

# **Audit Manual**

## **Chapter 14**

### **Appeals Procedures**



Business Tax and Fee Department

*California State*

*Board of Equalization*

*This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.*

*Please contact any Board of Equalization office if there are concerns regarding any section of this publication.*



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# APPEALS PROCEDURES

**1400.00**

## INTRODUCTION

**1401.00**

AM Chapter 14, *Appeals Procedures*, outlines the procedures for Board of Equalization (BOE) employees to follow when a taxpayer files a petition for redetermination, administrative protest<sup>1</sup>, or claim for refund (appeal). For Local Tax appeals procedures, refer to Compliance Policy and Procedures Manual [Chapter 9, Miscellaneous](#).

The [Rules for Tax Appeals](#) set forth formal appeals procedures that all parties must follow during the appeals process. Chapter 2 of the [Rules for Tax Appeals](#) contains appeals procedures that apply to appeals prior to the Board hearing phase. Chapter 5 of the [Rules for Tax Appeals](#) contains appeals procedures that apply to appeals during the Board hearing and petition for rehearing phases.

The Legal Department Appeals Division's responsibilities include conducting appeals conferences and issuing written Decision and Recommendations (D&R) on appeals and similar requests for review of Department actions resulting from the various taxes and fees administered by BOE. The responsibilities also include preparing Board hearing summaries, post-hearing analyses and Notices of Board Action where applicable.

## TERMINOLOGY

**1401.02**

**Taxpayer** includes a fee payer, claimant or petitioner, as applicable.

**Department** means the Business Tax and Fee Department (BTFD), the Field Operations Department (FOD), the Property Tax Department, the Administration Department, or the Legal Department's Investigations and Special Operations Division, as applicable.

**Office** means district offices, or Headquarters or field staff groups for special tax programs, or Property Tax Department's, Timber Tax Section, or the Legal Department's Investigations and Special Operations Division, as applicable.

**Petitions** means BTFD's Petitions Section or Appeals and Data Analysis Branch, Property Tax Department's Timber Tax Section, or the Legal Department's Investigations and Special Operations Division, as applicable.

**Refunds** means BTFD's Audit Determination and Refund Section or Appeals and Data Analysis Branch, or Property Tax Department's Timber Tax Section, or the Legal Department's Investigations and Special Operations Division as applicable..

## APPEALS CASE WORKLOAD PRIORITY GUIDELINES

**1401.04**

The Department's levels of priority for appeals cases are as follows (item 1 has the highest priority):

1. Appeals cases scheduled for, or previously heard by, the elected Board Members.
2. Appeals cases where a Decision and Recommendation has already been issued.
3. Appeals cases where the appeals conference has been held but the Decision and Recommendation has not yet been issued.
4. Appeals cases scheduled for an appeals conference.
5. Appeals cases pending the scheduling of an appeals conference.

Appeals cases have priority over routine assignments.

- 1 A premature or late petition for redetermination is not a valid petition. However, if the Department accepts that invalid petition into the appeals process, the appeal is called an administrative protest (formerly referred to as a "late protest"). A premature petition is a petition for redetermination filed prior to the notice of determination. A late petition is a petition for redetermination filed after the 30-day period following the date the determination was mailed.

## APPEALS PROCEDURES

### PETITIONED AUDIT DETERMINATIONS

1404.00

#### GENERAL

1404.02

AM sections 1404.00 – 1406.00 cover the appeals procedures on appeals related to a petitioned audit determination. These procedures apply after a Notice of Determination has been mailed to the taxpayer and the appeal has been acknowledged by Petitions.<sup>2</sup>

The appeals process is segregated into five phases that are generally categorized as follows:

1. Initial processing and summary preparation for an appeals conference or Pre-Appeals Conference Phase
2. Appeals Conference and D&R
3. Board Hearing
4. Petition for Rehearing
5. Appeals Case Closure

#### PRE-APPEALS CONFERENCE PHASE

1404.04

Generally, the taxpayer has 30 days from the date the Notice of Determination is issued to file a petition for redetermination. Instructions for filing petitions for redetermination are included on the taxpayer's copy of the Notice of Determination. The taxpayer may also file a claim for refund with respect to any payment made toward the determination.

A petition for redetermination of a Notice of Jeopardy Determination must be filed within 10 days after the date of the Notice of Jeopardy Determination. Within that 10-day period the taxpayer must either pay the amount due, or file a petition for redetermination and post a deposit with the Board in the prescribed amount for security. The petition for redetermination must be in writing and state the specific grounds upon which it is founded. Within 30 days following the date of a Notice of Jeopardy Determination the taxpayer may also apply for an administrative hearing for one or more purposes stated in the [Revenue and Taxation Code \(RTC\) section 6538.5](#). Applying for an administrative hearing does not operate as a stay of collection activities, except for the sale of property seized after issuance of the Notice of Jeopardy Determination.

#### Office Investigation

When an appeal is received in the office, the original documents (including the envelope) should be date stamped and immediately forwarded to Petitions or, in the case of a refund, to Refunds, for acknowledgment. Once the appeal is acknowledged and entered in the Board's Integrated Revenue Information System (IRIS) Appeals subsystem for tracking purposes, an appeals (petition or claim) file is established by Petitions or Refunds. Phase status codes are used to monitor appeals cases in IRIS.

If the responsible office has not prepared [Form BOE-836-A](#), Report of Discussion of Audit Findings, or the report does not fully address the taxpayer's contentions, the appeals file will be returned to the office for further investigation and comments. The new or revised [Form BOE-836-A](#) and the audit working papers (AWPs) should be returned to Petitions or Refunds for further processing and analysis. The audit findings will be evaluated for consistency, adequacy of procedures, proper application of law, and consideration of any recent statutory or regulatory changes or Board memorandum opinions which may affect the audit or investigation findings.

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<sup>2</sup> Reference [AM Chapter 2, Preparation of Field Audit Reports](#) for specific procedures regarding disputed audit findings prior to the issuance of a Notice of Determination. Additional information is available in [Publication 76, Audits](#).

If the information provided is considered incomplete, Petitions or Refunds will contact the taxpayer or the responsible office to obtain additional information. In some cases, the AWP's will be returned to the responsible office for additional fieldwork or contact with the taxpayer in an attempt to resolve the appeal.

### Other Investigations

While most determinations are the result of Board audits, other types of determinations may result from the following:

1. Compliance assessments (e.g., for failure to file returns)
2. Review of returns filed (errors on returns)
3. Dual determinations
4. Corporate officer or responsible person liability
5. Notice of successor liability
6. Field billing orders

As with a taxpayer's appeal of a Notice of Determination issued for a deficiency determined by audit of that taxpayer, an appeal related to a Notice of liability based on items 1 to 6, above, is acknowledged, entered in IRIS, and an appeals (petition or claim) file established. The appeal will be forwarded to the originating unit or responsible unit to contact the taxpayer and to investigate the taxpayer's appeal and any newly submitted documentation. After further investigation and discussion with the taxpayer(s) is completed, the new or revised report of discussion (similar to [Form BOE-836-A](#), Report of Discussion of Audit Findings) should document the items and amounts in dispute, the taxpayer's contentions, Department's position and recommendations, and whether or not the taxpayer requests an appeals conference or Board hearing. The report should be reviewed and signed by the appropriate supervisor and returned to Petitions or Refunds for further processing and analysis. The findings will be evaluated for consistency, adequacy of procedures, proper application of law, and consideration of any recent statutory or regulatory changes or Board memorandum opinions. If the information provided by the taxpayer is considered incomplete, the originating unit will be contacted by Petitions or Refunds to obtain additional information.

### Summary Analysis

If the appeal cannot be resolved, the investigation or reaudit findings are presented to the taxpayer. If the taxpayer has requested an appeals conference or Board hearing, the case will proceed to an appeals conference, except for claims for refund where there is specific reason to deny an appeals conference or Board hearing (e.g., the taxpayer already had a hearing on the same issue and there are no new facts or arguments).

A Summary Analysis is a written summary which contains the petitioner's contentions regarding the Notice of Determination or Notice of Deficiency Assessment, the position of the Department that issued the notice, and the reasons Petitions or Refunds staff believes that the Department's position should be sustained in whole or in part. Petitions will prepare the Summary Analysis if the case involves a petition or a petition with a related claim for refund. If the case involves only a claim for refund, the Summary Analysis will be prepared by Refunds.

The Summary Analysis is primarily prepared from information taken from the "Discussion of Audit Findings" prepared by the auditor and [Form BOE-836-A](#) prepared by the District Principal Auditor (DPA) in SUTD or the Division Principal Auditor (DPA) in Investigations and Special Operations Division and PSTD. It is imperative these reports are as complete as possible, clearly explaining the taxpayer's contentions, the arguments supporting these contentions, and the Department's position relating to those contentions. Once the Summary Analysis is prepared, the entire appeals file is forwarded to the Case Management Section of the Board Proceedings Division to schedule an appeals conference with the Appeals Division.

## APPEALS PROCEDURES

### PRE-APPEALS CONFERENCE PHASE

(CONT. 2) 1404.04

Copies of written communications between the taxpayer, Petitions, Refunds, and the Appeals Division should be distributed to all parties. Written communications from the Department to the taxpayer should include a statement requesting the taxpayer to contact the Board in writing as soon as possible if the taxpayer believes the facts and description of business activities set forth by the Department in the Summary Analysis are erroneous or require further explanation.

### APPEALS CONFERENCE

1404.06

Petitions or Refunds, as applicable, will contact the taxpayer to verify and update the taxpayer's contact information and inquire as to whether the taxpayer would prefer that the appeals conference be held at a specific BOE office. Unless the taxpayer indicates another preference, the appeals conference will generally be held in the BOE office that conducted the taxpayer's audit or recommended denial of the taxpayer's claim for refund.

#### Representation at Appeals Conferences

The following clarifies the role and responsibility of the Business Tax and Fee Department (BTFD), the Field Operations Department (FOD) and the Administration Department for providing representation at appeals conferences.

#### Conferences Involving Audit Appeals

The office making audit (OMA) is identified on the *Appeals Maintain/Inquire Case Header* (APL MH) screen. The appeals conference will generally be held at the OMA. However, the appeals conference may be held in Headquarters or a different field office ("host office") to accommodate the taxpayer and/or the taxpayer's representative. In all instances, the OMA's Principal Auditor, or his or her designee, will be the Department's representative and should attend the appeals conference in person. Such representation is necessary as the Principal Auditor and/or the auditor are familiar with the case, including the specific reason(s) the tax was determined to be due. This is especially important for cases involving fraud or complex audit issues. The presence and experience of the Principal Auditor, or his or her designee, provides valuable support for the auditor, lends credibility to the Department's position, and gives the Appeals Division conference holder an additional resource during the appeals conference. The appeals conference is intended to be an informal discussion of relevant facts and applicable law and the Principal Auditor, or his or her designee, should present all evidence and arguments concerning the disputed amounts.

Any exhibits, schedules or documentation which will be referenced during the appeals conference, which are not included in the appeals case file or in the electronic copy of the archived audit file should be provided to the conference holder prior to the conference. Similarly, **prior** to the conference, the conference holder should provide the OMA with any and all taxpayer exhibits, binders, schedules, etc., received by the Appeals Division or Board Proceedings Division which were not already copied to the OMA.

When it is not feasible for the OMA's auditor and the Principal Auditor, or their designee, to be physically present at the appeals conference due to geographic distance, the auditor and the Principal Auditor will represent the Department by telephone and this should be communicated to the Board Proceedings Division and the conference holder well in advance of the conference. The auditor and the Principal Auditor, or their designees, should ensure they have equipment readily available to receive scanned copies of documents the taxpayer may present during the conference.

For appeals conferences where the auditor and Principal Auditor represent the Department by telephone, it is not necessary for staff from the host office to attend the conference, since it is the responsibility of the OMA to address all questions raised by the Appeals Division and the taxpayer. However, there may be circumstances in which the Appeals Division requests that staff from the host office attend the conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Administrator of the host office or Headquarters section supervisor (Petitions Section, Appeals and Data Analysis Branch (ADAB), or the Audit Determination and Refund Section). In the absence of such a request, staff from the host office may nevertheless attend the conference at the discretion of the host office's Principal Auditor, with the consent of the conference holder.

### **Conferences Involving Consumer Use Tax Appeals**

Appeals cases involving consumer use tax liabilities are identified with office code "CUT" in the OMA field on the APL MH screen. Appeals conferences for such cases will generally be held at Headquarters or at a district office. In all instances the Department will be represented by an auditor from the Petitions Section or the Audit Determination and Refund Section (ADRS), in person or by telephone, depending on the location of the appeals conference.

For appeals conferences where a Petitions Section or ADRS auditor will represent the Department by telephone, it is not necessary for staff from the host office to attend the conference. However, there may be circumstance in which the Appeals Division requests that staff from the host office attend the conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Administrator of the host office. In the absence of such a request, staff from the host office may nevertheless attend the conference at the discretion of the host office's Principal Auditor, with the consent of the conference holder.

### **Conferences Involving Compliance Related Appeals**

When the OMA is the Use Tax Administration Section (UTAS), the Department is represented by staff from UTAS, either in person or by telephone depending on the location of the appeals conference. Such cases are identified with office codes CNO, CSO, or UTA on the APL MH screen.

When the OMA is the Return Analysis Unit (RAU), identified with office code RAU on the APL MH screen, the Department is represented by staff from RAU. When the OMA is the Local Revenue Branch (LRB), identified with the office code LRB on the APL MH screen, the Department is represented by LRB staff or an auditor from ADRS. RAU Staff, LRB Staff, or an auditor from ADRS, represents the Department, in person or by telephone, depending on the location of the appeals conference. When the OMA is the Return Processing Branch, identified with office code ADS on the APL MH screen, the Department is represented by staff from ADAB.

For appeals conferences where RAU staff, LRB staff, an auditor from ADRS or ADAB, or UTAS staff represents the Department by telephone, it is not necessary for staff from the host office to attend the conference. However, there may be circumstances in which the Appeals Division requests that staff from the host office attend the conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Administrator of the host office. In the absence of such a request, staff from the host office may nevertheless attend the conference at the discretion of the host office's Principal Auditor, with the consent of the conference holder.



## APPEALS PROCEDURES

### APPEALS CONFERENCE

(CONT.2) 1404.06

#### Department's Role at Appeals Conference

It is imperative that the Department staff be well prepared to effectively present the Department's case. The field auditor is expected to take an active role in explaining the audit findings during appeals conferences. Prior to the conference, he or she should thoroughly review the audit results, audit findings, and the taxpayer's contentions, as well as the summary analysis prepared by the Petitions Section or ADAB. During the conference, if any conflicting information is presented or if the auditor determines that information given is inconsistent with information contained in the audit working papers, the auditor must point out the discrepancy to the conference holder.

#### Submission of Additional Documents

Either the taxpayer or the Department may submit additional written arguments and documentary evidence to the Appeals Division at any time before or during the appeals conference.

If, during the appeals conference, a party requests additional time to submit additional written arguments or documentary evidence, the conference holder may grant that party 15 days after the appeals conference, or 30 days with sufficient justification, to submit such arguments or documentation. If the additional time is granted, the other party may submit a response to the additional arguments or documents within 15 days. The conference holder may not grant any further extension of time for the submission of additional arguments or documents without obtaining the approval of the Assistant Chief Counsel of the Appeals Division (or his or her designee). However, without regard to these time limits for additional arguments or documentation that the parties wish to submit, the Appeals Division can request additional arguments, documentation, or information at any time during the appeals process.

### DECISION AND RECOMMENDATION

1404.08

Once the appeals conference is concluded, the appeal will be taken under consideration by the Appeals Division and a D&R will be issued, generally within 90 days after the conference or within 90 days after the submission of any additional documents. When issuing a D&R, the Appeals Division includes a cover letter to the taxpayer, with a copy to the Department. The taxpayer or the Department may submit a request for reconsideration (RFR) within 30 days of the issuance of the D&R, in which case the Appeals Division will issue a Supplemental Decision and Recommendation (SD&R) after giving the other party the opportunity to respond. The Appeals Division may also issue a SD&R on its own initiative to clarify or correct the D&R. This includes situations where a party submits an RFR more than 30 days after the D&R was issued. Such a request is not automatically rejected as being untimely. Rather, if the Appeals Division decides that the request warrants a response, it will issue a SD&R, but it is not required to do so by the [Rules for Tax Appeals](#). D&Rs and SD&Rs have the same general recommendations (see below) and cover letters. The SD&R may affirm or change the recommendation in the D&R.

The general recommendations of the Appeals Division will be one of the following actions:

#### Deny the Appeal in its Entirety

If the taxpayer has already requested a Board hearing, the cover letter advises the taxpayer that a hearing will be scheduled before the Board in accordance with the taxpayer's prior request, unless the taxpayer advises the Board Proceedings Division that the hearing is waived. The letter also advises that, if the taxpayer waives the hearing, the appeal will be processed in accordance with the D&R. If the taxpayer has not previously requested a Board hearing, the cover letter advises the taxpayer that the taxpayer may do so within 30 days from the date of the D&R, and that the appeal otherwise will be processed in accordance with the D&R.

**Grant the Appeal in Part and Deny The Appeal In Part**

If the taxpayer has already requested a Board hearing, the cover letter will notify the taxpayer that a hearing will be scheduled before the Board in accordance with the taxpayer's prior request, unless the taxpayer advises the Board Proceedings Division that the hearing is waived. The letter also advises that, if the taxpayer waives the hearing, the appeal will be processed in accordance with the D&R unless the Appeals Division issues an SD&R to clarify or correct the D&R. If the taxpayer has not previously requested a Board hearing, the cover letter advises the taxpayer that the taxpayer may do so within 30 days from the date of the D&R, and that the appeal otherwise will be processed in accordance with the D&R unless the Appeals Division issues an SD&R to clarify or correct the D&R.

**Grant the Appeal in its Entirety**

The cover letter will notify the taxpayer that the appeal will be processed in accordance with the D&R unless the Appeals Division issues an SD&R to clarify or correct the D&R.

**Conduct a Reaudit**

The cover letter will ask the taxpayer to cooperate with the Department during the reaudit and will inform the taxpayer that the Appeals Division will explain the taxpayer's options for appeal when the reaudit is completed.

If the Department disagrees with the reaudit recommendation, the Department may submit an RFR prior to conducting the reaudit.

**Department Requests for Reconsideration**

The Chief of the Headquarters Operations Division, Chief of the Special Taxes and Fees Division or Chief of the Investigations and Special Operations Division is responsible for evaluating D&Rs and SD&Rs to determine whether an RFR should be filed. If the Department staff questions the conclusions reached in the D&R or SD&R, the DPA should notify the appropriate Chief immediately. If the Chief agrees, the appropriate office will prepare the RFR providing the reasons the respective Department believes the D&R or SD&R is incorrect. The applicable Chief will then submit the RFR if he or she agrees it is appropriate.

**BOARD HEARING****1404.10**

The taxpayer and any other state agency represented at the appeals conference may request a hearing before the Board. If such a request is received, the case will be scheduled for a Board hearing. (The Department may not request a Board hearing.) The Appeals Division will prepare a Board Hearing Summary for use by the Board Members, their staffs, and the parties to the hearing. The summary is a public document and sets forth the contentions of both parties. For convenience of the recipients of the summary, copies of the Appeals Division's D&R and any SD&R are included with the summary, but those documents, and any other documents included with the summary (except a document specifically attached as a "Summary exhibit") are not actually part of the summary and are not public documents. A copy of the Board Hearing Summary (without the D&R or any SD&R or other document other than a Summary exhibit) is posted on the BOE website 10 days prior to the hearing before the Board.

At the Board hearing, the Appeals Division representative will summarize the issues. The taxpayer will generally present its case first. The Department's position will be explained by the Sales and Use Tax Hearing Representative or by an attorney from the Tax and Fee Programs Division. The Deputy Director or designee and the Assistant Chief Counsel of the Tax and Fee Programs Division or designee will be available to respond to administrative, management, or other Board concerns.

In general, the Appeals Division representative plays a neutral role. The other two parties present their cases and, if appropriate, point out the weaknesses of the other party's arguments. Attorneys in the Board's Tax and Fee Programs Division represent the Department as its legal counsel. Requests by the Board Members for interpretation of law, clarification of facts, or any other matter may be directed to either party's representative or to the Appeals Division representative.

At the conclusion of the hearing, the Board may make an immediate decision such as ordering the case redetermined without adjustment or granting the appeal in full or in part. The Board may also take the matter under submission for a decision at the end of that hearing day or for a decision at a later time. If the case is taken under submission, the Board may refer the matter to the Appeals Division for further review and recommendation. For example, the Board may allow the taxpayer time to submit additional documentation or contention, the Department additional time to respond, and the Appeals Division additional time to review each party's submission and make its recommendation to the Board. In most such circumstances, the taxpayer, the Department, and the Appeals Division are each allowed 30 days, which is why this process is commonly called "30/30/30." When the Board allows the parties additional time to make submissions or otherwise takes the matter under submission without making a decision on the day of the hearing, the matter is returned for Board decision at a later Board meeting on the Tax Program Nonappearance Matters Adjudicatory calendar as a Legal Appeals Matter.

Following the Board's decision on an appeal, a notice of the Board's decision is mailed to the taxpayer, generally within 45 days from the date of the Board's decision. However, if the Board's decision denied a claim for refund in whole, the notice is mailed within 30 days from the date of the Board's decision. The Board's decision becomes final 30 days from the date of the official notice of Board decision, unless a petition for rehearing is filed within that 30-day period.

Closing notices, including applicable notice of Board decision, are mailed to the taxpayer by one of the following:

1. SUTD's Petitions Section for petitions and administrative protests under the Sales and Use Tax Law
2. SUTD's Audit Determination and Refund Section for claims for refund under the Sales and Use Tax Law
3. PSTD's Appeals and Data Analysis Branch
4. Timber Tax Section
5. Investigations and Special Operations Division

See Publication 143, *Your Appeal Hearing before the Board Members*, for more information on Board hearing procedures.

### Petition for Rehearing

The taxpayer has 30 days from the date shown on the notice of the Board's decision to file a petition for rehearing. A petition for rehearing should be addressed to the Board Proceedings Division, but if it is directed elsewhere within the Board, the Board section receiving the petition should immediately forward it to the Board Proceedings Division (except when the other section has received a copy of the petition which clearly indicates that the original or a copy of the petition was already sent to the Board Proceedings Division). A timely petition for rehearing will be scheduled for decision by the Board on its nonappearance calendar. In order to justify a rehearing, the petition must:

- Identify an irregularity in the Board's proceedings that prevented the fair consideration of the matter;
- Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
- Identify newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
- Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.

The Appeals Division will make a recommendation to the Board on the petition to grant the petition, to deny the petition, or to revise its prior decision and deny the petition for rehearing.<sup>3</sup> Where the Board grants the petition for rehearing, the matter is scheduled for rehearing. The Board may thereafter reaffirm its prior decision or reach a different decision, in whole or in part. If the Board denies the petition for rehearing, the Board's decision after the hearing becomes final 30 days after the mailing of the official notice of Board action to deny the petition for rehearing.

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<sup>3</sup> For example, when a taxpayer submits a petition for rehearing with documentation not previously submitted, the Appeals Division may conclude that the documentation supports a reduction to the tax deficiency upheld by the Board (often based on the Department's recommendation after reviewing that new documentation). If so, the Appeals Division will generally recommend that the Board revise its prior decision and, with that revision, deny the petition for rehearing because, with the recommended adjustment, there is no further basis for rehearing.

## APPEALS PROCEDURES

### APPEALS CASE CLOSURE PHASE

1404.12

At the conclusion of the appeals process, notification of the closure of the appeal is mailed to the taxpayer (e.g., Notice of Redetermination, Denial of Claim for Refund). If the appeals case was presented to the Board for action, then the notification will include the Board's decision rendered at that hearing.

**REAUDITS RECOMMENDED BY D&R****1406.00**

Reaudits requiring minimal adjustments will be completed in Headquarters by Petitions or, for claims for refund, by Refunds. If the reaudit requires office staff to review additional records to be provided by the taxpayer, Petitions or Refunds will contact the appropriate office or unit. Reaudits should be considered priority assignments.

Within 10 days of receiving the assignment, the auditor shall contact the taxpayer by telephone to request an appointment to review the records identified in the D&R. If the telephone call does not result in an appointment, the auditor shall send a letter asking the taxpayer to respond within 10 days to the Department's request for an appointment to review the required records. If the taxpayer fails to respond after the 10th day, the auditor shall send a second letter to the taxpayer within one week after the expiration of the initial 10-day period explaining what will happen next. Where some adjustments will be made even if the requested documents are not produced, such as specific adjustments recommended in the D&R based on the existing record or other recommended adjustments that can be made based on the existing record, the letter should specify such adjustments and also state that no other adjustments will be considered if taxpayer does not submit the requested records within seven days. If there are no such adjustments that will be made in the absence of additional records, the letter should state that no adjustments will be considered if taxpayer does not submit the requested records within seven days.

If the taxpayer fails to respond to both letters from the auditor, the Department will return the case to the Appeals Division, along with a memorandum to the Appeals Division (copy to the taxpayer). The memorandum will state that as a result of the taxpayer's failure to provide the requested records, the Department is returning the case to the Appeals Division without adjustments that require the examination of the requested records. The memorandum will also state the adjustments made on the basis of existing records, which would include any specific amount of reduction specified in the D&R. If the Appeals Division believes that additional reaudit work is required, it will return the case to the Department with a memorandum explaining what it believes should be done. If the Appeals Division agrees that the reaudit has been performed in accordance with the D&R, it will send the taxpayer an options letter that explains the taxpayer's choices for further appeal. Thereafter, if the case proceeds to a Board hearing and some or all of the possible adjustments for which the D&R recommended a reaudit were not made because petitioner did not provide the applicable records, the hearing summary will note that such is the case.

If the taxpayer timely responds to the telephone call or letter(s), the Department will review the taxpayer's records and conduct the reaudit in a manner that will ensure the report is transmitted to Headquarters within 90 days from the date the records are provided. The 90-day time frame includes the time required to provide the taxpayer copies of the reaudit, hold an exit conference with the taxpayer (AM sections 0207.00 – 0207.12), and document any remaining contentions.

The reaudit report must specify whether the taxpayer agrees or disagrees with the reaudit results and if there are any remaining disputed matters. It is important to recognize that simply stating that the taxpayer agrees or disagrees with the reaudit is ambiguous. A taxpayer who agrees with the reaudit may agree that the remaining deficiency is the correct amount and have no further dispute. However, a taxpayer who agrees with the reaudit may instead agree only that the reaudit was performed as recommended by the Appeals Division, and may still dispute the remaining deficiency because it does not agree with other aspects of the recommendation of the Appeals Division. Similarly, a taxpayer who disagrees with the reaudit may only dispute that the reaudit was performed as recommended by the Appeals Division, or such a taxpayer may dispute other aspects of the recommendation of the Appeals Division, or both. That is, a taxpayer who "disagrees" with the reaudit might actually agree that the reaudit was performed correctly, or might agree with the recommendation of the Appeals Division.

## APPEALS PROCEDURES

### REAUDITS RECOMMENDED BY D&R

(CONT.) 1406.00

With all these possibilities, it is imperative that auditor ask the taxpayer specifically whether it agrees that the reaudit has properly made the adjustments as recommended by the Appeals Division. The answer to this specific question must be included in the reaudit report, along with a description of the reason for the disagreement. Whether the taxpayer agrees or disagrees that the reaudit was performed as recommended by the Appeals Division, the auditor must then ask whether the taxpayer agrees with the recommendation of the Appeals Division, and the answer to this specific question must also be included in the reaudit report.

Where the reaudit report indicates that the taxpayer agrees the reaudit was performed correctly and agrees with the recommendation of the Appeals Division, that should mean the taxpayer does not require a hearing; in such circumstances, the audit must ensure, and the reaudit report must be very clear, that the taxpayer has no further dispute and accepts that it owes any remaining deficiency specified in the reaudit (including any interest and penalties). If such is the case, the options letter discussed below will be written accordingly.

The time frames set forth above may be extended with the approval of the appropriate Chief, or his or her designee (see [AM section 1404.06](#)).

Upon completion of the reaudit, the reaudit report and audit must be sent to Refunds (see [AM Chapter 7](#), Reaudit Reports and Revised Audit Reports). Refunds will update the audit interest calculation and forward the reaudit report and the AWP's to Petitions for further processing, if necessary. Whether the taxpayer agrees or disagrees with the reaudit results, the office must send copies of the reaudit report and AWP's to the taxpayer. If the taxpayer disagrees with the reaudit results, the office must send or include a report fully explaining the taxpayer's contentions regarding each non-concurred item and the office staff's position on each issue.

Petitions or Refunds will incorporate the reaudit report into the appeals file. The file, and AWP's if the taxpayer disagrees with the reaudit or the recommendation of the D&R (or both), will then be sent to the appeals conference holder. The appeals conference holder will review the file to ensure the reaudit was completed in accordance with the D&R. If it was completed in accordance with the D&R, a letter will be sent to the taxpayer, with a copy to the Department, briefly noting the results of the reaudit and explaining the taxpayer's further options for appeal, which are essentially identical to the options discussed on the cover letter sent with the D&R ([AM section 1404.08](#)). The one significant difference is where there remains a deficiency but the reaudit report indicates that the taxpayer accepts that deficiency without further dispute. If the taxpayer had previously asked for a Board hearing, the letter will note that, although the taxpayer had previously requested a Board hearing, since the Appeals Division understands that there is no further dispute, no Board hearing will be scheduled. The letter will note that the taxpayer may still request a Board hearing, but will state that any such request must be accompanied by an explanation of what remains in dispute. If the taxpayer had not previously requested a Board hearing, the letter will explain how the taxpayer may request a Board hearing, but will also note the understanding of the Appeals Division that the taxpayer has accepted the remaining deficiency and will state that a request for Board hearing must thus be accompanied by an explanation of what remains in dispute. [Form BOE-89-G](#), Reaudit Transmittal Letter – Adjustment Resulted from Appeals Staff's D&R, will be sent to the taxpayer by the office at the conclusion of a reaudit.

**CLAIM FOR REFUND HEARING PROCEDURES****1408.00****GENERAL****1408.02**

AM sections 1408.00 – 1408.06 provide appeals procedures for BOE employees to follow with respect to the denial of a claim for refund that is not related to a petitioned audit determination and the granting of appeals conferences or Board hearings. These procedures are intended to ensure that all claimants who wish to have an appeals conference or a Board hearing will be allowed such opportunity (in virtually every case, a taxpayer who requests only a Board hearing will first be scheduled for an appeals conference, and the Appeals Division will issue a Decision and Recommendation before the appeal is scheduled for Board hearing).

**HEADQUARTERS' PROCEDURES****1408.04****Claim for Refund without a Request for an Appeals Conference or a Board Hearing**

Once a claim for refund is received, Refunds will promptly notify the claimant that the claim has been received by sending an acknowledgement letter. If the tax portion of a liability has been paid in full and documentary evidence is required to verify the claim, Refunds will request documentation from the claimant to support the claim.

1. No documentation provided to support the claim for refund.
  - Refunds will send a follow-up letter to the claimant referencing the prior letter requesting documentation. The claimant will be advised that if documentation is not provided within 30 days of the date of the letter, the claim for refund will be denied. The follow-up letter will contain a statement informing the claimant that he or she may request an appeals conference or Board hearing.
  - If documentation is not provided and the claimant has not requested an appeals conference or a Board hearing, the claim will be denied. The denial letter will contain information on filing a court action as provided in [RTC section 6933](#) or comparable Property or Special Tax Code sections. However, the denial letter will also note that the claimant failed to provide the requested documentation to support his or her claim and in the Department's view, the claimant has failed to exhaust his or her administrative remedies, which is a condition to filing a suit for refund.
2. Insufficient documentation provided to support claim for refund.
  - Refunds will send a follow-up letter to the claimant requesting additional supporting documentation. If the documentation provided is not adequate, Refunds will send a third letter to the claimant outlining Refunds' position, with a clear explanation of what documentation the claimant needs to provide, and that it is Refunds' intention to deny the claim if such documentation is not submitted within 30 days. The letter will also inform the claimant that he or she can request an appeals conference or Board hearing.



## APPEALS PROCEDURES

### HEADQUARTERS' PROCEDURES

(CONT. 1) 1408.04

- If the claimant responds by requesting an appeals conference or Board hearing or by reaffirming his or her position regarding the claim, the request for an appeals conference or a Board hearing will generally be granted and Refunds staff will prepare a Summary Analysis of the issues involved in the claim. The claim file will be forwarded to the Business Taxes Case Management Section to process for an appeals conference.<sup>4</sup> A request for an appeals conference or Board hearing may be denied if the claimant has already been provided with an appeals conference and a Board hearing on the same issue, and has not submitted any additional arguments, documentation or evidence.
  - If no response to the third letter sent by Refunds is received from the claimant within 30 days, a denial letter will be sent. The denial letter will contain information on filing a court action as provided in [RTC section 6933](#) or comparable Property or Special Tax Code sections.
3. If sufficient documentation is provided to support the claim for refund, the claim will be granted.

### Claim for Refund and a Request for an Appeals Conference or Board Hearing

Refunds will notify the claimant that the claim has been received by sending an acknowledgment letter. If documentary evidence is needed to verify the claim, Refunds will request documentation from the claimant to support the claim. The letter to the claimant will state that a decision on whether the request for conference or hearing will be granted is being held in abeyance pending submission of the requested documentation.

1. No documentation provided to support the claim for refund.
  - Refunds will send a follow-up letter to the claimant referencing the prior letter requesting documentation. The claimant will be advised that if documentation is not provided within 30 days, the claim for refund will be denied. If the claimant fails to provide documentation but reaffirms his or her request for an appeals conference or Board hearing, Refunds staff will prepare a Summary Analysis of the issues involved in the case and will forward the claim file to the Business Taxes Case Management Section to process for an appeals conference. However, a request for an appeals conference or Board hearing may be denied if the claimant has already been provided with an appeals conference and a Board hearing on the same issue and has not submitted any additional arguments, documentation or evidence.
  - If the claimant fails to provide documentation and does not reaffirm his or her request for an appeals conference or Board hearing, the claim will be denied. The denial letter will note that the claimant failed to provide the requested documentation to support his or her claim and in the Department's view, the claimant has failed to exhaust his or her administrative remedies, which is a condition to filing a suit for refund. The denial letter will also contain information on filing a court action as provided in [RTC section 6933](#) or comparable Property or Special Tax Code sections.

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<sup>4</sup> Although a taxpayer can request a Board hearing without requesting an appeals conference, the Board hearing will not be scheduled before the holding of an appeals conference. The only exception is for an appeal for which conferences are not offered as a matter of right, such as a petition for return of seized cigarettes or tobacco products. Thus, for the appeals discussed in this chapter, where the taxpayer requests only a Board hearing, the Department will process that request as one for an appeals conference.

HEADQUARTERS' PROCEDURES

(CONT. 2) 1408.04

2. Insufficient documentation provided to support granting the claim for refund.
  - Refunds will send a follow-up letter to the claimant requesting additional supporting documentation. If adequate documentation is not provided, Refunds will send a third letter to the claimant outlining Refunds' position, with a clear explanation of what documentation the claimant needs to provide. The letter will ask whether the claimant wishes to reaffirm his or her request for an appeals conference or Board hearing, and will state that the claim will be denied if the claimant does not submit the requested documentation or reaffirm his or her request for appeals conference or Board hearing within 30 days of the date of the letter.
  - If the claimant reaffirms his or her request for an appeals conference or Board hearing, Refunds staff will prepare a Summary Analysis of the issues involved in the claim. The claim file will be forwarded to the Business Taxes Case Management Section to process for an appeals conference. However, a request for an appeals conference or Board hearing may be denied if the claimant has already been provided with an appeals conference and a Board hearing on the same issue, and has not submitted any additional arguments, documentation, or evidence.
3. If the documentation provided is sufficient to support claim for refund, the claim will be granted.

OFFICE RESPONSIBILITIES

1408.06

When Refunds refers a claim for refund to an office for investigation, the office will investigate the claim and submit a report of its findings. This report may be in the form of an audit report, a Field Billing Order (FBO), or a signed memorandum to Refunds, as appropriate. If the claimant does not concur with the report, the office will submit a [Form BOE-836-A](#), *Report of Discussion of Audit Findings*, to Refunds for processing.

It is important that the report of discussion include the following information:

- A detailed summary of the claimant's contentions on each disputed item and the office staff's comments on the claimant's position.
- Whether the claimant has requested an appeals conference or Board hearing.
- If pertinent, a history of the office staff's dealings with the claimant (e.g., repeated failure to provide requested information).

**ADMINISTRATIVE PROTESTS****1409.00**

A petition for redetermination (petition) must be filed within 30 days following the date a Notice of Determination (NOD) is mailed. A petition is invalid if it is filed prior to the issuance of an NOD or more than 30 days following the date the NOD was mailed, often referred to as the “finality date.” The department that issued the NOD may accept an invalid petition into the appeals process as an administrative protest pursuant to the Rules of Tax Appeals section 5220. Exceptions to the 30 days to file a timely petition are: jeopardy determinations, which become final in 10 days, determinations made for the payment of cigarette tax stamps become final in 10 days, and determinations for guaranteed funding of the Prepaid MTS 911 become final in 60 days.

An invalid petition may be treated as an administrative protest when the Deputy Director of the department that issued the NOD, or his or her designee, determines that there is a reasonable basis to believe that there may be an error with the tax/feepayer’s NOD. The section assigned to review the appeal is responsible for notifying the tax/feepayer when an appeal is accepted as a timely petition or as an administrative protest, or is not accepted into the appeals process because it was not filed timely (i.e., either before (premature) or after the time period as explained in the first paragraph).

The Department generally accepts an invalid petition as an administrative protest when the tax/feepayer:

- Has a known representative (power of attorney) on file and a copy of the NOD was not mailed to the representative;
- Has another pending case with similar areas of contention that is already in the appeals process;
- Received multiple NODs for different periods on the same account and a timely petition was previously filed for the first period billed;
- Is a corporate officer who received a dual determination and a timely petition was previously filed for the corporation; or
- Can document that he/she was unavailable to reply during the petition period (e.g., out of town, hospitalized, incarcerated) and files an appeal as soon as he/she is able to do so (within 30 days of becoming available) with documentation supporting the reason for the delay.

The Petitions Section or Appeals and Data Analysis Branch (ADAB) must notify the tax/feepayer who files a premature appeal that his/her correspondence cannot be accepted as a timely petition since it was received before the NOD was mailed and that he or she should resubmit the petition once the NOD is mailed. Petitions Section or ADAB staff will also attempt to phone the tax/feepayer to advise them to refile their petition within the timeframe required to be accepted as a timely appeal. Petitions or ADAB will also send a copy of the letter to the office that originated the determination so that if they are in contact with the taxpayer, they can also remind them to file a timely appeal. A comment should be entered into IRIS under the TAR screen noting the receipt of the premature appeal.

If the tax/feepayer that filed a premature appeal then files a late petition, but files within a reasonable period of time, the Department should accept the late appeal as an administrative protest. While reasonable time is meant to be flexible to accommodate the tax/feepayer's circumstances, it typically does not exceed 30 days.

When the tax/feepayer submits new documentation or information that supports the amounts listed on the NOD are overstated, the field office or BOE section that issued the NOD being appealed should carefully consider the new information and, if warranted, make the appropriate adjustments to the final liability. Adjustments can be made without an active appeal.

The Department generally **will not** accept a premature or late petition as an administrative protest when the tax/feepayer:

- Cannot document that he/she was unavailable to reply during the petition period (e.g., out of town, hospitalized, incarcerated) or can document that he/she was unavailable to reply during the petition period but nevertheless there is a significant delay in filing an appeal once the tax/feepayer is able to do so. A significant delay is typically more than 30 days after becoming available;
- Claims he/she did not receive the NOD; however the NOD was mailed to the address of record and the BOE has not received any returned mail; or
- Claims they were not aware of his/her tax or fee obligation.

The tax/feepayer may request the section assigned to review the petition to reconsider an invalid petition previously not accepted as an administrative protest. If upon reconsideration, the section continues to believe the appeal should not be accepted as an administrative protest, the tax/feepayer's reconsideration request will be submitted to the Deputy Director, Business Tax and Fee Department, for final review and decision. When an invalid petition is not accepted as an administrative protest, the tax/feepayer may file a claim for refund after paying the liability.

## APPEALS PROCEDURES

### APPEALS CASES REMOVED FROM BOARD HEARING CALENDAR

**1410.00**

This section clarifies the criteria for requesting removal of an appeals case from the Board hearing calendar (calendar) and provides guidance on keeping tax and fee payers informed of the status of their case.

Occasionally, the Business Tax and Fee Department or other BOE Departments (Department) will request removal of an appeals case from the calendar when it is determined that the case is not ready for a Board hearing. When an appeals case is removed from the calendar, the Board Proceedings Division (BPD) typically notifies the tax or fee payer in writing. The Department, when requesting a case be removed from the calendar, must provide the BPD with the reason for the request so that the BPD may include it in its correspondence to the tax or fee payer.

In general, requests to remove an appeals case from the calendar should only be made when:

- New evidence is provided by the tax or fee payer that requires further evaluation and verification.
- New arguments are discovered or presented by the tax or fee payer and/or the Department that require further evaluation and verification.
- Further review is needed of various auditing techniques performed and additional documentation is or may become available for review.

Once the BPD notifies all relevant parties that the case was removed from the calendar and provides the reason for the removal, the BPD then refers the case back to the appropriate section, typically Headquarters Operations Division or Audit and Carrier Division. The section handling the case must provide a status update to the tax or fee payer in writing within 90 days from the date the notification of removal from the calendar was sent by the BPD to the tax or fee payer. The section must then continue to provide the tax or fee payer a written status update (with a copy to the BPD) every 90 days thereafter until the case is resolved or returned to the BPD to place on the calendar.