms. Olson

Q. Closed Session

Q1. Discussion and approval of staff recommendations regarding settlement cases (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11)

Q2. Pending litigation: *BARNESANDNOBLE.COM LLC v. State Board of Equalization,* San Francisco County Superior Court, Case Number 456465; First District Court of Appeal, Case Number A120834 (Gov. Code § 11126(e))

Q3. Pending litigation: *BARNESANDNOBLE.COM LLC v. Betty T. Yee, Bill Leonard, Michelle Steel, Judy Chu, John Chiang, Wayne Hopkins, Joseph D. Young*, United States District Court, Eastern District of California, Case Number 2:07-cv-02776-WBS-KJM (Gov. Code § 11126(e))

Q4. Pending litigation: N*ortel Networks Inc. v. State Board of Equalization,* Los Angeles County Superior Court, Case Number BC341568L (Gov. Code § 11126(e))

Q5. Pending litigation: Status of *Computer Service Tax Cases*--San Francisco County Judicial Council Coordination Proceeding No. 4442; *Mohan et al. v. Dell, Inc. et al.; Dell Inc. et al. v. California State Board of Equalization*; San Francisco County Superior Court Case No. CGC 03 419192 (Gov. Code § 11126(e))

Q6. Pending litigation: *Schroeder, et al.* v. *State Board of Equalization, et al.* Superior Court of California for Sacramento County, Case Number 34-2008-00004467-CU-MT-GDS (Gov. Code § 11126(e)(2)(B)(i))

Q7. Discussion and action on personnel matters (Gov. Code § 11126(a))

Announcement of Open Session ..... Ms. Olson

Adjourn

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Diane G. Olson, Chief
Board Proceedings Division

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++ Material will be available at a later date.

"CF" Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.

BOARD OF EQUALIZATION
BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR
450 N STREET, SACRAMENTO
MEETING DATE: JANUARY 31, 2008, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

Title: Proposed amendments to Sales and Use Tax Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, and Regulation 1828, *Process for Reviewing Transactions and Use Tax Distributions*

Issue/Topic:

Proposed regulatory changes to the processes for reviewing petitions for local tax reallocations and transaction and use tax redistributions.

Committee Discussion:

Board Members discussed the provisions of proposed Regulation 1807(d)(4) regarding postponement of Board hearings following the issuance of a Supplemental Decision & Recommendation (SD&R) by the Appeals Division. Members expressed concern that the proposed revision to the regulations providing for postponements shift discretion from the Board to staff and has not been considered in the light of the BOE's current *Rules of Practice* or recently promulgated *Rules for Tax Appeals*.

Interested parties addressed the Committee in support of Alternative 2 and explained that they believe Regulations 1807 and 1828 should include a prospective date and a transition rule to preserve their right to argue that cases filed prior to the adoption of the regulations are open, including cases identified as denied by Board Management under the 1996 guidelines operative prior to the promulgation of the current Regulation 1807 and 1828. Staff explained its belief that the appeal cases interested parties are concerned about were closed long ago, so that including the transition rule unnecessarily prolongs the argument that those cases remain open.

Committee Action/Recommendation/Direction:

<u>Motion 1 – Postponement Following SD&R - Regulations 1807 and 1828</u>
Ms. Yee made a motion to retain the first sentence of 1807(d)(4) and 1828(d)(4) and delete the remaining language under those subdivisions. The motion was seconded by Mr. Leonard and carried without objection.

MEMBER	Yee	Leonard	Steel	Chu	Mandel
VOTE	Y	Y	Y	Y	Y

Motion 2 – Transition Rule – Regulations 1807 and 1828

Upon motion by Mr. Leonard, seconded by Ms. Yee, the Committee approved the remainder of the regulations as proposed in Alternative 2. Alternative 2 included the transition rule language for Regulation 1807 submitted by MuniServices on January 30, 2008 at 4:43 P.M. and substantially identical transition rule language for Regulation 1828.

The vote was as follows:

MEMBER	Yee	Leonard	Steel	Chu	Mandel
VOTE	Y	Y	Y	Y	Y

Motion 3 – Authorization to Publish – Regulations 1807 and 1828

Ms. Mandel moved to authorize for publication of the proposed Regulations 1807 and 1828. The motion was seconded by Ms. Yee and carried without objection.

MEMBER	Yee	Leonard	Steel	Chu	Mandel
VOTE	Y	Y	Y	Y	Y

Copies of the proposed amendments to Regulations 1807 and 1828 are attached.

/s/ Betty T. Yee
Honorable Betty T. Yee, Committee Chair

/s/ Ramon J. Hirsig
Ramon J. Hirsig, Executive Director

BOARD APPROVED

at the February 1, 2008 Board Meeting

/s/ Diane Olson
Diane Olson, Chief
Board Proceedings Division

~~Regulation 1807. PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES.~~

~~Reference: Sections 7209 and 7223, Revenue and Taxation Code~~

~~**(a) DEFINITIONS.** For inquiries under Revenue and Taxation Code section 6066.3, see subdivision (g) of this regulation.~~

~~(1) INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC). "Inquiring Jurisdictions and their Consultants (IJC)" means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.~~

~~(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX. Except for submittals under Revenue and Taxation Code section 6066.3, "claim or inquiry" means a written request from an IJC for investigation of suspected improper distribution of local tax. The inquiry must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:~~

~~**(A)** Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.~~

~~**(B)** Taxpayer's permit number or a notation stating "No Permit Number."~~

~~**(C)** Complete business address of the taxpayer.~~

~~**(D)** Complete description of taxpayer's business activity or activities.~~

~~**(E)** Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location or that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.~~

~~**(F)** Name, title, and phone number of the contact person.~~

~~**(G)** The tax reporting periods involved.~~

~~(3) DATE OF KNOWLEDGE. "Date of knowledge" shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry documenting IJC efforts to obtain each of the facts required by subdivision (a)(2) of this regulation, the Board will use the date this inquiry is received as the date of knowledge.~~

~~(4) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.~~

~~**(b) INQUIRIES.**~~

~~(1) SUBMITTING INQUIRIES. Every inquiry of local tax allocation must be submitted in writing and shall include the information set forth in subdivision (a)(2) of this regulation. Except for submittals under Revenue and Taxation Code section 6066.3, all inquiries are to be sent directly to the Allocation Group in the Refund Section of the Board's Sales and Use Tax Department.~~

~~(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a date of knowledge under subdivision (a)(2) of this regulation. The Allocation Group will review the inquiry and notify the IJC if the inquiry does not qualify to establish a date of knowledge.~~

~~(c) REVIEW PROCESS.~~

~~(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion was based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.~~

~~(2) REVIEW BY REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.~~

~~(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor a conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.~~

~~(4) REVIEW BY BOARD MANAGEMENT. If the D&R's recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.~~

~~(5) REVIEW BY BOARD MEMBERS. If Board Management's decision is adverse to the IJC, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.~~

~~**(A) Petition for Hearing.** The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.~~

~~**(B) Persons to be Notified of the Board Hearing.** After receiving the IJC's petition for hearing, the Board Proceedings Division will notify the IJC and the following persons of the Board hearing:~~

~~1. The taxpayer(s) whose allocations are the subject of the petition.~~

~~2. All jurisdictions that would be substantially affected if the Board does not uphold the taxpayer's original allocation (including the jurisdictions within the statewide and countywide pools that would gain or lose money solely as a result of a reallocation to or from the pools in which they participate). For the purpose of this subdivision a jurisdiction is "substantially affected" if its total reallocation would increase or decrease by the amount of 5% of its average quarterly allocation (generally, the prior four calendar quarters) or $50,000, whichever is less, as a result of a reallocation of the taxpayer's original allocation.~~

~~The notification will state that the claimed misallocation is being placed on the Board's Hearing Calendar to determine the proper allocation and that the IJC and all jurisdictions so notified are considered parties to the hearing.~~

~~**(C) The Hearing and Parties to the Hearing.** The petitioning IJC and all jurisdictions notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board will make a final decision at the hearing on the proper allocation. The Board's decision exhausts all parties' administrative remedies on the matter.~~

~~**(D) Presentation of New Evidence.** If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.~~

~~**(d) TIME LIMITATIONS.**~~

~~(1) An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.~~

~~(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.~~

~~(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.~~

~~**(e) APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION.**~~

~~(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or $50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing jurisdiction" includes a gaining jurisdiction where the original decision in favor of the gaining jurisdiction was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.~~

~~(2) If the losing jurisdiction contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed reallocation, the reallocation postponement will be extended pending the final outcome of the petition.~~

~~**(f) LIMITATION PERIOD FOR REDISTRIBUTIONS.** Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.~~

~~**(g) APPLICATION TO SECTION 6066.3 INQUIRIES.**~~

****

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

~~(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.~~

~~(2) The terms and procedures set forth in subdivision (c)(2) through (c)(5) of this regulation shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.~~

~~(h) The provisions of this regulation shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to the existing inquiries and appeals procedures contained in the "Process for Reviewing Reallocation Inquiries", (June 1996, amended October 1998) incorporated herein by reference in it entirety. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.~~

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

Reference: Sections 7209 and 7223, Revenue and Taxation Code

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition.

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided

to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

~~Regulation 1828. PROCESS FOR REVIEWING TRANSACTIONS AND USE TAX DISTRIBUTION INQUIRIES.~~

~~Reference: Section 7270 Revenue and Taxation Code.~~

~~(a) DEFINITIONS.~~

~~(1) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which levies a transactions and use ("district") tax that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6).~~

~~(2) DISTRICT TAX. Any tax levied under special statutory authority that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6). District taxes may be for either general or special purposes.~~

~~(3) INQUIRING DISTRICTS AND THEIR CONSULTANTS (IDC). "Inquiring Districts and their Consultants (IDC)" means any district which has adopted a district tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of that ordinance. IDC also includes any consultant that has entered into an agreement with the tax district and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.~~

~~(4) CLAIM (INQUIRY) OF INCORRECT DISTRIBUTION OR NON DISTRIBUTION OF DISTRICT TAX. "Claim or inquiry" means a written request from an IDC for investigation of suspected improper distribution or nondistribution of district tax. The inquiry must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:~~

~~**(A)** Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.~~

~~**(B)** Taxpayer's permit number or a notation stating "No Permit Number."~~

~~**(C)** Complete business address of the taxpayer.~~

~~**(D)** Complete description of taxpayer's business activity or activities.~~

~~**(E)** Specific reasons and evidence why the distribution or nondistribution is questioned, including the location to which the property the sales of which are at issue was delivered. In cases that involve claims that the transactions that are the focus of the appeal are subject to the IDC's district use tax, evidence must be submitted that the retailer is engaged in business in the IDC under Regulation 1827.~~

~~**(F)** Name, title, and phone number of the contact person.~~

~~**(G)** The tax reporting periods involved.~~

~~(5) CLAIM DATE "Claim date" shall be the date the inquiry of suspected improper distribution or non distribution of district tax that contains the facts required by subdivision (a)(4) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. The Board shall redistribute district tax revenues back from the claim date to the beginning of the applicable statute of limitations. If the IDC is not able to obtain the above minimum factual data but provides a letter with the inquiry documenting IDC efforts to obtain each of the facts required by subdivision (a)(4) of this regulation, the Board will use the date this inquiry is received as the claim date.~~

~~(6) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.~~

~~**(b) INQUIRIES.**~~

~~(1) SUBMITTING INQUIRIES. Every inquiry regarding district tax distributions must be submitted in writing and shall include the information set forth in subdivision (a)(4) of this regulation. All inquiries must be sent directly to the Allocation Group in the Audit Determination and Refund Section of the Board's Sales and Use Tax Department.~~

~~(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a claim date under subdivision (a)(4) of this regulation. The Allocation Group will review the inquiry and notify the IDC if the inquiry does not qualify to establish a claim date. Investigation of an alleged improper distribution cannot occur until a claim date is established.~~

~~**(c) REVIEW PROCESS.**~~

~~(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that an improper distribution has not occurred and recommends that a request for redistribution be denied, the IDC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that an improper distribution has not occurred must state the specific facts on which the conclusion was based. If the IDC contacts the Allocation Group Supervisor, the IDC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.~~

~~(2) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IDC, if the Allocation Group Supervisor upholds the denial, the IDC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for redistribution" with the Audit Determination and Refund Section Supervisor. The petition for redistribution must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for redistribution is filed by the IDC, the Audit Determination and Refund Section Supervisor will review the request for redistribution and determine if any additional staff investigation is warranted prior to making a decision. If no basis for redistribution is found, the petition will be forwarded to the Local Tax Appeals Auditor.~~

~~(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor, a conference between the Local Tax Appeals Auditor and the IDC will be scheduled. However, the IDC may provide a written brief in addition to or instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IDC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.~~

~~(4) REVIEW BY BOARD MANAGEMENT. If the D&R's recommendation is to deny the petition, the IDC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IDC. The IDC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.~~

~~(5) REVIEW BY BOARD MEMBERS. If Board Management's decision is adverse to the IDC, the IDC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.~~

~~**(A) Petition for Hearing.** The IDC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.~~

~~**(B) Persons to be Notified of the Board Hearing.** After receiving the IDC's petition for hearing, the Board Proceedings Division will notify the IDC and the following persons of the Board hearing:~~

~~1. The taxpayer(s) whose district tax reporting was the subject of the petition.~~

~~2. All districts that would be substantially affected if the Board does not uphold the taxpayer's original distribution. For the purpose of this subdivision a district is "substantially affected" if its total redistribution would increase or decrease by the amount of 5% of its average quarterly distribution (generally, the prior four calendar quarters) or $50,000, whichever is less, as a result of such redistribution.~~

~~The notification will state that the claimed improper distribution is being placed on the Board's Hearing Calendar to determine the proper distribution and that the IDC and all districts so notified are considered parties to the hearing.~~

~~**(C) The Hearing and Parties to the Hearing.** The petitioning IDC and all districts notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board's decision is final as provided in Regulation 5082. The Board's decision exhausts all parties' administrative remedies on the matter.~~

~~**(D) Presentation of New Evidence.** If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.~~

~~**(d) TIME LIMITATIONS.**~~

~~(1) An IDC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.~~

~~(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IDC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.~~

~~(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any claim date established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new claim date as of the date of receipt of the new information.~~

~~**(e) APPEAL RIGHTS OF DISTRICTS THAT WILL LOSE REVENUE AS THE RESULT OF A REDISTRIBUTION.**~~

~~(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that an improper distribution has occurred, any district that will lose 5% of its average quarterly receipts (generally, the prior four calendar quarters) or $50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed redistribution. The losing district may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing district" includes a gaining district where the original decision in favor of the gaining district was overturned in favor of a previously losing district. The redistribution will be postponed until the period for the losing district to request a hearing with the Allocation Group has expired.~~

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

~~(2) If the losing district contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed redistribution, the redistribution postponement will be extended pending the final outcome of the petition.~~

~~**(f) OPERATIVE DATE.**~~

~~The provisions of this regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures. However, for inquiries filed prior to July 1, 2004, the IDC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.~~

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

Reference: Section 7270 Revenue and Taxation Code.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition.

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

(9) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to

90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s)

whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

Wednesday, May 28, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:20 a.m., Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Janice Diana Samsing and Mildred Kaunas, 356928 (UT)

September 29, 2004, $2,982.00 Tax
For Petitioner: Mildred Kaunas, Taxpayer
For Department: NaTasha Ralston, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether the purchase and use of the vehicle by petitioners is subject to California use tax.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Foster Poultry Farms, 77405, 265656, 304306 (KHE)

1-1-95 to 9-12-98, $131,576.77 Tax, $0.00 Penalty
1-1-99 to 12-28-02, $112,320.84 Tax
12-29-02 to 6-19-04, $805,488.00 Claim for Refund
For Petitioner/Claimant: Rich Carlson, Representative
For Department: Bradley Heller, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioner's lease of equipment that injects a vaccine into eggs also included a separate technology transfer agreement so that a portion of petitioner's otherwise taxable lease payments were not subject to tax.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitions and claim be submitted for decision.

Matt Lababedy, 89002316680 (KH)

1-1-95 to 12-31-97, $10,502.00 Tax, $2,267.53 Amnesty Interest Penalty
For Petitioner: Matt Lababedy, Taxpayer
Don McKaughan, CPA
For Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether the evidence supports further adjustments for check-cashing fees.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, May 28, 2008

OTHER CHIEF COUNSEL MATTERS

Adoption of Formal and Memorandum Opinions

Deborah Cooke, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of Formal and Memorandum Opinions and the publication of Dissenting and Concurring Opinions. (Exhibit 5.14.)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board amended staff's recommendation for implementing the provisions of the *Board of Equalizations Rules for Tax Appeals* with regards to the adoption and publication of Formal and Memorandum Opinions and the submission and publication of Concurring and Dissenting Opinions as follows: reflect a vote to adopt a formal opinion to mean the Member agrees with the result and the rationale set forth in the formal opinion; concurring opinions submitted by Members who vote to adopt the formal opinion must be consistent with the result and rationale of the formal opinion; update the Board's publications to reflect the foregoing; remove "motion to continue hearing to a later date" and "motion to take matter under submission" from staff's flow chart; and, clarified that the Appeals Division will promptly notify the taxpayer of the Board's decision when the Board asks that a Formal Opinion be drafted.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:40 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SPECIAL PRESENTATIONS

Superior Accomplishment Award Presentations

Ramon Hirsig, Executive Director, and Members of the Board presented the 2007-08 Sustained Superior Accomplishment Awards to employees in recognition of their outstanding achievements.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Jamal A. Mahgoub, 356195;* and, *AMT Solutions, Inc., 356197, 392072.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Synpep Corporation, 329381 (CH)
4-1-01 to 3-31-04, $78,361.87 Tax, $7,836.22 Negligence Penalty, $5,222.79 Double Negligence Penalty, $6,042.19 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

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Jamal A. Mahgoub, 356195 (CH)
1-1-02 to 3-19-03, $3,686.02 Tax, $0.00 Finality Penalties, $327.44 Amnesty Interest Penalty
AMT Solutions, Inc., 356197, 392072 (CH)
3-20-03 to 5-31-05, $3,489.09 Tax, $0.00 Penalty
3-20-03 to 5-31-05, $10,000.00 Claim for Refund
Action: The Board took no action.

Kenneth Darryl Beecham, 393632, (KH)
8-1-04 to 2-12-06, $51,307.00 Tax, $5,130.70 Penalty
Action: Redetermine as recommended by the Appeals Division.

Weston James Coolidge, 386899 (CH)
12-1-98 to 3-31-00, $79,555.76 Tax, $33,992.48 Penalty
Action: Redetermine as recommended by the Appeals Division.

Simmons Duplicating Supply Company, Inc., 347724 (OH)
4-1-02 to 6-30-05, $44,030.07 Tax, $5,685.96 Penalties, $1,187.47 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

Hany M. Abuelrous, 433967 (ET)
October 10, 2007, $175.50 Approximate Value
Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Jack Larson, 329112
2003, $1,449.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Gloria M. Williams, 387273
2006, $347.50
Action: Sustain the action of the Franchise Tax Board.

Wednesday, May 28, 2008

SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Nissan North America, Inc., 272698 (OHA)
4-1-98 to 6-30-02, $753,095.18
Action: Approve the redetermination as recommended by staff.

Panasonic Corporation of North America, 422116 (OHB)
1-1-01 to 6-30-04, $181,307.35
Action: Approve the redetermination as recommended by staff.

4 S Casino Party Suppliers, LLC, 299497 (BH)
1-1-98 to 6-30-04, $285,562.71
Action: Approve the redetermination as recommended by staff.

Specialty Salvage Limited, 283580 (KH)
7-1-95 to 11-30-97, $107,775.80
Action: Approve the redetermination as recommended by staff.

Union Pacific Railroad Company, 326246 (OHA)
1-1-99 to 9-30-02, $4,593,357.48
Action: Approve the redetermination as recommended by staff.

Govstor, LLC, 417205 (JHF)
10-1-05 to 12-31-06, $75,779.00
Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Target Corporation, 360870*, the Board made the following orders:

Target Corporation, 360870 (OHA)
1-1-00 to 6-30-03, $238,090.57
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

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Lighthouse Worldwide Solutions, Inc., 373666 (CH)
7-1-04 to 6-30-07, $50,816.59
Action: Approve the refund as recommended by staff.

Birchwood Cabinets of California, Inc., 389873 (KH)
1-1-03 to 6-30-06, $619,597.44
Action: Approve the refund as recommended by staff.

Pentax of America, Inc., 403453 (OHB)
1-1-06 to 9-30-06, $130,134.19
Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 436898 (CHA)
7-17-07 to 12-06-07, $487,897.67
Action: Approve the refund as recommended by staff.

Mercedes–Benz USA, LLC, 426403 (KH)
11-15-07 to 1-23-08, $180,804.00
Action: Approve the refund as recommended by staff.

Qualcomm, Inc., 404369 (UT)
7-28-04 to 7-28-04, $2,258,156.28
Action: Approve the refund as recommended by staff.

KII Acquisition Company, 342751 (FH)
1-1-03 to 12-31-05, $1,216,627.59
Action: Approve the refund as recommended by staff.

Vertis, Inc., 396782 (OHB)
4-1-06 to 3-31-07, $56,995.79
Action: Approve the refund as recommended by staff.

Consolidated Electrical Distributors, Inc., 287507 (AC)
1-1-02 to 12-31-04, $920,073.75
Action: Approve the refund as recommended by staff.

TSK America, Inc., 417773 (OHA)
1-1-07 to 3-31-07, $176,252.45
Action: Approve the refund as recommended by staff.

Freight Systems, Inc., 395248 (OHA)
10-1-04 to 12-31-06, $325,367.74
Action: Approve the refund as recommended by staff.

Watsonville Hospital Corporation, 381029 (GHC)
7-1-03 to 12-31-04, $66,622.83
Action: Approve the refund as recommended by staff.

Wednesday, May 28, 2008

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Equiva Trading Company, 254407; Equiva Trading Company, 208034;* and, *Midland National Life Insurance Company, 427043;* the Board made the following orders:

Equiva Trading Company, 254407, (MT)
Equiva Trading Company, 208034, (MT)
3-1-99 to 12-31-01, $3,427,542.73
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nella Oil Company, LLC, 345962 (MT)
10-1-05 to 12-31-05, $192,683.70
Action: Approve the refund as recommended by staff.

Midland National Life Insurance Company, 427043 (ET)
1-1-04 to 12-31-06, $488,280.81
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

Rajinder Singh Garcha, 30060 (KH)
7-1-95 to 6-30-98, $10,894.69 Tax
Considered by the Board: April 8, 2008
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

John Richard Dudley, 253691 (KH)
7-1-00 to 6-30-03, $15,019.87 Tax, $6,112.27 Penalty, $3,615.91 Amnesty Interest Penalty
Considered by the Board: December 11, 2007
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Don Ricardo's Restaurant, Inc., 42025 (AP)
4-1-95 to 12-31-06, $37,111.60 Tax, $3,711.16 Penalty
Padrino's, Inc., 42029 (AC)
4-1-95 to 3-31-98, $179,168.19 Tax, $17,916.81 Penalty, $76,605.02 Amnesty Interest Penalty
Considered by the Board: February 27, 2008
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Dr. Chu, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board ordered that the amnesty interest penalty be relieved, otherwise redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Affiliated Funding Corporation, 317945
2003, $14,446.88 Claim for Refund
Considered by the Board: Formal Opinion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board but did not adopt a formal opinion.

Ronald C. Nelson and Marie J. Nelson, 329716
1985, $1,048.54 Accrued Interest
Considered by the Board: February 27, 2007
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Constance Zorn, 317272
1992 to 1994, $216,732.36 Assessment
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Bruce H. Erfer and Lynn N. Erfer, 294534
2001, $756.75 Claim for Refund
2002, $953.18 Claim for Refund
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision modifying the action of the Franchise Tax Board.

Stanley W. Gribble, 354879
1994, $1,239,603.62 Claim for Refund
SWG Management Company, 354880
1994, $95,441.22 Claim for Refund
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted a decision reversing the action with concessions by the Franchise Tax Board in the appeal of *SWG Management Company, 354880;* and, modified the action with concessions by the Franchise Tax Board in the appeal of *Stanley W. Gribble, 354879.*

Teresa Rothman, 380556
2004, $2,909.00 Tax, $727.25 Penalty
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.
Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board. The Board did not impose a frivolous appeal penalty.

Catherine Wimby, 354090
2005, $851.00 Claim for Refund
Considered by the Board: September 12, 2007
Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.
Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision modifying the Franchise Tax Board's denial of claim for refund to allow for Child and Dependent Care Credit expenses in the amount of $984.80.

Larry Geisel and Rhoda Geisel, 358724
2000, $92,424.00 Assessment
Considered by the Board: December 12, 2007
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard abstaining, the Board adopted a decision denying the petition for rehearing.

Wednesday, May 28, 2008

Speakers: Marty Dakessian, Attorney, Akerman Senterfitt LLP, representing *Daniel V, Inc., 342609*
Ron Lane, Taxpayer, *Daniel V, Inc., 342609*

Daniel V, Inc., 342609
1997, $40,759.23 Assessment
1998, $840,010.32 Assessment
Considered by the Board: May 15, 2008
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Mr. Leonard moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Savann Nhem, 379885
2006, $1.00 or more
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board dismissed the appeal.

Sajjad Riyaz, 349075
2004, $300.00
2005, $300.00
Considered by the Board: March 19, 2008
Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.
Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a denying the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY

Messer Griesheim Industries, Inc., 435576 (OHB)
1-1-01 to 12-31-04, $50,534.74
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the relief of penalty as recommended by staff.

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PCS Leasing Co, L.P., 431274 (OHA)
1-1-07 to 3-31-07, $59,230.00
Considered by the Board: March 19, 2008
Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.
Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105, the Board approved the relief of penalty as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Owens & Minor Distribution, Inc., 306485 (OHB)
1-1-02 to 12-31-05, $2,072,102.77
Considered by the Board: Presented for Separate Discussion
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

CallTower, Inc. (7960)
2004, $560,000.00 Escaped Assessment, $56,000.00 Penalties, $184,800.00 In-lieu Interest
2005, $40,000.00 Escaped Assessment, $4,000.00 Penalties, $9,600.00 In-lieu Interest
2006, $640,000.00 Escaped Assessment, $64,000.00 Penalties, $96,000.00 In-lieu Interest
2007, $290,000.00 Excessive Assessment
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

IP Networks, Inc. (7995)
2004, $1,570,000.00 Escaped Assessment, $157,000.00 Penalties, $518,100.00 In-lieu Interest
2005, $130,000.00 Excessive Assessment
2006, $1,600,000.00 Escaped Assessment, $160,000.00 Penalties, $240,000.00 In-lieu Interest
2007, $200,000.00 Excessive Assessment

Wednesday, May 28, 2008

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Sharp Image Electronics, Inc.; Fassel Mahmoud Elder; Management Insultants L.P.; James Steven Slack; Fadel Mohammed; Elwalani and Marina Elwalani;* and *Angie Wilder;* as recommended by staff.

SALES AND USE TAX APPEALS HEARING

Norman P. Shockley, Jr., 306953 (GH)
Acclaim Technology, Inc., 341204 (GH)
7-1-03 to 9-30-03, $51,488.23 Tax, $11,728.85 Failure to Pay Penalty

For Petitioner/Claimant: Norman Shockley, Jr., Taxpayer
Norman Shockley, Sr., Witness
For Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally responsible for the unpaid liability of Acclaim Technology, Inc. for the third quarter 2003.

Whether the failure-to-pay penalty should be relieved.

Whether Acclaim's overpayments related to unclaimed bad deduction for the fourth quarters of 2000, 2001, and 2002 can be offset against its liability for the third quarter 2003, with corresponding adjustments to petitioner's personal liability.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*; and, adoption of Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries.*

David Levine, Tax Counsel, Appeals Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulations 1807, *Process of Reviewing Local Tax Reallocation Inquiries,* and 1828, *Process for Reviewing Transactions and Use Tax Distributions,* which are changes to the process of reviewing petitions for local tax reallocations and transition and use tax distributions. (Exhibit 5.15.)

Wednesday, May 28, 2008

Speakers: Fran Mancia, Director of Government Relations, Muniservices
Dan Carrigg, Legislative Director, League of CA Cities
Matt Hinderliter, Audit Manager, HDL
Al Koch, General Counsel, MuniServices, LLC
Bob Cendejas, Attorney, Cendejas & Associates
Dave McPherson, Deputy Finance Director, City of San Jose

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 28, 2008

Janice Diana Samsing and Mildred Kaunas, 356928 (UT)

Final Action: Ms. Steel moved that the petition be granted. The motion failed for lack of a second.

Upon motion of Mr. Leonard, seconded by Ms. Mandel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board ordered that the petitioner be relieved of the interest that accrued from August 8, 2005, when the Department should have sent a follow up letter to petitioners, and May 12, 2006, when the Department issued the Notice of Determination, and otherwise redetermine in accordance with the recommendation of the Appeals Division.

Foster Poultry Farms, 77405, 265656, 304306 (KHE)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the claim be denied and the petition be redetermined as recommended by the Appeals Division.

Matt Lababedy, 89002316680 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 3:35 p.m.

The foregoing minutes are adopted by the Board on June 24, 2008.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

NOVEMBER 15, 2011

ITEM F PUBLIC HEARINGS

ITEM F2

PROPOSED ADOPTION OF AMENDMENTS TO

REGULATION 1807

PETITIONS FOR REALLOCATION OF LOCAL TAX

REGULATION 1828

PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION

OF TRANSACTIONS AND USE TAX

Reported by: Juli Price Jackson

No. CSR 5214

Electronically signed by Juli Jackson (001-065-206-4972) 3da5811d-2d86-4afd-a266-a1c7d2d1c14c

1 P R E S E N T

2

3 For the Board of Equalization: Jerome E. Horton
Chairman

4

5 Michelle Steel
Vice-Chairwoman

6

7 Betty T. Yee
Member

8

9 George Runner
Member

10

11 Marcy Jo Mandel
Appearing for John
12 Chiang, State
Controller (per
13 Government Code
Section 7.9)

14

15 Diane G. Olson
Chief, Board
16 Proceedings Division

17

18 For the Board: Bradley Heller
Legal Department

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20 ---oOo---

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1 INDEX OF SPEAKERS

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3

4 NAME	PAGE
5	
6 Robin Sturdivant HdL Companies	5
7	
8 Johan Klehs Klehs & Company	6
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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 NOVEMBER 15, 2011
4 ---oOo---
5 MR. HORTON: Ms. Olson?
6 MS. OLSON: Our next item is F2, Proposed
7 Adoption of Amendments to Regulation 1807, Petitions for
8 Reallocation of Local Tax, and, Regulation 1828,
9 Petitions for Distribution or Redistribution of
10 Transactions and Use Tax.
11 We have two speakers.
12 MR. HORTON: Members, we have Mr. Johan Klehs,
13 with the Klehs & Company, President, CEO, CFO, CEA and
14 Robin with local government advocates, the HdL Company.
15 I'm going to hear from the Department, then
16 I'll go to you and then back to the Department.
17 Is that okay?
18 All right, thank you.
19 MR. HELLER: Thank you, Chairman Horton,
20 Members of the Board.
21 Again, I'm Bradley Heller from the Board's
22 Legal Department and I'm here with Kevin Hanks, from the
23 Board's Sales and Use Tax Department.
24 We're here to request that the Board adopt the
25 proposed amendments to Local Sales and Use Tax
26 Regulation 1807, Petitions for Reallocation of Local Tax
27 and Transactions and Use Tax, Regulation 1828, Petitions
28 for Distribution or Redistributions of Transactions and

Electronically signed by Juli Jackson (001-065-206-4972) 3da5811d-2d86-4afd-a266-a1c7d2d1c14c

1 Use Tax that the Board authorized for publication during
2 its August 23rd, 2011 Business Taxes Committee meeting.
3 The proposed amendments are intended to improve
4 the Board's review of Local and District tax petitions.
5 And I understand that we have received written public
6 comments from Robin Sturdivant of the HdL Companies and
7 also Albin Koch.
8 And staff can answer any questions regarding
9 the regulation and those comments, whatever the Board
10 desires.
11 MR. HORTON: Thank you very much.
12 Ms. Sturdivant.
13 ---o0o---
14 ROBIN STURDIVANT
15 HdL COMPANIES
16 ---o0o---
17 MS. STURDIVANT: Good morning, Mr. Chair and
18 Board Members. I'm Robin Sturdivant with the HdL
19 Companies.
20 And I had recently submitted -- and Ms. Olson
21 confirms that they were distributed -- some sort of late
22 changes to the regulation, to both 1807 and 1828.
23 And these suggestions were made in response to
24 just a couple of issues we've had with some -- some
25 recent older petitions.
26 And what we're proposing is that in certain
27 spots throughout the regulation to change the wording
28 from "Allocation Group" to "Sales and Use Tax

1 Department" in a couple of different places.
2 We're not suggesting a change in the process,
3 but rather clarifying that the decision that's issued in
4 response to a petition is the position of the Sales and
5 Use Tax Department rather than the position of the
6 Allocation Group or the Local Revenue Allocation Unit.
7 And to avoid confusion, we suggest that the
8 responsibilities of each group be outlined in a CCPM.
9 And I understand that we're going to public meetings for
10 those coming up very soon.
11 And the changes that we've suggested just
12 seemed to make the regulation a little more consistent.
13 The first half of the regulation refers to the
14 Allocation Group, the latter half refers to the Sales
15 and Use Tax Department. So, just to kind of make it
16 more consistent.
17 Thank you.
18 MR. HORTON: Thank you very much.
19 Mr. Klehs?
20 ---o0o---
21 JOHAN KLEHS
22 KLEHS & COMPANY
23 ---o0o---
24 MR. KLEHS: Representing the City of Livermore,
25 we support the regulation, as we participated in
26 drafting it.
27 And we have no objections to the suggestions by
28 HdL.

1 MR. HORTON: Thank you very much.
2 Department, any follow-up comments?
3 MR. HELLER: Real briefly.
4 Staff has reviewed HdL's suggested changes and,
5 essentially, it's -- it's just a matter of word choice.
6 And staff still thinks that the Allocation Group
7 reference is correct because it's -- at least from
8 staff's point of view, that is the portion of the Sales
9 and Use Tax Department that's supposed to be making
10 those decisions at issue in the regulation.
11 And that's still how staff would, essentially,
12 be reading the regulation if we do change it to Sales
13 and Use Tax Department since the Allocation Group would
14 still be the portion -- part of the Sales and Use Tax
15 Department doing this review and making the decisions,
16 but, again, it's a word choice issue.
17 And I think the Board Members can decide for
18 themselves which -- which language they think is more
19 clear for taxpayers.
20 MR. HORTON: Thank you. Discussion?
21 Member Yee.
22 MS. YEE: Thank you, Mr. Chairman.
23 I -- I think it's a little bit more than a word
24 choice change, but I think -- I want to look at it from
25 the perspective of what's in practice.
26 And I think with the change, at least the way
27 I'm reading it, is that it really captures that whatever
28 source a decision is issued within the Sales and Use Tax

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1 Department, that it's considered a decision.
2 And it may be the Allocation Group within the
3 Sales and Use Tax Department, it may be somewhere else,
4 but I -- my understanding's that the genesis of this was
5 really a lack of clarity with respect to, you know, what
6 decision -- where decisions are made within the
7 Department.
8 Now with respect to these types of matters, I
9 would agree with you, I think they generally are from
10 the Allocation Group and that has been the practice.
11 But -- and we can certainly clarify it further
12 within the CCPM. But I think the intent here -- I don't
13 want to just cast it off as a word choice. It's
14 responding to something that actually took place that I
15 hope doesn't take place again. And it really does, I
16 think, crystallize for us that whatever decision comes
17 out of wherever within the Sales and Use Tax Department,
18 that it is an official decision relative to these
19 matters.
20 So, I just want to recharacterize what I think
21 the change means.
22 MR. HORTON: Okay.
23 MS. MANDEL: I don't know that -- uhm, uh-oh,
24 my mind just went blank -- I don't -- I'm not sure that
25 the information about what generated the proposed change
26 was in your hands because I can tell maybe from your
27 forehead scrunching it looked like you were not familiar
28 with the particular events that precipitated it -- or

1 maybe you were and you're just forehead scrunching.
2 MR. HELLER: Ms. Mandel, I have -- I was not
3 involved in any particular petition. I've been briefed
4 a little bit on the issues that HdL is concerned about.
5 So, I have some background.
6 MS. MANDEL: Okay.
7 MR. HELLER: And may -- maybe I was overly
8 broad in saying "word choice", I -- I know that, at
9 least from the perspective of HdL that it was intended
10 to address procedurals, issues that had happened in the
11 past, but I think in this case, the regulation's
12 amendments are going to be perspective only and
13 essentially, as -- as was intended previously and as I
14 think we would still read the regulation in the future,
15 that these petitions would still be assigned to the
16 Allocation Group, that they would essentially be the
17 ones that Sales and Use Tax Department would want to
18 speak for Department, deciding the petitions at the
19 initial review level.
20 And I think that's maybe why I kind of
21 overspoke in saying it was a word choice, but then it
22 may have some substantive impact in the future.
23 MS. YEE: Okay.
24 MR. HELLER: Sorry.
25 MR. HORTON: Mr. Runner.
26 MR. RUNNER: Yeah, just to -- just to clarify,
27 yeah, I -- yeah, I would -- I'd be a little concerned in
28 regards to the fact that -- that -- I guess to go back

1 to the idea that the words do have meanings and -- and
2 consequence and how they're looked at and viewed.
3 And, so, I'm going to go back to HdL a little
4 bit and just say, hey, I mean, it -- I would assume that
5 you would see this as more than just a word choice, that
6 it brings clarity --
7 MS. STURDIVANT: Correct.
8 MR. RUNNER: -- to the local governments to
9 which you represent?
10 MS. STURDIVANT: Correct. And the particular
11 incident in question here, because of the -- I guess,
12 the lack of clarity in the regulation, we have a
13 petition that's now going to be delayed because it was
14 issued from the incorrect department or group or unit.
15 And, so, we've been basically told that the
16 first decision is invalid and we'll sort of go back.
17 And we'd like to avoid that in the future.
18 MR. RUNNER: Can somebody remind me right now
19 what the process -- as we deal with this now and if we
20 go ahead and accept that, then it's as a -- as a -- as a
21 substitution?
22 But what is the process we're in right now and
23 how would that -- how would that take place?
24 I'm not sure who it --
25 MR. HORTON: Mr. --
26 MR. RUNNER: -- yeah.
27 MR. HELLER: Senator, this is Bradley Heller --
28 MR. RUNNER: Okay.

1 MR. HELLER: -- from the Legal Department.
2 MR. RUNNER: Yeah.
3 MR. HELLER: Senator Runner, well, first of
4 all, from a procedural standpoint --
5 MR. RUNNER: Uh-huh.
6 MR. HELLER: -- just refer to the rulemaking
7 process.
8 If the Board does want to change the proposed
9 language, the Board can -- can authorize staff to make
10 the changes and issue a 15-day notice to make the public
11 aware of those changes and then we'll bring them back to
12 the Board for adoption at a later Board meeting, after
13 the 15-day notice and comment period's expired.
14 MR. RUNNER: So, this is -- this is not
15 substantial enough to be able to meet a 15-day notice at
16 that point?
17 MR. HELLER: Well, basically, we can do changes
18 that are substantially related if we do the 15-day
19 notice.
20 MR. RUNNER: Oh, okay.
21 MR. HELLER: And, so, this -- I think staff
22 believes these are substantially related to the prior
23 amendment.
24 MR. RUNNER: But it can be done on a 15-day
25 notice?
26 MR. HELLER: Correct.
27 MR. RUNNER: To be able to then be adopted at
28 the next meeting?

1 MR. HELLER: That's -- that's correct, yeah.
2 MR. RUNNER: Okay.
3 MS. YEE: Yeah.
4 MR. RUNNER: I certainly would be supportive of
5 that as a process.
6 MR. HORTON: Okay. Looks like there is support
7 for that.
8 MS. MANDEL: Can I ask one other question?
9 MR. HORTON: Sure. Ms. Mandel.
10 MS. MANDEL: Can you just address the comment
11 that we got this morning from Mr. Koch?
12 MR. HELLER: Yes, Ms. Mandel.
13 As we all -- as we discussed back at the, I
14 believe, the August Business Taxes Committee Meeting,
15 there are -- during the process of, quote,
16 "either amending or repealing
17 Regulations 1807 and 1828 back in
18 2008,"
19 -- the Board's rulemaking documents did
20 indicate that the Board was in the process of amending
21 those regulations.
22 However, the actual text of what the Board did
23 was to strike out the entire text and titles of both
24 regulations and then adopt an entirely new underlying
25 text and titles of brand-new regulations.
26 When those were added to the California Code of
27 Regulations by the Office of Administrative Law, they
28 interpreted that as a repeal of the prior regulations

1 that were adopted in 2002 and adoption of the new
2 regulations in 2008. And that's the official notation
3 in the California Code of Regulations.
4 Board staff has just amended the transition
5 rules in Regulations 1807 -- or has proposed amending
6 them -- so that they indicate that the regulation was
7 repealed and reenacted or readopted in 2008.
8 And mainly just so that it's clear and in
9 conformity with what's -- the history notes in the
10 California Code of Regulations.
11 And Mr. Koch, to the extent that his statements
12 indicate that staff is trying to expunge the prior
13 record of what happened, that's not the case.
14 We're just trying to conform these amendments
15 with current history notes. And we're not trying to
16 change anything that happened in the past, all the
17 Board's records remain the same as they were, including
18 the minutes of all of the Board's meetings and the texts
19 of all of the rulemaking documents, which are all
20 official public records and available to the public on
21 request.
22 MS. MANDEL: And what about his proposal for --
23 or is this proposed language have to do with that same
24 thing on this?
25 He proposes some clarifying language.
26 MR. HELLER: Ms. Mandel, I really have -- I
27 really could not follow where that went, to be honest.
28 It just kind of starts on the word "on" and I don't even

1 know where it goes, to be honest.
2 MS. MANDEL: The reg.
3 MR. HELLER: And I think it's -- I'm not so
4 sure that it's really clarifying in any respect. I
5 mean, it's -- I really can't even -- I was unclear about
6 where it went.
7 MS. MANDEL: Okay.
8 MR. HORTON: Further discussion, Members?
9 Mr. Heller is that sufficient enough for you to
10 be able to make the changes?
11 MR. HELLER: Well --
12 MS. YEE: You need a motion.
13 MR. HORTON: I will.
14 MS. YEE: Okay.
15 MR. HORTON: I just want to make you
16 understand.
17 MS. YEE: Okay.
18 MR. HORTON: Okay, Ms. Yee.
19 MS. YEE: I'll move adoption of the amendments
20 to Regulation -- to these regulations as amended per our
21 discussion and sent to the 15-day file.
22 MR. HORTON: So moved.
23 Second by Member Steel.
24 Without objection, Members, such will be the
25 order.
26 Mr. Heller.
27 MR. HELLER: Chairman Horton, could I just
28 clarify?

1 I just wanted to make sure, HdL's comments
2 mostly just referred to Regulation 1807, but I just
3 wanted to make sure we're making conforming changes to
4 both regulations?
5 MS. YEE: Yes.
6 MR. HELLER: Correct?
7 MR. HORTON: Yes.
8 MS. YEE: Yes.
9 MR. HELLER: Perfect, I have all of the
10 information I need.
11 MS. YEE: Yep.
12 MR. HORTON: All right, thank you very much,
13 appreciate your time.
14 MS. STURDIVANT: Thank you very much.
15 MR. KLEHS: Thank you.
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1 REPORTER'S CERTIFICATE.

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, JULI PRICE JACKSON, Hearing Reporter for the

8 California State Board of Equalization certify that on

9 NOVEMBER 15, 2011 I recorded verbatim, in shorthand, to

10 the best of my ability, the proceedings in the

11 above-entitled hearing; that I transcribed the shorthand

12 writing into typewriting; and that the preceding pages 1

13 through 15 constitute a complete and accurate

14 transcription of the shorthand writing.

15

16 Dated: NOVEMBER 17, 2011

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18

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20 JULI PRICE JACKSON

21 Hearing Reporter

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Electronically signed by Juli Jackson (001-065-206-4972) 3da5811d-2d86-4afd-a266-a1c7d2d1c14c

2011 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, November 15, 2011

PUBLIC HEARINGS

F1 Proposed Adoption of Amendments to Regulation 1616, *Federal Areas*

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of proposed amendments clarifying the types of transactions with governments of federally-recognized Indian tribes that are exempt under Revenue and Taxation Code, section 6352 (Exhibit 11.2).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted amendments to Regulation 1616 as recommended by staff.

F2 Proposed Adoption of Amendments to Regulation 1807, *Petitions for Reallocation of Local Tax,* and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of proposed amendments to improve the Board's review of local sales and use tax and district transactions and use tax petitions (Exhibit 11.3).

Speakers: Robin Sturdivant, Local Government Advocate, The HdL Companies
Johan Klehs, President, Johan Klehs & Company, Representing City of Livermore

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved further changes to the published version of regulations 1807 and 1828 and ordered that the changed version be placed in the rulemaking file for 15 days.

[G1] LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

G1. 1 Tirebusters, Inc., 390462 (CH)
2-1-93 to 12-31-03, $644,280.69 Tax, $63,912.70 Failure to File Penalty, $1.288.96 Fraud Penalty, $319,563.02 Knowingly Operating without a Permit Penalty
Action: Redetermine as recommended by the Appeals Division.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
50 N STREET, SACRAMENTO, CALIFORNIA
O BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

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

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

STATE BOARD OF EQUALIZATION

BOARD APPROVED Revision and sent to 15-Day File
At the November 15, 2011 Board Meeting
for Diane Richmond
Diane G. Olson, Chief
Board Proceedings Division

September 23, 2011

To Interested Parties:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

Proposed to Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and

Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investigation of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC §7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department

within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited

petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,

Diane G. Olson

Diane G. Olson, Chief
Board Proceedings Division

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In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC §7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC §7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website.

At the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board agreed with Board staff, Mr. Klehs, the HdL Companies, and MuniServices, LLC that the amendments to Regulations 1807 and 1828 set forth in staff's revised recommendation improved the review processes prescribed by both regulations and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 11-004, the Informal Issue Paper dated August 10, 2011, the exhibits to the formal issue paper and informal issue paper, and comments made during the Board's discussion of the formal issue paper and informal issue paper during its April 26, 2011, and August 23, 2011, Business Taxes Committee meetings, respectively, in deciding to propose the amendments to Regulations 1807 and 1828 described above.

ALTERNATIVES CONSIDERED

The Board considered four alternatives to the proposed amendments to Regulations 1807 and 1828 during its April 26, 2011, Business Taxes Committee meeting, which are described in detail in Formal Issue Paper 11-004. Alternative 1 was recommended by Board staff, alternative 2 was recommended by Mr. Klehs and supported by the HdL Companies, and alternatives 3 and 4 were recommended by MuniServices, LLC.

All four alternatives recommended that Regulations 1807 and 1828 be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the regulations apply to procedures occurring after their effective dates and are not retroactive. Alternative 3 recommended that the Board adopt Regulations 1807.1 and 1828.1 containing the provisions of Regulations 1807 and 1828 as recommended to be amended in alternative 3, and amend Regulations 1807 and 1828 so that they cease to be operative when Regulations 1807.1 and 1828.1 become operative in order to make it clear that the provisions of new Regulations 1807.1 and 1828.1 are not retroactive. Alternative 4 simply recommended amending Regulations 1807 and 1828 to provide that the 2011 amendments have no retroactive effect. In its revised recommendation in the Informal Issue Paper dated August 10, 2011, Board staff continued to recommend that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be clarified as originally recommended by staff in alternative 1. However, MuniServices, LLC, recommend that the transition rules be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. The Board voted to propose to amend the transition rules in the manner recommended by staff because the Board agreed that staff's recommended amendments were consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations, and the Board determined that staff's recommended amendments clarified the regulations' existing transition rules without creating unnecessary confusion.

Alternative 2 also recommended that the Board amend Regulations 1807 and 1828 to: (1) limit the time the Allocation Group has to prepare a second supplement decision after it receives an objection to its original supplemental decision; (2) require the Appeals Division to schedule an appeals conference within six months after receiving a petition file from the Allocation Group, and require the Appeals Division to schedule an appeals conference within 90 days after the Board receives an objection to a second supplemental decision; (3) reduce the additional time the Board's Chief Counsel can grant the Appeals Division to prepare its Decision and Recommendation (D&R) regarding a petition to 30 days; (4) eliminate the procedures for the parties to a petition to request that the Appeals Division reconsider its D&R and issue a Supplemental D&R; and (5) require the Board to issue a notice of hearing within 90 days after a party to a petition files a timely request for a Board hearing. The Board did no vote on whether to propose any of these amendments because they were no longer being recommended by Mr. Klehs or the HdL Companies at the time of the Board's August 23, 2011, Business Taxes Committee meeting.

Alternatives 3 and 4 also recommended that the Board amend Regulations 1807 and 1828 to: (1) impose a 270-day limit on the Allocation Group's initial investigation of a petition, require the Allocation Group to meet and confer with the petitioner regarding the status of its investigation if it has not issued a decision on the petition within that period, and allow the petitioner to request that the Allocation Group issue its decision within 30 days after it has met and conferred with the petitioner without regard to the status of the investigation; (2) prohibit an appeals conference holder from accepting post-conference submissions outside of the 30-day periods provided in the regulation, except upon the agreement of all the parties to a petition; and (3) require a party to a petition to provide a justification as to why that party is presenting new evidence to the Board prior to a Board

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9~~1~~0). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its

Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

Regulation History

Type of Regulation: Sales and Use Tax

Regulations: 1807 and 1828

Title: 1807, *Petitions for Reallocation of Local Tax*,

and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Preparation: Brad Heller
Legal Contact: Brad Heller

Board proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax,* to clarify the Board's review of local sales and use tax and district transactions and use tax petitions.

History of Proposed Regulation:

November 15-17, 2011	Public Hearing
September 23, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 13, 2011	Notice to OAL
August 23, 2011	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA

ESTIMATE OF COST OR SAVINGS RESULTING FROM PROPOSED REGULATORY ACTION

Proposed Amendment of Sales and Use Tax Regulations 1807, *Petitions for Reallocation of Local Tax* and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

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

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

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

Statement Prepared by _____ Date August 28, 2011
Regulations Coordinator

Approved by _____ for RF Date 8-29-11
Acting Chief Counsel

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

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: **SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

Board Proceedings Division
10/7/05

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
ate Board of Equalization	Rick Bennion	916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Title 18, Section 1807, Petitions for Reallocation of Local Tax		Z

ECONOMIC IMPACT STATEMENT

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

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

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) No significant adverse economic impact on business or employees,small business,jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

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

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

Explain: _____

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

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

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

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

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

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

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

d. Describe other economic costs that may occur: _____

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

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

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and th number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

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

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

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

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

Explain: _____

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

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

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

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

Regulation:	Benefit: $ _____	Cost: $ _____
Alternative 1:	Benefit: $ _____	Cost: $ _____
Alternative 2:	Benefit: $ _____	Cost: $ _____

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

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

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.

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

Alternative 1: _____

Alternative 2: _____

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

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

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

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Sectio

_____ of the _____ Code;

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

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

3. Savings of approximately $ _____ annually.

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

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

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

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☐ 4. Other.

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

☐ 1. Additional expenditures of approximately $_____ in the current State Fiscal Year.

☐ 2. Savings of approximately $_____ in the current State Fiscal Year.

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

☐ 4. Other.

SIGNATURE		TITLE Regulations Coordinator
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE		DATE 9/12/2011
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER Exempt under SAM section 6660	DATE

1. *The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.*

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

November 28, 2011

To Interested Parties

California Code of Regulations, Title 18,

Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

On November 15, 2011, the State Board of Equalization (Board) held a public hearing regarding the adoption of proposed amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. In response to a public comment, the Board directed staff to make the grammatical and sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828 described below and referred the proposed amendments to Regulations 1807 and 1828 to the fifteen-day file.

The Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the proposed amendments to Regulations 1807 and 1828 published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), explained that:

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax: (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.)

with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by

Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant

opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828

contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

November 4, 2012, Public Comment

On November 4, 2012, Ms. Robin Sturdivant submitted written comments on behalf of the HdL Companies, which recommended that the Board revise the proposed amendments to Regulations 1807 and 1828 to clarify that that Board's Sales and Use Tax Department, as a whole, rather than the Sales and Use Tax Department's Allocation Group, is responsible for:

- Reviewing petitions filed pursuant to both regulations;
- Issuing decisions to grant or deny petitions under subdivision (b)(2) of both regulations;
- Reviewing objections to its decisions issued under subdivision (b)(2) of both regulations;
- Issuing supplemental decisions in response to such objections under subdivision (b)(7) of both regulations; and
- Deciding whether to grant or deny requests for extensions under subdivision (b)(10) (as proposed to be renumbered) of both regulations.

November 15, 2011, Public Hearing

During the public hearing on November 15, 2011, the Board Members unanimously voted to authorize staff to make the changes to the original text of the proposed amendments to Regulations 1807 and 1828 that are necessary to clarify the regulations in the manner recommended by Ms. Sturdivant and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c). The objective of the proposed amendments to Regulations 1807 and 1828 is still to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

Changes to the Original Text

In order to clarify the regulations in the manner recommended by Ms. Sturdivant, the Board has made the following changes to the original text of the proposed amendments to Regulations 1807 and 1828:

- Replaced the reference to the "Allocation Group" in the title to subdivision (b) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced all of the references to the "Allocation Group" with references to the "Sales and Use Tax Department" in subdivision (b)(2), (3), (7), (8) (as proposed to be added), and (9) (as proposed to be renumbered) of both regulations;
- Replaced the first reference to the "Allocation Group" in subdivision (b)(4) and (5) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced the first and third references to the "Allocation Group" with references to the "Sales and Use Tax Department" and replaced the reference to the "Allocation Group's" decision with a reference to the "Sales and Use Tax Department's" decision in subdivision (b)(6) of both regulations;
- Replaced the first, third, fourth, and fifth references to the "Allocation Group" in subdivision (b)(10) (as proposed to be renumbered) of both regulations with references to the "Sales and Use Tax Department" and replaced the word "its" with "the Sales and Use Tax Department's" in the second sentence in subdivision (b)(10) (as proposed to be renumbered) of both regulations;
- Replaced the references to the "Allocation Group" and the "Allocation Group's" with references to the "Sales and Use Tax Department" and "Sales and Use Tax Department's," respectively, in subdivision (c)(1) of both regulations;
- Replaced the word "its" with "the Sales and Use Tax Department's" in the first sentence of subdivision (c)(2) of both regulations; and
- Deleted "of the Allocation Group" from subdivision (c)(2)(A) of both regulations.

In addition, the Board also changed the original text of the proposed amendments to Regulations 1807 and 1828 by adding "Sales and Use Tax" before the word "Department" throughout subdivision (c)(2)(B)-(D) and (7) of both regulations to ensure that both of the regulations consistently refer to the Board's Sales and Use Tax Department by its full name.

Additional Comments Regarding Changes

Enclosed are revised underscore and strikeout versions of the text of the proposed amendments to Regulations 1807 and 1828 with the additional changes authorized on November 15, 2011, clearly indicated. The text proposed to be deleted from and added to the proposed amendments to Regulations 1807 and 1828 is shown in double strikeout and double underline, respectively.

In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised versions of the proposed amendments to Regulations 1807 and 1828 during its December 14-15, 2011, Board meeting in

November 28, 2011

Sacramento, California. The specific agenda for the December 14-15, 2011, Board meeting will be available on the Board's Website at www.boe.ca.gov at 5:00 p.m. on December 2, 2011.

Any interested person may appear during the Board's discussion of the revised versions of the proposed amendments to Regulations 1807 and 1828 during the December 14-15, 2011, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised versions of the proposed amendments to Regulations 1807 and 1828. The written comment period closes at 9:30 a.m. on December 14, 2011, or as soon thereafter as the Board commences its discussion of the revised versions of the proposed amendments to Regulations 1807 and 1828 during the December 14-15, 2011, Board meeting.

Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the revised versions of the proposed amendments to Regulations 1807 and 1828. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.

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

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the December 14-15, 2011, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the December 14-15, 2011, Board meeting should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (91 6) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/

Sincerely,

Diane G. Olson

Diane G. Olson, Chief
Board Proceedings Division

DGO:bmh:reb

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any

notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified jurisdiction may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~its~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within

a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision ~~of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision

(b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board

hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified district may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~it's~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision ~~of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the

Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be

mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the

burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, did comply with the provision of Government Code section 11346.8(c) and section 44 of Title 1, California Code of Regulations. The 15-day letter and the changed version of Regulations 1807 and 1828 were mailed on November 28, 2011, to interested parties who commented orally or in writing or that requested such information and were made available for public comment from November 28 to December 14, 2011, a period of 16 days prior to the public hearing.

December 15, 2011

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any

notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified jurisdiction may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~its~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within

a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision~~ of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision

(b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board

hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified district may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~it's~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision~~ of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the

Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be

mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the

burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

2011 MINUTES OF THE STATE BOARD OF EQUALIZATION

Thursday, December 15, 2011

CHIEF COUNSEL MATTERS

[J] RULEMAKING

J1 Proposed Adoption of Amendments to Regulation 1807, *Petitions for Reallocation of Local Tax,* and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks requesting the adoption of proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax,* and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax,* with the changes authorized by the Board on November 15, 2011 (Exhibit 12.6).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the changed version of the amendments to Regulations 1807 and 1828 as published in the 15-day file.

STATE OF CALIFORNIA

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

November 28, 2011

To Interested Parties

California Code of Regulations, Title 18,

Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

On November 15, 2011, the State Board of Equalization (Board) held a public hearing regarding the adoption of proposed amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. In response to a public comment, the Board directed staff to make the grammatical and sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828 described below and referred the proposed amendments to Regulations 1807 and 1828 to the fifteen-day file.

The Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the proposed amendments to Regulations 1807 and 1828 published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), explained that:

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.)

with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC §7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by

opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828

contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

November 4, 2012, Public Comment

On November 4, 2012, Ms. Robin Sturdivant submitted written comments on behalf of the HdL Companies, which recommended that the Board revise the proposed amendments to Regulations 1807 and 1828 to clarify that that Board's Sales and Use Tax Department, as a whole, rather than the Sales and Use Tax Department's Allocation Group, is responsible for:

- Reviewing petitions filed pursuant to both regulations;
- Issuing decisions to grant or deny petitions under subdivision (b)(2) of both regulations;
- Reviewing objections to its decisions issued under subdivision (b)(2) of both regulations;
- Issuing supplemental decisions in response to such objections under subdivision (b)(7) of both regulations; and
- Deciding whether to grant or deny requests for extensions under subdivision (b)(10) (as proposed to be renumbered) of both regulations.

November 15, 2011, Public Hearing

During the public hearing on November 15, 2011, the Board Members unanimously voted to authorize staff to make the changes to the original text of the proposed amendments to Regulations 1807 and 1828 that are necessary to clarify the regulations in the manner recommended by Ms. Sturdivant and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c). The objective of the proposed amendments to Regulations 1807 and 1828 is still to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

Changes to the Original Text

In order to clarify the regulations in the manner recommended by Ms. Sturdivant, the Board has made the following changes to the original text of the proposed amendments to Regulations 1807 and 1828:

- Replaced the reference to the "Allocation Group" in the title to subdivision (b) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced all of the references to the "Allocation Group" with references to the "Sales and Use Tax Department" in subdivision (b)(2), (3), (7), (8) (as proposed to be added), and (9) (as proposed to be renumbered) of both regulations;
- Replaced the first reference to the "Allocation Group" in subdivision (b)(4) and (5) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced the first and third references to the "Allocation Group" with references to the "Sales and Use Tax Department" and replaced the reference to the "Allocation Group's" decision with a reference to the "Sales and Use Tax Department's" decision in subdivision (b)(6) of both regulations;
- Replaced the first, third, fourth, and fifth references to the "Allocation Group" in subdivision (b)(10) (as proposed to be renumbered) of both regulations with references to the "Sales and Use Tax Department" and replaced the word "its" with "the Sales and Use Tax Department's" in the second sentence in subdivision (b)(10) (as proposed to be renumbered) of both regulations;
- Replaced the references to the "Allocation Group" and the "Allocation Group's" with references to the "Sales and Use Tax Department" and "Sales and Use Tax Department's," respectively, in subdivision (c)(1) of both regulations;
- Replaced the word "its" with "the Sales and Use Tax Department's" in the first sentence of subdivision (c)(2) of both regulations; and
- Deleted "of the Allocation Group" from subdivision (c)(2)(A) of both regulations.

In addition, the Board also changed the original text of the proposed amendments to Regulations 1807 and 1828 by adding "Sales and Use Tax" before the word "Department" throughout subdivision (c)(2)(B)-(D) and (7) of both regulations to ensure that both of the regulations consistently refer to the Board's Sales and Use Tax Department by its full name.

Additional Comments Regarding Changes

Enclosed are revised underscore and strikeout versions of the text of the proposed amendments to Regulations 1807 and 1828 with the additional changes authorized on November 15, 2011, clearly indicated. The text proposed to be deleted from and added to the proposed amendments to Regulations 1807 and 1828 is shown in double strikeout and double underline, respectively.

In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised versions of the proposed amendments to Regulations 1807 and 1828 during its December 14-15, 2011, Board meeting in

November 28, 2011

Sacramento, California. The specific agenda for the December 14-15, 2011, Board meeting will be available on the Board's Website at www.boe.ca.gov at 5:00 p.m. on December 2, 2011.

Any interested person may appear during the Board's discussion of the revised versions of the proposed amendments to Regulations 1807 and 1828 during the December 14-15, 2011, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised versions of the proposed amendments to Regulations 1807 and 1828. The written comment period closes at 9:30 a.m. on December 14, 2011, or as soon thereafter as the Board commences its discussion of the revised versions of the proposed amendments to Regulations 1807 and 1828 during the December 14-15, 2011, Board meeting.

Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the revised versions of the proposed amendments to Regulations 1807 and 1828. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.

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

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the December 14-15, 2011, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the December 14-15, 2011, Board meeting should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (91 6) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/

Sincerely,

Diane G. Olson

Diane G. Olson, Chief
Board Proceedings Division

DGO:bmh:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED
At the December 15, 2011 Board Meeting
Diane G. Olson
Diane G. Olson, Chief

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1807,

Petitions for Reallocation of Local Tax

Regulation 1807. Petitions for Reallocation of Local Tax.

(a) Definitions.

(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the

Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected Jurisdiction. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) Notified Jurisdiction. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the

Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any

notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified jurisdiction may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~its~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within

a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision~~ of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision

(b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board

hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Application to Section 6066.3 Inquiries.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

Text of Proposed Amendments to

California Code of Regulations, Title 18, Section 1828,

Petitions for Distribution or Redistribution of Transactions and Use Tax

Regulation 1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.

(a) Definitions.

(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of</u>

extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) Petitioner. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) Substantially Affected District. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of $50,000 or more.

(7) Notified District. "Notified district" is a district that has been notified as a substantially affected district.

(b) Review by Sales and Use Tax Department~~Allocation Group~~.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will

be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The ~~Allocation Group~~Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the ~~Allocation Group~~Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its decision based on the information in its possession.

(4) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the ~~Allocation Group~~Sales and Use Tax Department is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the ~~Allocation Group~~Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the ~~Allocation Group~~Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the ~~Allocation Group~~Sales and Use Tax Department, the petitioner or any notified district may request that the ~~Allocation Group~~Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the ~~Allocation Group~~Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is final as to the petitioner and all notified districts.

(~~9~~10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the ~~Allocation Group~~Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of ~~it's~~the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the ~~Allocation Group~~Sales and Use Tax Department will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) Review by Appeals Division.

(1) The petitioner or any notified district may appeal the supplemental decision of the ~~Allocation Group~~Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the ~~Allocation Group's~~Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to ~~its~~the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision~~ of the Allocation Group~~ was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the

Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be

mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the

burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) Limitation Period for Redistributions.

For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) Operative Date and Transition Rules.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. ~~It~~The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date~~ it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~approval by the Office of Administrative Law and ~~forwarded~~forwarding to the Secretary of State) and ~~it~~there shall ~~have~~be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulations: 1807 and 1828

Title: 1807, *Petitions for Reallocation of Local Tax*,

and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

Preparation: Brad Heller
Legal Contact: Brad Heller

Board proposes to amend Regulation 1807, *Petitions for Reallocation of Local Tax*, and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax,* to clarify the Board's review of local sales and use tax and district transactions and use tax petitions.

History of Proposed Regulation:

December 15, 2011	Chief Counsel Matters – Board to consider the adoption of revised language.
November 29, 2011	15-day public comment period begins.
November 28, 2011	15-day letter and revised text mailed to Interested Parties.
November 15, 2011	Board approved revised text and referred the regulation to the 15-day file. (Vote 5-0)
November 15, 2011	Public Hearing
September 23, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 13, 2011	Notice to OAL
August 23, 2011	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA
Support: NA
Oppose: NA

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 15, 2011

ITEM J RULEMAKING

J1 PROPOSED ADOPTION OF AMENDMENTS TO

REGULATION 1807, PETITIONS FOR REALLOCATION OF LOCAL TAX

REGULATION 1828, PETITIONS FOR DISTRIBUTION OR

REDISTRIBUTION OF TRANSACTIONS AND USE TAX

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Reported by: Juli Price Jackson

No. CSR 5214

Electronically signed by Juli Jackson (001-065-206-4972) 4fa7e898-08ae-410c-a0ff-1c6bc24cbb96

1 P R E S E N T

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3 For the Board of Equalization: Jerome E. Horton
Chairman

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5 Michelle Steel
Vice-Chairwoman

6

7 Betty T. Yee
Member

8

9 Marcy Jo Mandel
Appearing for John
10 Chiang, State
Controller (per
11 Government Code
Section 7.9)

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13 Diane G. Olson
Chief, Board
14 Proceedings Division

15 Bradley Heller
Legal Department

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 15, 2011
4 ---oOo---
5 MR. HORTON: Ms. Olson?
6 MS. OLSON: Our next item is J1, Proposed
7 Adoption of Amendments to Regulation 1807, Petitions for
8 Reallocation of Local Tax, and Regulation 1828,
9 Petitions for Distribution or Redistributions of
10 Transactions and Use Tax.
11 MR. HORTON: Mr. Heller, how are you today?
12 MR. HELLER: I'm very good.
13 How are you, Chairman Horton?
14 MR. HORTON: Good. Welcome to the Board.
15 MR. HELLER: Thank you.
16 MR. HORTON: We look forward to your
17 presentation.
18 MR. HELLER: Thank you again.
19 I'm Bradley Heller, I'm here on behalf of the
20 Board's Legal Department. And I'm here to request that
21 the Board adopt the proposed amendments to
22 Regulation 1807, Petitions for Reallocation of Local
23 Tax, and Regulation 1828, Petitions for Distributions or
24 Redistribution of Transactions and Use Tax.
25 MR. HORTON: And why should we do that?
26 MR. HELLER: Well, the staff has worked with
27 the interested parties to improve the Board's review of
28 both types of petitions and we think that the proposed

1 amendments will basically improve the efficiency of our
2 review process.
3 And I also wanted to mention that the proposed
4 amendments include the substantially-related changes
5 that the Board approved in November, and also some minor
6 grammatical changes to make sure that the regulations
7 both refer to the Sales and Use Tax Department
8 consistently throughout both regulations.
9 MR. HORTON: Anyone in the audience wish to
10 speak on this?
11 Hearing none, please continue?
12 MR. HELLER: I'm just going to add that if
13 there's any questions I can help answer, otherwise we
14 just -- staff would request that Board adopt the
15 proposed amendments.
16 MS. YEE: I'll move adoption, Mr. Chairman.
17 MR. HORTON: Moved by Member Yee to adopt as
18 proposed.
19 Second by Member Steel.
20 Objection? Hearing none, thank you very much,
21 sir.
22 MR. HELLER: Thank you.
23 ---o0o---
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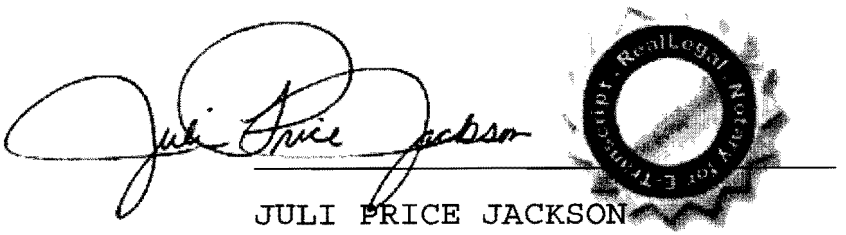
REPORTER'S CERTIFICATE.

State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on DECEMBER 15, 2011 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: December 22, 2011



JULI PRICE JACKSON
Hearing Reporter