

Response to Comments Regarding Board of Equalization Rules for Tax Appeals
October 18, 2006, Interested Parties Meeting

Rule Number	Date Received	Source	Proposed Amendment	Staff Response
Chapter 1 Statement of Intent		No comments received		
Chapter 2 Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees				
2010 (9/14/05 Draft) Persons Permitted to File Petitions for Redetermination	10/24/2005	Joseph A. Vinatieri Bewley Lasseben & Miller LLP	Asked staff to define the phrase "person directly interested."	Staff added a definition.
2013 (9/14/05 Draft) Contents of Petition for Redetermination and Supporting Documentation	10/24/2005	Joseph A. Vinatieri	Objected to requiring petitioners to identify the amount in dispute.	Staff revised the language so that the amount is only required if it is already known.
2017 (9/14/05 Draft) Scope of Petition for Redetermination Filed Pursuant to Hazardous Substance Tax Law	10/24/2005	Joseph A. Vinatieri	Asked staff to create a mechanism to deem certain applications denied by the State Director of the State Department of Health Services.	Staff declined due to a lack of statutory authority.
2018 (9/14/05 Draft) Petitions for Redetermination Pursuant to Covered Electronic Waste Recycling Fee	10/24/2005	Joseph A. Vinatieri	Asked staff to clarify Dept. of Toxic Substances Control's role (DTSC) in determining a covered electronic device.	Staff clarified DTSC's sole jurisdiction over the issue.

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2019 (9/14/05 Draft) Scope of Petitions for Redetermination Pursuant to Water Rights Fee Law	10/24/2005	Joseph A. Vinatieri	Asked staff to further clarify the Board's jurisdiction.	Staff added a cross reference to the statute prescribing the State Water Resources Board's jurisdiction.
2020 (9/14/05 Draft) Addresses for Filing Petitions for Redetermination	10/24/2005	Joseph A. Vinatieri	Asked whether properly addressing the petition should be a regulatory requirement for a "complete" petition.	Staff deleted the requirement, but retained the Board's discretion to reject petitions that are filed in an unauthorized manner.
2021 (9/14/05 Draft) Assignment and Acknowledgement of Petition for Redetermination	10/24/2005	Joseph A. Vinatieri	Asked staff to act promptly.	Staff added the suggested language.
2022 (9/14/05 Draft) Review of the Petition and Referral to District Office or Audit Group	10/24/2005	Joseph A. Vinatieri	Asked staff to provide for Appeals Division review where taxpayers have not requested an oral hearing.	Staff added the suggested language.
2023 (9/14/05 Draft) Assignment of Petition to Appeals Division	10/24/2005	Joseph A. Vinatieri	Suggested that a copy of the summary analysis be provided to the taxpayer.	Staff added the suggested language.
2046 (9/14/05 Draft) Application for Administrative Hearing	10/24/2005	Joseph A. Vinatieri	Asked staff to clarify that taxpayers can file both a petition for redetermination and application for administrative hearing.	Staff revised the language so that it did not imply that the two types of review were mutually exclusive and added procedures for situations where taxpayers request both forms of review.
2049.5 (9/14/05 Draft)	10/24/2005	Joseph A. Vinatieri	Asked staff to place time constraints on the Appeals	Staff agreed to require prompt review.

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Assignment of Application for Administrative Hearing			Division's review.	
2050 (9/14/05 Draft) Persons Who May File a Claim for Refund	10/24/2005	Joseph A. Vinatieri	Asked staff to create a mechanism to deem certain applications denied by the State Director of the State Department of Health Services and asked staff to clarify what happens after the State Director does act on such applications.	Staff declined to add "deemed denial" procedures due to a lack of statutory authority. However, staff did clarify the Board's overall jurisdiction to accept claims regarding the Childhood Lead Poisoning Prevention Fee.
2053 (9/14/05 Draft) Contents of Claim	10/24/2005	Joseph A. Vinatieri	Suggested that the regulation only require claims to contain statutorily required information and asked staff to define reporting period.	Staff limited the required contents of claims, and provided taxpayers with guidance as to other documents and information they may submit to support their claims.
2054 (9/14/05 Draft) Contents of Claims for Refund Under Diesel Fuel Tax Law	10/24/2005	Joseph A. Vinatieri	Asked staff to specifically address claims for refund of the Motor Vehicle Fuel Tax.	The specified claims are covered by the general requirements for claims for refund.
2061 (9/14/05 Draft) Discretion to Grant or Deny Conferences and Hearings	10/24/2005	Joseph A. Vinatieri	Asked that staff add language requiring the consideration of any new evidence or arguments in deciding whether to grant an appeals conference or oral hearing.	Staff added language favoring the granting of appeals conferences and oral hearings, and preventing denials where taxpayers have submitted new arguments and/or evidence.
2080 (9/14/05 Draft) No Independent Right to Oral Board Hearing	10/24/2005	Joseph A. Vinatieri	Expressed his opinion that persons requesting relief should have a right to an oral hearing.	Staff declined to create a right to an oral hearing that was not provided by statute.
2086 (9/14/05 Draft)	10/24/2005	Joseph A.	Asked staff to clarify the meaning	Staff explained that where granting

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Assignment of Requests for Relief		Vinatieri	of subdivision (a)(2).	a request for relief would result in a refund, the request may be reviewed as a claim for refund.
2101 (9/14/05 Draft) Notice of Appeals Conference	10/24/2005	Joseph A. Vinatieri	Suggested that conference holders be required to consider evidence and arguments that are first submitted at the taxpayer's appeals conference.	Staff revised the language so as not to require the advance submission of evidence, and revised another section to permit the submission of evidence at the appeals conference.
2102 (9/14/05 Draft) Rescheduling or Postponing Appeals Conference	10/24/2005	Joseph A. Vinatieri	Asked staff to further explain the difference between rescheduling and postponing an appeals conference.	Staff explained that conferences scheduled to be held in Sacramento or via electronic means may be rescheduled with the same conference holder without undue delay. However, conferences scheduled to be held outside of Sacramento must be postponed if they are delayed because scheduling conflicts normally require the conference to be reassigned to a different conference holder.
2104 (9/14/05 Draft) Conducting the Appeals Conference	10/24/2005	Joseph A. Vinatieri	Asked for clarification of the terms "audit staff" and "collections staff" and points out a perceived inconsistency between subdivision (d) and section 2101, subdivision (c).	Staff revised the language to resolve the inconsistency and clearly permit evidence to be submitted at an appeals conference.
2105 (9/14/05 Draft) Issuing Decision and Recommendation	10/24/2005	Joseph A. Vinatieri	Asked staff to explain the term "significant factual error."	Staff explained that a significant factual error is any error that may affect the Appeals Division's recommendation.
2106 (9/14/05 Draft)	10/24/2005	Joseph A.	Reminded staff to add a deadline	Staff added a deadline for

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Conference Holder Recommendations		Vinatieri	for requesting reconsideration, suggested adding procedures for staff to confirm a taxpayer's desire for a previously requested hearing, and questioned the Board's discretion to deny an oral hearing on an application for administrative hearing.	requesting reconsideration, and added procedures for staff to confirm prior requests for an oral hearing.
2110 (9/14/05 Draft) Briefing Schedule	10/25/2005	Marty Dakessian Attorney at Law	Pointed out that staff failed to include a briefing schedule in the first draft of chapter 2, and suggested that whatever briefing schedule is incorporated provide more time than the schedule in the old Rules of Practice.	Staff has provided a briefing schedule giving taxpayers and the department 5 additional days to prepare their opening briefs, and giving taxpayers the right to file a reply brief.
Chapter 3 Property Taxes				
3110 (9/14/05 Draft) Definitions	11/14/2005	Peter Michaels Cooper, White & Cooper	Indicated that the Appraisal Data Report should continue to contain the level of detail currently provided.	Staff agrees.
3130(a) (9/14/05 Draft) Contents of the Petition	11/14/2005	Peter Michaels	Suggested adding a reference to penalty abatement petitions.	Staff added the requested reference to section 5000.3111 of the September 2006 draft.
3131 (9/14/05 Draft) Submission of the Petition	11/14/2005	Peter Michaels	Suggested staff provide for electronic filing.	Staff has provided for the submission of an electronic file containing the petition in lieu of 10 copies.

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3135 (9/14/05 Draft) Evaluation of Petition	11/14/2005	Peter Michaels	Stated that the phrase “timely, valid, and complete” seems duplicative.	Staff explained that timely refers to the due date of the petition, valid refers to the taxpayer’s authorization for the filing of the petition, and complete refers to the contents of the petition itself.
3136(a) (9/14/05 Draft) Submission of Additional Supporting Documents by Petitioner	11/14/2005	Peter Michaels	Requested the deletion of the time constraints in the second sentence of subdivision (a), and clarification of the Board staff referred to in subdivision (b).	Staff retained the time constraints due to the statutory deadlines imposed upon the Board, but did clarify that subdivision (b) referred to the Valuation Division and the Appeals Division.
3140 (9/14/05 Draft) Dismissal of Petition	11/14/2005	Peter Michaels	Asked about the difference between an invalid brief and an incomplete brief.	See the response to the September 14, 2005, comment on section 3135 above.
3153 (2/23/06 Draft) General Briefing Procedures for Petitions Reviewed by the Appeals Division	4/5/2006	Peter Michaels	Suggested adding language to make it clear that “A <u>valid and complete</u> petition is considered the petitioner’s opening brief.”	Staff added the language to section 5000.3161 of the September 2006 draft.
3156 (2/23/06 Draft) Scheduling of Appeals Conferences; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled	4/5/2006	Peter Michaels	Suggested that the use of both “days” and “business days” is confusing.	Staff deleted the references to “business” days.
3157 (2/23/06 Draft) Appeals Division Hearing Summary or Summary	4/5/2006	Peter Michaels	Suggested that staff should act “promptly.”	Staff added language requiring revised hearing summaries and revised summary decisions to be

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Decision				distributed "promptly."
3163 (9/14/05 Draft) Consolidation of Petition into a Single Hearing	11/14/2005	Peter Michaels	Raised concerns that consolidation may jeopardize some petitioners' rights to confidentiality, and inadequately address unique issues.	Staff clarified the consolidation provisions in section 5000.5005.2 of chapter 5 to prohibit consolidation where there is an objection to consolidation that is not frivolous.
3163 (2/23/06 Draft) Consolidation of Petitions into a Single Hearing	4/5/2006	Peter Michaels	Suggested that the Board create procedures to protect trade secrets, especially when two or more petitioners' hearings are consolidated.	See the response to the November 14, 2005, comment on section 3163 regarding consolidation. Also, staff provided procedures to protect trade secrets in section 5000.5033.2 of chapter 5.
3164 (9/14/05 Draft) Oral Hearing Procedures	11/14/2005	Peter Michaels	Suggested that staff add procedures for hearing trade secrets, etc. in closed session.	See the response to the April 5, 2006, comment on section 3163 above regarding the protection of trade secrets.
3171 (9/14/05) Oral Hearing Waived – Unresolved Issues	11/14/2005	Peter Michaels	Suggested that taxpayers who waived their oral hearings, but still disagreed with the Valuation Division be permitted to reply to the Valuation Division's brief.	Staff agreed and added the necessary provisions for replies.
Chapter 4 Appeals from Actions of the Franchise Tax Board				
4010 (9/14/05 Draft) Application of Part	12/13/2005	Kenneth A. Davis FTB Legal Dept.	1. Suggested adding a reference to the Taxpayers' Bill of Rights in part 10.7 of division 2 of the Revenue and Taxation Code. 2.	1. Staff explained that chapter 4 does not apply to claims under the specified Taxpayers' Bill of Rights. 2. Staff added the suggested

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			Suggested adding language to resolve potential unforeseen conflicts between chapter 4 and chapter 5.	language regarding conflicts between procedures.
4011 (9/14/05 Draft) Definitions	12/13/2005	Kenneth A. Davis	Suggested that the term "taxpayer" include business entities.	Staff replaced the definition for "taxpayer" with a definition for "appellant" and added the suggested language regarding business entities.
4012 (9/14/05 Draft) Jurisdiction	11/30/2005	Joseph A. Vinatieri	Asked staff to clarify the term "grievance" as used in subdivision (a).	Staff deleted the term "grievance" because it was too ambiguous.
	12/13/2005	Kenneth A. Davis	<ol style="list-style-type: none"> 1. Suggested that staff add language declaring the Board to be a "quasi-adjudicatory body." 2. Recommended useful language to clarify the Board's jurisdiction, including identifying previously omitted areas. 	<ol style="list-style-type: none"> 1. Staff determined that the language was unnecessary. 2. Staff included the recommended language.
4012 (1/19/06 Draft) Jurisdiction	3/10/2006	Kenneth A. Davis	Suggested staff clarify that the deemed denial provisions only apply to perfected claims for refund and requests for abatement of interest that are not associated with an FTB protest.	Staff added the suggested language.
4020 (9/14/05 Draft) Basic Appeal Filing Requirements	12/13/2005	Kenneth A. Davis	Requested that appellants be required to attach a copy of any FTB notice being appealed from, include the signature of all the appellants listed in such notice	Staff included the recommended language, although Homeowners and Renters Property Tax Assistance appellants are not required to state the amount

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			who are included in the appeal, and also state any amounts that are conceded. Also recommended the addition of e-filing language.	conceded.
	12/22/2005	Marc A. Aprea of Aprea & Company A Government Relations Firm	Suggested not requiring appellants' social security numbers on their appeals to help prevent identity theft.	Although staff has continued to require social security numbers, it has provided procedures for protecting social security numbers from disclosure in section 5000.5033.1, subdivision (e), of chapter 5.
4020 (12/9/05 Draft) Basic Appeal Filing Requirements	1/10/2006	Kenneth A. Davis	Suggested converting section 4020, subdivision (c) into chapter 4's main method of filing provision and to reference it thereafter; and suggested language requiring the Board Proceedings Division to forward copies of all taxpayer filed documents to the FTB.	Staff created section 5000.4020.5 to replace section 4020, subdivision (c) and serve as the central filing provision for chapter 4.
4020 (1/19/06 Draft) Appeal Filing Requirements	3/10/2006	Kenneth A. Davis	Requested that appellants utilizing the deemed denial provisions provide a copy of their claim for refund or request for interest abatement with their appeals.	Staff added the requested language.
4021 (9/14/05 Draft) Time for Filing an Appeal	12/13/2005	Kenneth A. Davis	Recommended the creation of alternative language deleting the filing extensions in subdivision (b), and also recommended several clarifications to the existing language.	Staff created an alternative deleting the filing extensions in subdivision (b), and incorporated the recommended clarifications into both the original language and the alternative. The alternative was

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				presented to the interested parties in the January 2006 version of chapter 4 and discussed at the March 15, 2006, interested parties meeting. However, the interested parties (other than the FTB) supported staff's original language and the alternative did not receive any additional support. As a result, staff did not include the alternative in the August or September versions of chapter 4.
4021 (1/19/06 Draft) Time for Filing an Appeal	3/10/2006	Kenneth A. Davis	Indicated support for the alternative deleting the filing extensions, and recommended deletion of the examples.	Staff deleted the examples.
4022 (9/14/05 Draft) Accepting or Rejecting an Appeal	12/13/2005	Kenneth A. Davis.	Recommended alternative procedures to brief and decide jurisdictional issues before briefing and deciding substantive issues raised in an appeal.	Staff created the requested alternative provision and also revised its original language to provide for the investigation of jurisdictional issues by the Chief Counsel. Staff presented its revised language and the alternative to the interested parties in the January 2006 version of chapter 4 and discussed the alternative at the March 15, 2006, interested parties meeting. However, the interested parties (other than the FTB) supported staff's language and the alternative did not receive any additional support. As a result, staff

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				did not include the alternative in the August or September versions of chapter 4.
	11/30/2005	Joseph A. Vinatieri	Suggested that staff specify the alternative rights and remedies referred to in subdivision (d).	Staff deleted the language regarding alternative rights and remedies.
4022 (1/19/06 Draft) Accepting or Rejecting an Appeal (Both Alternatives)	3/10/2006	Kenneth A. Davis	Indicated support for alternative requiring separate briefing of jurisdictional issues.	See the response to the December 13, 2005, comment regarding section 4022.
4023 (9/14/05 Draft) Perfecting an Appeal	12/13/2005	Kenneth A. Davis	Suggested deleting the “substantial compliance” language in subdivision (a).	Staff explained that the “substantial compliance” language was necessary to preserve the Board’s discretion.
4030 (9/14/05 Draft)	12/22/2005	Marc A. Aprea of Aprea & Company	Suggested allowing appellants to submit written comments to the FTB’s requests for permission to file supplemental briefs.	Staff did not add the suggested language because it believed such a process would be inefficient and lead to more requests for additional briefing from the FTB.
	11/30/2005	Joseph A. Vinatieri	Suggested replacing “extreme hardship” with “reasonable cause” in subdivision (c).	Staff incorporated the provisions from section 5000.5007 of chapter 5, which utilize the reasonable cause standard.
4030 (12/9/05 Draft) General Requirements	1/10/2006	Kenneth A. Davis	Suggested requiring the Board Proceedings Division to give parties written notification of the filing of a perfected appeal; and allowing the Chief of Board Proceedings to grant filing extension for “reasonable cause” instead of “extreme hardship.”	Staff added the requested language regarding notification and incorporated the reasonable cause standard as described in the response to the November 30, 2005, comment regarding section 4030.

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4031 (9/14/05 Draft) General Briefing Schedule	11/30/2005	Joseph A. Vinatieri	Suggested giving appellants 90 days to reply to the FTB's opening brief.	Staff did not change the filing deadline. Staff determined that reply briefs can normally be prepared in 30 days due to their limited scope, and has provided the ability to request a filing extension when more time is needed to prepare a complex reply.
4031 (12/9/05 Draft) General Briefing Schedule	1/10/2006	Kenneth A. Davis	Suggested adding language requiring the FTB to mail copies of its briefs to the appellant and inserting language permitting the filing of non-party (amicus) briefs.	Staff decided to continue to have the Board Proceedings Division distribute copies of briefs for verification purposes, but added the language regarding non-party (amicus) briefs.
4032 (12/9/05 Draft) Briefing Schedule for Innocent Spouse Appeals	1/10/2006	Kenneth A. Davis	Suggested that the FTB file its opening brief after both the appealing and non-appealing spouses have filed their briefs, that the FTB be permitted to reply to the non-appealing spouse's reply brief when appropriate, and that the FTB should be given an extra 5 days to request permission to file a reply brief.	Staff determined that the FTB should reply to the appealing spouse's opening brief without waiting for the non-appealing spouse's opening brief because the non-appealing spouse may not file a brief and the delay may be detrimental to the appellant. Staff also determined that the FTB should request permission to file a reply brief replying to the appealing spouse's reply brief and non-appealing spouse's briefs in accordance with the Board's current longstanding policy so as not to unnecessarily delay the appeals process.

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4032 (1/19/06 Draft) Briefing Schedule for Innocent Spouse Appeals	3/10/2006	Kenneth A. Davis	Suggested that the FTB always be permitted to respond to every brief filed by the appealing and non-appealing spouses.	Staff did not incorporate the suggestion because it conflicts with the Board's longstanding policy as described in the response to the January 10, 2006, comment regarding section 4032.
4033 (9/14/05 Draft) Simplified Briefing Schedule for Small Tax Appeals	11/30/2005	Joseph A. Vinatieri	Suggested increasing the threshold from \$5000 to \$10,000 and deleting the last sentence in subdivision (d)(1) regarding "unpaid" interest because it may be too confusing for some taxpayers. Also suggested that taxpayers be specifically informed that their elections constitute waivers.	Staff eventually deleted the simplified briefing schedule provisions due to a lack of support for requiring appellants to waive their oral hearings.
4033 (12/9/05 Draft) Simplified Briefing Schedule for Small Tax Appeals	1/10/2006	Kenneth A. Davis	Suggested that staff clarify how the threshold amount is calculated, recommended that the threshold amount be calculated on a yearly basis where appeals concern more than one taxable year, and suggested that the FTB be granted filing extensions for "reasonable cause."	See the response to the November 30, 2005, comment regarding section 4033.
4033 (1/19/06 Draft) Elective Simplified Briefing Schedule for Small Tax Cases and Homeowner and Renter Assistance Appeals	3/10/2006	Kenneth A. Davis	Suggested adding a cross reference to the requirements of section 4030.	See the response to the November 30, 2005, comment regarding section 4033.

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4034 (12/9/05) Briefing Schedule for Homeowners' and Renters' Property Tax Assistance Appeals	1/10/2006	Kenneth A. Davis	Suggested that the FTB be granted filing extensions for "reasonable cause" and adding language regarding the availability of pro bono representation for HRA appellants.	Staff eventually deleted the briefing schedule because it did not accomplish its goal of simplifying the appeals process for Homeowners and Renters' Property Tax Assistance appellants.
4035 (12/9/05) Discretionary Supplemental Briefing	1/10/2006	Kenneth A. Davis	Suggested adding subdivision headings, replacing "extreme hardship" with "reasonable cause," and generally clarifying when the supplemental briefing procedures apply.	Staff added headings, incorporated the reasonable cause standard, and clarified when the section applies.
4040 (9/14/05 Draft) Right to Oral Hearing	1/10/2006	Kenneth A. Davis	Suggested that the FTB be permitted to request an oral hearing.	Staff did not add language permitting the FTB to request an oral hearing due to a lack of statutory authority.
4040 (12/9/05 Draft) Appeals Conferences	12/22/2005	Marc A. Aprea of Aprea & Company	Recommended that the Board utilize discretionary appeals conferences so as not to burden taxpayers in every case, and also suggested that the FTB improve its review process to decrease delays and improve accuracy.	Staff has replaced the mandatory appeals conference provisions with discretionary prehearing conference procedures.
4041 (9/14/05 Draft) Submission for Decision without Oral Hearing	1/10/2006	Kenneth A. Davis	Suggested adding language indicating appeals will be submitted for decision on the written record if the appellant fails to respond to the notice of hearing and permitting the Chief of Board Proceedings to put appeals back on the oral hearing calendar for	Staff added the suggested language regarding the submission of appeals on the written record. Section 5000.5007 of chapter 5 allows the Chief Counsel to put appeals back on the oral hearing calendar when they have been removed due to the appellant's failure to respond to the

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			reasonable cause.	notice of hearing.
4042 (9/14/05 Draft) Appeals Review; Scheduling an Oral Hearing	1/10/2006	Kenneth A. Davis	Suggested deleting as duplicative of section 4035.	Staff retained both provisions and clarified that section 5000.4035 provides generally authority to require additional briefing at any time, while section 5000.4042 applies to the Appeals Division's review of the appeal file prior to the scheduling of an oral hearing.
4042.5 (1/19/06 Draft) Pre-Hearing Conference	3/10/2006	Kenneth A. Davis	Suggested provisions requiring reasonable advance notice to the FTB and appellant of any pre-hearing conferences.	Staff added language requiring at least 15 days advance notice of a pre-hearing conference.
4050 (9/14/05 Draft) Letter Decisions	1/10/2006	Kenneth A. Davis	Suggested that letter decisions be provided to the parties within 3 business days of the Board's decision.	Incorporated the requested language into section 5000.5026 of chapter 5.
4052 (9/14/05 Draft) Formal Opinions	12/13/2005	State & Local Tax Committee of the California State Bar's Tax Section (SALT)	Suggested that the Board adopt binding criteria for the adoption of Formal Opinions and recommended that the Board look at California Rules of Court, Rule 976.	Staff added non-exclusive criteria drawn from the California Rules of Court to provide guidance for the adoption of Formal Opinions while preserving the Board's discretion.
4053 (9/14/05 Draft) Dissenting Opinion	11/30/2005	Joseph A. Vinatieri	Suggested that dissenting opinions be citable just like dissenting opinions from the California courts.	Staff incorporated the suggested language in section 5000.5024 of chapter 5.
4060 (9/14/05 Draft) Finality of Decision	1/10/2006	Kenneth A. Davis	Suggested clarifying that each party may file only one petition for rehearing and that if the Board	Staff incorporated the suggested language.

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			does grant a rehearing, the Board's decision on the appeal will become final 30 days after the Board issues its decision on the rehearing.	
4061 (9/14/05 Draft) Petition for Rehearing	1/10/2006	Kenneth A. Davis	Suggested granting petitioners 30 days to perfect a timely, but incomplete petition.	Staff incorporated the suggested language, and provided for extensions.
4061 (1/19/06 Draft) Petition for Rehearing	3/10/2006	Kenneth A. Davis	Suggested deleting the provision for incorporating the filing extensions from section 4021 and suggested staff add language permitting extensions for reasonable cause.	Staff retained the filing extensions as described in the response to the December 13, 2005, comment to section 4021.
4062 (9/14/05 Draft) Decisions on Petitions for Rehearing	11/30/2005	Joseph A. Vinatieri	Recommended providing the taxpayer with a copy of the proposed decision prepared by the Appeals Division.	Staff did not incorporate the requested language due to the legal department's longstanding opinion that a Decision on Petition for Rehearing is privileged until adopted.
	1/10/2006	Kenneth A. Davis	Recommended that the actual decision be provided to each party within 3 business days from its adoption.	Incorporated the requested language into section 5000.5026 of chapter 5.
Chapter 5 General Board Hearing Procedures				
5002 (9/14/05 Draft)	12/13/2005	Joseph A. Vinatieri	Suggested replacing the word "oppressive" with the word "harsh"	Staff clarified the definition for the phrase "extreme hardship."

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Definitions			in the definition for the phrase "extreme hardship."	
5005.2 (9/14/05 Draft)	12/23/2005	Peter Michaels	Raised concerns about protecting taxpayers' confidential information (i.e., trade secrets) from other taxpayers when cases are consolidated.	Staff clarified the consolidation provisions in section 5000.5005.2 to prohibit consolidation where there is an objection to consolidation that is not frivolous. Also, staff provided procedures to protect trade secrets in section 5000.5033.2.
5006 (9/14/05 Draft) Notice of Hearing and Response	12/13/2005	Joseph A. Vinatieri,	Suggested replacing "extreme hardship" with "reasonable cause" in subdivision (e)(3).	Staff incorporated the reasonable cause standard.
	12/9/2005	Sarah Zimmerman Research and Policy Director SEIU Local 1000	Requested clarification of the term "extreme hardship."	Staff revised the definition in section 5000.5002.
5007 (9/14/05 Draft) Dismissal, Deferral, and Postponement of Hearing	12/13/2005	Kenneth A. Davis	Suggested adding language permitting deferrals for formal settlement negotiations, related pending litigation, or bankruptcy.	Staff incorporated the suggested language.
5008 (9/14/05 Draft) Representation at Hearings	12/13/2005	Kenneth A. Davis	Suggested adding language prohibiting a person who has been disbarred from practice before the FTB from representing a taxpayer in an appeal from the FTB. (See Rev. & Tax. Code, § 19523.5.)	Staff incorporated the suggested language.
5011 (9/14/05 Draft)	12/13/2005	Joseph A. Vinatieri,	Suggested replacing 35 days with 45 days.	Staff agreed to change 35 days to 40 days.

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Hearing Summary				
	12/23/2005	Albin C. Koch General Counsel MBIA MuniServices	Suggested that hearing summaries be required to be "neutral."	Staff incorporated language requiring hearing summaries to be "objective."
5013 (9/14/05 Draft) Preparation for Presentation of Hearing	12/13/2005	Kenneth A. Davis	Suggested adding information regarding subpoenas and the burden of proof from the old Rules of Practice.	Staff added the suggested language regarding subpoenas, and added a new section 5000.5022.2 to address the burden of proof.
5000.5013 (Sept. 2006 Draft) Preparation for Board Hearing and Subpoenas	9/27/2006	Lenny Goldberg, Executive Director of Cal. Tax Reform Association	Suggested that the Board provide more time for all oral hearings as a way of alleviating parties' desires to speak with the Board Members individually. Note: Joshua Golka of SEIU Local 1000 and Mary Hernandez of the California State Council for Service Employees stated support for Mr. Goldberg's suggestion.	Staff believes that the current process makes the most efficient use of the Board's resources and that additional hearing time is not necessary in most cases. However, staff has added provisions permitting parties to request additional time to make their arguments when necessary.
5014 (9/14/05 Draft) Presentation of Evidence or Exhibits	12/13/2005	Joseph A. Vinatieri,	Suggested deleting the second sentence in subdivision (b) and adding language inviting the submission of evidence at the oral hearing.	Staff did not make the suggested revisions. Although the Board may accept evidence at an oral hearing, staff believes the Board should continue its current policy of encouraging the submission of evidence at the earliest opportunity.
	12/9/2005	Sarah Zimmerman	Suggested that the Board require all documentary evidence to be	Staff did not incorporate the suggestion. The risk of reaching the

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		SEIU Local 1000	submitted at least 14 days before an oral hearing.	wrong result is too great to prohibit the submission of relevant evidence at oral hearings.
	12/13/2005	Kenneth A. Davis	Suggested adding language codifying the Board's policy of liberally accepting evidence at oral hearings, and allowing the parties to comment on its relevance.	Staff incorporated the suggestion.
5015.1 (9/14/05 Draft) Communications with Board Members	1/25/2006	Mary Leslie, President LA Business Council	Expressed support for codifying the Board's current policy and maintaining the current right to contact Board Members.	Staff recommends that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/13/2005 and 12/19/2005	Carl Guardino President & CEO, and Kirk Everett Director of Government Relations and Tax Policy, of the Silicon Valley Leadership Group	Expressed support for codifying the Board's current policy and commended the Board for its hands on approach to tax administration and use of the interested parties process to develop new regulations.	Staff recommends that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	01/25/2006	James Santa Maria, President Historic Filipinotown Chamber of Commerce	Expressed support for codifying the Board's current policy and maintaining the current right to contact Board Members.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/21/2005	Katherine Hatch	Expressed support for codifying	Staff intends to continue to

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		Manager of California State Government Affairs for the American Electronics Association (AeA)	the Board's current policy and maintaining the current right to contact Board Members; and also expressed opposition to the FTB Chief Counsel's current policy of restricting his staff from communicating with Board Members and their staff.	recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/22/2005	Lucy McCoy Secretary-Treasurer of the Asian American Small Business Association	Expressed support for codifying the Board's current policy and expressed a belief that it would be unfair to prohibit small business owners from contacting their Board Members.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/22/2005	Marc A. Aprea of Aprea & Company	Expressed support for codifying the Board's current policy and a belief that greater access to the Board Members helps create a public feeling of trust in the fairness of the administrative process.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/21/2005	Teresa Casazza Vice President and Legislative Director of the California Taxpayers' Association (Cal-Tax)	Expressed support for codifying the Board's current policy and stated that the Board Members access to information should not be limited in any way.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/13/2005	John W. Davies, Chief Counsel	Opposed codification of the Board's current policy and	Staff included Mr. Davies' alternative in the March 2006 draft

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		Franchise Tax Board	recommended alternative provisions restricting communications with Board Members regarding appeals from the FTB.	of chapter 5 and discussed it with the interested parties at the April 2006 interested parties meeting. Staff did not include the alternative in the September 2006 draft of chapter 5 because it would be difficult to administer, and is not required by law.
	1/4/2006	Marty Dakessian Attorney at Law	Expressed support for codifying the Board's current policy and provided his own analysis refuting the information submitted by Mr. Davies in support of his proposed restrictions.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.
	12/12/2005	Sarah Zimmerman SEIU Local 1000	Expressed opposition to codifying the Board's current policy, and suggested restricting communications occurring in the last 10 days prior to the date of an oral hearing.	Staff included SEIU Local 1000's alternative in the March 2006 draft of chapter 5 and discussed it with the interested parties at the April 2006 interested parties meeting. Staff did not include the alternative in the September 2006 draft of chapter 5 because it would be difficult to administer, was not required by law, and staff received notice that it had been withdrawn.
	12/13/2005	State & Local Tax Committee of the California State Bar's Tax Section (SALT)	Stated that the committee members were unable to reach a consensus.	Staff intends to continue to recommend that the Board codify its current policy in order to give taxpayers, constituents, and other government agencies equal access to the elected Board Members.

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	12/23/2005	Albin C. Koch	Recommended that the parties be given greater access to information obtained by the Board Members.	Staff considered the comments, but did not create another alternative for the section.
	12/14/2005	Lenny Goldberg	Suggested that communications with Board Members be prohibited entirely in a similar manner to that employed by the Public Utilities Commission.	Staff does not believe it is necessary or a legal requirement to prohibit any communications with Board Members.
5000.5015.1 (Sept. 2006 Draft) Communications with Board Members	9/27/2006	Lenny Goldberg	Stated that he supported Mr. Davies' alternative proposal, although it does not contain all of the restrictions he would like. Note: Joshua Golka of SEIU Local 1000 and Mary Hernandez of the California State Council for Service Employees stated support for Mr. Goldberg's statement.	See the response to the December 13, 2005, comment from Mr. Davies regarding section 5015.1.
5017 (9/14/05 Draft) Public Agenda Notice	12/13/2005	Joseph A. Vinatieri	Suggested replacing 10 days with fifteen days in subdivision (a) and also suggested staff add another regulation addressing the burden of proof.	Staff did not change the deadline for issuing the public agenda notice because it is statutory. However, staff did add section 5000.5022.2 to address the burden of proof.
5022 (9/14/05 Draft) Order of Business and Time Allocation for Oral Hearings	12/13/2005	State & Local Tax Committee of the California State Bar's Tax Section (SALT)	Recommended that more than 35 minutes be provided to argue complex cases, and suggested that the Board respond to requests for additional hearing time prior to the hearing.	Staff added language to section 5000.5013, subdivision (d), allowing parties to request additional time to make their arguments.
5024 (9/14/05 Draft)	12/13/2005	State & Local	Suggested that the Board adopt	Staff added non-exclusive criteria

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Voting and Decisions		Tax Committee of the California State Bar's Tax Section (SALT)	criteria for the adoption of Formal Opinions and recommend that the Board look at California Rules of Court, Rule 976.	for the adoption of Formal Opinions to section 5000.4052 of chapter 4.
5028 (9/14/05 Draft) Decision on Petition for Rehearing	12/13/2005	Joseph a. Vinatieri	Suggested that Decisions on Petitions for Rehearing prepared by the Appeals Division be called recommendations until adopted by the Board, and suggests that the time period in which a decision to deny a petition for rehearing becomes final commence on the date notice of the denial is provided to the petitioner.	Staff incorporated the suggested language.
5033 (9/14/05 Draft) Hearing Records	12/13/2005	Joseph A. Vinatieri	Expressed support for the alternative 2 version of section 5033.	Staff deleted alternative 1 for section 5000.5033 from the September 2006 draft of chapter 5 and recommends alternative 2.
	12/12/2005	Sarah Zimmerman SEIU Local 1000	Expressed support for the expanded disclosure provisions in alternative 2, section 5033-5033.3. Expressed that alternative 2 provided greater access to information for both the public and staff performing audits.	Staff deleted alternative 1 for section 5000.5033 from the September 2006 draft of chapter 5 and intends to recommend that the Board adopt alternative 2 for sections 5000.5033-5000.5033.3.
	10/5/2005	Patrick J. Finnegan Senior Tax Auditor for BOE and SEIU Local 1000 Union Steward	Expressed support for expanded disclosure and offered his opinion that increased disclosure regarding Board decisions is necessary for Board auditors and compliance staff to properly	Staff deleted alternative 1 for section 5000.5033 from the September 2006 draft of chapter 5 and intends to recommend that the Board adopt alternative 2 for sections 5000.5033-5000.5033.3.

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			perform their work.	
	12/13/2005	State & Local Tax Committee of the California State Bar's Tax Section (SALT)	Expressed the committee's support for the expanded disclosure provisions, and suggested that the Board protect harmful information from disclosure by permitting parties to request that such information be heard during a closed session.	Staff deleted alternative 1 for section 5000.5033 from the September 2006 draft of chapter 5 and intends to recommend that the Board adopt alternative 2 for sections 5000.5033-5000.5033.3. Staff also added provisions to section 5000.5033.2 permitting taxpayers to request that certain information be heard during a closed session.
	12/21/2005	Teresa Casazza Vice President and Legislative Director of the California Taxpayers' Association (Cal-Tax)	Expressed concern that increased disclosure might dissuade some taxpayers from requesting Board hearings, unless adequate protections for confidential information such as trade secrets are provided.	Staff worked with the interested parties to ensure that: (1) whatever additional information was disclosed with regard to business taxes appeals was relevant to the issues discussed at taxpayers' oral hearings; and (2) the disclosure procedures worked fairly and efficiently. There was a general agreement that the disclosure of hearing summaries prepared for oral hearings would be appropriate and efficient without dissuading taxpayers from requesting oral hearings. Staff also added provisions to section 5000.5033.2 permitting taxpayers to request that certain information be heard during a closed session.
	12/23/2005	Peter Michaels	Objected to the Board's current	Staff did not change the Board's

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			practice of taking official notice of, and incorporating into the public record, state assessee business property statements, appraisal data reports, valuation related correspondence, etc.	longstanding policy and practice.
5033.1 (9/14/05 Draft) Waiver of Confidentiality	12/13/2005	Joseph A. Vinatieri	Expressed his initial opposition to expanded disclosure.	See the response to the December 21, 2005, comment from Teresa Casazza regarding section 5033.
	12/23/2005	Albin C. Koch	Suggested that the Board might want to seek legislation as an alternative to the expanded disclosure regulations.	Staff does not believe legislation is necessary to support the proposed regulations.
	12/23/2005	Peter Michaels	Expressed initial opposition to expanded disclosure because it does not provide sufficient safeguards.	See the response to the December 21, 2005, comment from Teresa Casazza regarding section 5033.
5000.5033.1 (Sept. 2006 Draft) Waiver of Confidentiality	9/27/2006	Lenny Goldberg	Suggested that anything that goes to the Board Members be considered a disclosable public record in business taxes appeals. Note: Joshua Golka of SEIU Local 1000 and Mary Hernandez of the California State Council for Service Employees stated support for Mr. Goldberg's suggestion.	Expanded disclosure in business taxes appeals is based upon taxpayers' waivers of their rights to confidentiality with regard to information to be discussed at their oral hearings. Staff believes that the proposed formula is overly broad because it covers information that is not relevant to taxpayers' oral hearings. It would be impractical to apply legally required redactions to documents or portions thereof. Staff believes that disclosure of the hearing summaries for business

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				taxes oral hearings provides the additional information needed to understand the issues without providing information on subjects that are not relevant or requiring unnecessary redaction.
5033.2 (9/14/05 Draft) Requests of Preservation of Harmful Information	12/13/2005	Tax Section State & Local Tax Committee of the California State Bar (SALT)	Expressed support for alternative 2's expand disclosure provisions and suggested alternative language for section 5033.2 that would utilize the Board's ability to hold a closed session to protect trade secrets.	Staff created provisions that would allow the Board to hear trade secrets, and other confidential information during a closed session when doing so is necessary to protect the requesting party from unwarranted annoyance, embarrassment, or oppression. The provisions are based upon the California courts' authority to issue protective orders for the same information under the same circumstances pursuant to Code of Civil Procedure section 2031.060.
	12/23/2005	Peter Michaels	Suggested that the Board utilize closed sessions to hear confidential taxpayer information, such as trade secrets.	See the response to the December 13, 2005, comment from SALT regarding section 5033.2.
	12/13/2005	Joseph A. Vinatieri	Suggested extending the deadline to request the protection of trade secrets and giving the Board until the date of the hearing to decide such requests.	Staff did not incorporate the suggestions because the Chair needs sufficient time to review and decide requests, and must also decide them well enough in advance that taxpayers may still waive their oral hearings if they disagree with the Chair's decision.

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<p>5000.5033.2 (Sept. 2006 Draft)</p> <p>Request for Portion of Oral Hearing Conducted During Closed Session</p>	<p>9/27/2006</p>	<p>Lenny Goldberg</p>	<p>Stated his belief that the language permitting a closed session is overly broad.</p> <p>Note: Joshua Golka of SEIU Local 1000 and Mary Hernandez of the California State Council for Service Employees stated support for Mr. Goldberg's statement.</p>	<p>See response to the December 13, 2005, comment from SALT regarding section 5033.2. Also, staff's language does not give the Board as much discretion as the California courts have to issue protective orders pursuant to Code of Civil Procedure section 2031.060 because staff did not include language allowing the Board to hear information in a closed session to protect a taxpayer from an undue burden or expense.</p>
<p>5033.3 (9/14/05 Draft)</p> <p>Privilege (Second alternative)</p>	<p>12/13/2005</p>	<p>Joseph A. Vinatieri</p>	<p>Expressed doubt as to the application of the privilege.</p>	<p>Staff believes that the privilege does apply in some circumstances.</p>