State of California

Board of Equalization
Legal Department-MIC:83
Office of the Chief Counsel
(916) 445-4380
Fax: (916) 322-0341

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: May 29, 2013

From: Randy Ferris
Chief Counsel

Subject: **Board Meeting, June 11, 2013**
Chief Counsel Matters – Item J – Rulemaking
Request for Authorization to Publish Proposed Amendments to the Rules for Tax Appeals

We recommend and request your authorization to publish proposed amendments to the Board's Rules for Tax Appeals (RTA) (Cal. Code Regs., tit. 18, div. 2.1 (§§ 5000-5700)) to:

- Incorporate, implement, and clarify the provisions of Assembly Bill No. (AB) 2323 (Stats. 2012, ch. 788), which added section 40 to the Revenue and Taxation Code (RTC); and
- Otherwise address clean-up and housekeeping issues that Board staff or interested parties have suggested based on their common experience with the RTA since it was promulgated in 2008.

Background

Adoption of the RTA

The RTA originally became effective on February 6, 2008. The RTA is the result of a two-year review, drafting, and approval process in which:

- Board staff prepared more than 25 drafts of the various chapters contained in the RTA;
- A broad variety of interested parties, including other state agencies, submitted hundreds of comments;
- Board staff held seven interested parties meetings to hear and discuss the interested parties' comments; and
- The Board Members held 10 Board meetings to hear from both Board staff and the interested parties, discuss new proposed regulations, and grant staff authority to begin the rulemaking process.

The Board eventually adopted the RTA in order to provide comprehensive regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board and specifically address public concerns regarding its administrative and appellate review processes. (See RTA § 5000.)

Chapter 1 (RTA § 5000) names the RTA, and provides a clear statement of the Board's primary intent for its implementation, which is to improve the Board's relationship with taxpayers and feepayers (hereafter, collectively, taxpayers).

Chapter 2 (RTA §§ 5200-5271) was intended to codify the Board's existing practices, at the time, for handling appeals involving revenue-generating tax and fee programs (business taxes and fees), including the Sales and Use Tax, administered by the Board. (See BOE Publication 41, *Taxes and Fees Administered by the California State Board of Equalization*, for a complete list.) Chapter 2 also improved the Board's existing practices by: (1) codifying the Board's policy of accepting untimely petitions for redetermination as administrative protests; (2) clarifying that taxpayers requesting relief have the right to request both an appeals conference and an oral hearing; (3) giving taxpayers and Board staff additional time to prepare briefs; and (4) guaranteeing taxpayers the right to file the last brief.

Chapter 3 (RTA §§ 5310-5345) codified the Board's existing practices, at the time, for handling property tax appeals, including the practice of having the Appeals Division review appeals prior to the Board's consideration, and provided a more detailed description of each step in the property tax appeals process than the Board's Rules of Practice (Cal. Code Regs., tit. 18, 5010-5095), which were repealed and replaced by the RTA.

Chapter 4 (RTA §§ 5410-5465) restated most of the Rules of Practice provisions and codified the Board's existing practices, at the time, for handling appeals from the Franchise Tax Board (FTB). Chapter 4 also improved the Board's existing practices in several ways. For example, Chapter 4 added new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals. Chapter 4 additionally provided notice of the criteria for the imposition of frivolous appeal penalties and established new procedures to help resolve jurisdictional issues. Chapter 4 also added new procedures for holding discretionary prehearing conferences that can be used to better develop the facts and issues raised in complicated or complex appeals when requested by the appellant or the FTB or when deemed necessary either by the Board's Appeals Division or the Board Members.

Chapter 5 (RTA §§ 5510-5576) restated most of the Rules of Practice provisions and codified the Board's existing practices, at the time, for conducting oral Board hearings and deciding appeals in all of the Board's appeals processes. Chapter 5 also made several important improvements over the Rules of Practice, including:

- Clarifying that all appellants have the right to request an oral hearing before the Board Members;
- Describing the conflict-of-interest provisions applicable to the Board;
- Permitting individual Board Members to adopt their own dissenting and concurring opinions when the Board adopts a Formal Opinion or Memorandum Opinion;
- Codifying the Board's longstanding policy permitting all interested persons to communicate with the Board Members at any time;

- Making oral Board hearings more understandable to the public; and
- Protecting trade secrets and information that could be used for identify theft from disclosure.

Chapter 6 incorporated the Board's previously adopted regulations governing Taxpayer Bill of Rights reimbursement claims (RTA §§ 5600-5605) and the Board's previously adopted regulation governing the publication of annotations derived from legal rulings of counsel.

2010 Amendments to the RTA

At the time that the RTA was adopted, the Board had delegated authority to appropriate Board staff to grant or deny claims for refunds of specified taxes and fees, unless the refunds exceeded $50,000, and that delegation of authority was codified in RTA Regulations 5237 and 5267. The Board subsequently changed the delegation of authority so that it applied to claims for refunds that did not exceed $100,000, and the Board adopted amendments to RTA Regulations 5237 and 5267 to incorporate the change, which became effective on February 19, 2010. No other substantive amendments have been made to the RTA since it was originally adopted in 2008.

AB 2323 & RTC Section 40

The Governor approved AB 2323 on September 29, 2012, and AB 2323 added section 40 to the RTC effective January 1, 2013. Section 40 provides as follows:

> (a)(1) The board shall publish on its Internet Web site a written formal opinion, a written memorandum opinion, or a written summary decision for each decision of the board in which the amount in controversy is five hundred thousand dollars ($500,000) or more, within 120 days of the date upon which the board rendered its decision. (2) A decision of the board shall not include consent calendar actions taken by the board.
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> (b) Each formal opinion, memorandum opinion, and summary decision as described in subdivision (a) shall include all of the following: (1) Findings of fact. (2) The legal issue or issues presented. (3) Applicable law. (4) Analysis. (5) Disposition. (6) Names of adopting board members.
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> (c) (1) A board member may submit a dissenting opinion setting forth his or her rationale for disagreeing with the memorandum opinion or formal opinion. (2) A board member may submit a concurring opinion setting forth the board member's rationale for agreeing with the result reached in the memorandum opinion or formal opinion, if different than the rationale set forth in the memorandum opinion or formal opinion. (3) A dissenting opinion and a concurring opinion shall be published in the same manner as prescribed in subdivision (a) for a formal opinion or memorandum opinion.
>
> (d) A formal opinion or memorandum opinion adopted by the board may be cited as precedent in any matter or proceeding before the board, unless the opinion has been depublished, overruled, or superseded. A summary decision may not be cited as precedent in any matter or proceeding before the board.

Discussion of Proposed Amendments to the RTA to Incorporate, Implement, and Clarify RTC Section 40

The Board discussed AB 2323 during its meeting on December 19, 2012, and directed staff to draft proposed amendments to the RTA to incorporate, implement, and clarify the publication requirements of RTC section 40. The Board also directed staff to meet with interested parties to discuss the proposed amendments prior to presenting them to the Board for potential publication. Therefore, Board staff drafted proposed amendments to chapter 5 of the RTA to incorporate, implement, and clarify the publication provisions of RTC section 40, which included amendments to Regulations 5551, *Voting and Decisions*, 5573, *Waiver of Confidentiality*, and 5574, *Request for Portion of Oral Hearing Conducted During Closed Session*, and the addition of new Regulation 5552, *Publication*, to the RTA. Then, Board staff provided the proposed amendments to the interested parties as an attachment to staff's Initial Discussion Paper distributed on February 8, 2013.

The Initial Discussion Paper

In the Initial Discussion Paper, Board staff recommended that the Board divide Regulation 5551, subdivision (a) into three new subdivisions. Board staff recommended that revised subdivision (a) continue to explain the actions the Board may take on a matter at the conclusion of an oral hearing. Board staff recommended that new subdivision (b) clarify that the Board may vote to "decide" a matter with or without adopting a Summary Decision, Formal Opinion, or Memorandum Opinion. Board staff also recommended that new subdivision (c):

- Include the regulation's current language providing for the Board to direct staff to prepare a Formal Opinion or Memorandum Opinion for the Board's potential adoption, whenever the Board, in its discretion, determines that it might be appropriate to adopt such an opinion with regard to a specific matter;
- Include a new default rule, which would preserve the Board's discretion while it considers whether to adopt a Formal Opinion or Memorandum Opinion, that when the Board has previously voted to decide a matter and, before the decision is final, directs staff to draft a Formal Opinion or Memorandum Opinion for the same matter, then the Board's initial decision in the matter will be held in abeyance and will be subject to change until the Board decides whether to adopt the Formal Opinion or Memorandum Opinion, unless the Board directs otherwise;
- Require Board staff to prepare a Summary Decision for the Board's consideration and potential adoption, whenever the Board actually decides a matter without adopting a Summary Decision, Formal Opinion, or Memorandum Opinion and without directing staff to draft a Formal Opinion or Memorandum Opinion for the Board's consideration, and the Board's decision is subject to the provisions of RTC section 40 requiring the adoption and publication of a written decision or opinion;
- Clearly explain when non-approved drafts of Summary Decisions, Formal Opinions, and Memorandum Opinions are confidential; and
- Include the regulation's current language regarding the precedential value of Summary Decisions, Formal Opinions, and Memorandum Opinions, which is virtually identical to similar language contained in RTC section 40, subdivision (d).

In addition, Board staff recommended renumbering current subdivision (b) of Regulation 5551 as subdivision (d) and making minor edits to the subdivision to make it consistent with the provisions of RTC section 40, subdivision (c), regarding dissenting and concurring opinions.

In the Initial Discussion Paper, Board staff recommended that the Board propose to adopt new Regulation 5552, *Publication*, to incorporate the remaining provisions of RTC section 40 into the RTA and to specifically:

- Clarify the date upon which the Board renders a decision within the meaning of RTC section 40, subdivision (a)(1);
- Clarify the meaning of the phrase "amount in controversy" as used in RTC section 40, subdivision (a)(1); and
- Clarify that RTC section 40's publication requirements apply to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including nonappearance matters, except for nonappearance consent calendar action items (as provided in RTC § 40, subd. (a)(1)).

In the Initial Discussion Paper, Board staff recommended changing the name of Regulation 5573 from "Waiver of Confidentiality" to "Confidentiality." Board staff additionally recommended revising subdivision (a) of Regulation 5573 to further emphasize the broad waiver of confidentiality associated with the filing of an appeal from the actions of the FTB with the Board. Board staff also recommended adding a new subdivision (f) to Regulation 5573 to clarify that, even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board includes in a published decision or opinion in order to satisfy the requirements of RTC section 40, subdivision (c), regarding the content of decisions and opinions required to be published under RTC section 40.

Finally, in the Initial Discussion Paper, Board staff recommended adding a new subdivision (g) to Regulation 5574 to avoid potential confusion by clarifying that nothing in Regulation 5574 shall prevent the Board from publishing a written decision or opinion when required under RTC section 40.

First Interested Parties Meeting

Board staff discussed RTC section 40 and staff's initial proposed amendments to chapter 5 of the RTA (described above) with the interested parties during the first interested parties meeting, which was held on February 21, 2013. During the meeting, the interested parties did not express any concerns regarding the substance of the proposed amendments or the way they implemented or interpreted RTC section 40, and no interested parties submitted written comments regarding the Initial Discussion Paper. However, there appeared to be a general consensus that staff's initial proposed amendments to Regulation 5551 were not sufficiently clear.

Staff's proposed amendments to Regulation 5551 related to the procedures the Board uses when voting to "decide" appeals, including the procedures for adopting "Summary Decisions" to decide nonappearance matters, the procedures the Board uses when deciding whether or not to adopt a "Memorandum Opinion or Formal Opinion," and new procedures staff recommends that the Board use to ensure that the Board complies with the new provisions of RTC section 40, which require the Board to adopt "a written formal opinion, a written memorandum opinion, or a written summary decision" for specified appeals. The lack of clarity appeared to be due to:

- Staff's repeated use of the word "decision" in conjunction with the phrase "Summary Decision, Memorandum Opinion, or Formal Opinion";
- The fact that staff referred to Summary Decisions, Memorandum Opinions, and Formal Opinions as "Written Decisions"; and
- The difficulty in distinguishing the various types of decisions and opinions referred to in the proposed amendments.

The lack of clarity also appeared to be due, to a lesser extent, to the way new Regulation 5552 implemented the term "rendered" from RTC section 40, which had not previously been used by the Board or referred to in the RTA.

The Second Discussion Paper

Based upon the comments from the first interested parties meeting, staff proposed additional clarifying changes to current RTA provisions and new Regulation 5552 in the Second Discussion Paper distributed on March 29, 2013. Staff proposed to move the definitions for the terms "Summary Decision" and "Formal Opinion" from Regulations 5311, *Definitions*, 5451, *Summary Decisions*, and 5452, *Formal Opinions*, in chapters 3 and 4 of the RTA to Regulation 5511, *Definitions*, in chapter 5 of the RTA, and add a consistent definition for the term "Memorandum Opinion" to Regulation 5511 so that all of the terms are consistently defined in one place. Staff proposed to add definitions to Regulation 5511 to clarify that all three types of documents are "written opinions," Summary Decisions are "nonprecedential opinions" and Memorandum Opinions and Formal Opinions are "precedential opinions." Staff also proposed to add definitions for the commonly used terms "Appeal," "Board hearing," and "nonappearance matter" to Regulation 5511 so that staff could revise Regulation 5551 to more clearly and concisely distinguish: (1) a vote to decide an appeal without adopting a written opinion at the time of the vote, which the Board commonly does when deciding an appeal after a Board hearing, from a vote to decide an appeal by adopting a written opinion at the time of the vote, which the Board commonly does when appeals are submitted for decision as nonappearance matters; and (2) the differing procedures that apply to the drafting, confidentiality, and adoption of precedential and nonprecedential opinions.

As a result, Board staff's revised amendments to Regulation 5551, subdivision (a) more clearly explain the timing of the Board's vote to decide an appeal. Board staff's revised proposed amendments to Regulation 5551, subdivision (b) no longer focus on decisions, and they do not use the term written decision or employ the regulation's existing language referring to Summary Decisions, Memorandum Opinions, and Formal Opinions. Instead, the revised proposed amendments to subdivision (b) more clearly address the adoption of written "opinions" by explaining that the "Board may, but is not required to, adopt a written opinion

to decide an appeal. The Board may vote to decide an appeal by adopting a written opinion containing its decision, or the Board may vote to decide an appeal without adopting a written opinion at the time of the vote." The revised amendments to subdivision (b), paragraphs (1) through (5), then go on to explain the Board's discretion to direct staff to prepare written opinions, the procedures for ensuring that the Board adopts written opinions when required by RTC section 40, the procedures for the adoption of precedential opinions prepared at the Board's direction, the authority to cite written opinions in proceedings before the Board, and the confidentiality of written opinions, respectively.

Furthermore, Board staff's revised proposed amendments to Regulation 5551 renumbered existing subdivision (b), regarding dissenting and concurring opinions, as subdivision (c). The revised proposed amendments replaced the phrase "Memorandum Opinion or Formal Opinion" with the term "precedential opinion" in renumbered subdivision (c)(1) and (2) and with the term "opinion" in renumbered subdivision (c)(1)(A) and (B). The revised proposed amendments also replaced the word "decision" with the word "opinion" in renumbered subdivision (c)(1)(B).

In addition, Board staff revised its proposed amendments adding new Regulation 5552 so that the new regulation uses the terms "appeal" and "written opinion" instead of the term "matter" and the phrase "Formal Opinion, Memorandum Opinion, or Summary Decision," respectively. Staff revised the last sentence of subdivision (b) of new Regulation 5552 to more clearly explain that for purposes of RTC section 40, "the Board's decision on an appeal is rendered on the date that the Board's vote to decide the appeal becomes final"; then moved the sentence to new subdivision (f); and implemented its meaning by replacing the references to the date the Board rendered its decision to decide a matter with references to the date the Board's vote to decide an appeal becomes final throughout the rest of the new regulation. Board staff also added a fifth sentence to new Regulation 5552, subdivision (e) to clarify the "amount in controversy" in local and district tax appeals.

Furthermore, Board staff revised its proposed amendments adding subdivision (f) to Regulation 5573. Board staff changed the title of the subdivision from "Published Decisions" to "Published Opinions" to make the title consistent with the amendments made to Regulation 5511. Board staff also revised the subdivision to provide that "there is no right to confidentiality as to relevant information that the Board or Board staff includes in a written opinion that is required to be published pursuant to section 5552," instead of providing that "there is no right to confidentiality as to relevant information that the Board includes in a published decision or opinion in order to satisfy the requirements of section 5552, subdivision (c)." The revisions are based upon comments made during the first interested parties meeting that the subdivision should be applicable to the Board and Board staff, and that staff should clarify the meaning of the word "relevant." The revisions also replaced the subdivision's prior reference to a "published decision or opinion" with a reference to a "written opinion" to make the text consistent with the proposed amendments made to Regulation 5511. Board staff also revised its proposed amendments adding subdivision (g) to Regulation 5574 by deleting the unnecessary reference to Regulation 5574 and replacing the word "decision" with the word "opinion." In addition, staff proposed additional amendments throughout Regulations 5573 and 5574 so that they consistently use the terms "Board hearing," "Summary Decision," "Hearing Summary," "appeal," and "nonappearance matter" from Regulation 5511.

Finally, Board staff proposed to change the title of article 5 of chapter 5 of the RTA from "Voting and Decisions" to "Voting, Decisions, and Opinions." This change was proposed to better reflect that the article contains Regulations 5551 and 5552 regarding the adoption and publication of written opinions.

Second Interested Parties Meeting

Board staff discussed its revised proposed amendments to Regulation 5511, staff's changes to the title of article 5, staff's revised proposed amendments to Regulation 5551, staff's revised proposed amendments adding Regulation 5552, and staff's revised and additional proposed amendments to Regulations 5573 and 5574 with the interested parties during the second interested parties meeting, which was held on April 11, 2013. During the meeting, Board staff and the interested parties agreed that:

- It is not necessary for staff's proposed amendments adding the definitions for the terms "Formal Opinion" and "Memorandum Opinion" to Regulation 5511 to say that that the opinions are "intended to set precedent," and that the amendments should just say that a Formal Opinion or Memorandum Opinion "sets" precedent;
- The reference to the "written record on file" in staff's proposed amendments adding the definition for the term "nonappearance matter" to Regulation 5511, subdivision (t) is outdated, and the reference should be updated to refer to the "existing record";
- Staff's proposed amendments to Regulation 5551, subdivision (a) should be revised to simply state that the Board "may also continue a Board hearing," rather than say that the Board "may also *vote to* continue a Board hearing" (italics added for emphasis); and
- It is unnecessary for Regulation 5551 to explain how Dissenting and Concurring Opinions may be relied upon, and that the regulation would be more concise if it simply explained that a Dissenting or Concurring Opinion may be cited "in any proceeding before the Board."

Therefore, staff has incorporated these changes into its proposed amendments to Regulations 5511 and 5551.

Also, after the interested parties meeting, staff decided to capitalize the reference to "board members" in the proposed amendments adding new Regulation 5552, subdivision (c)(6) to make the reference consistent with the Board's style guide.

Staff's proposed amendments to the RTA to implement, interpret, and clarify the publication requirements of RTC section 40 are illustrated in strikeout and underline format in Attachment A. Staff has not received any written comments regarding these proposed amendments, and staff has not made any changes to these proposed amendments, other than the changes to Regulations 5511, 5551, and 5552, discussed above, since staff issued the Second Discussion Paper.

Discussion of Further Amendments to the RTA

In the Second Discussion Paper, staff also proposed the following additional amendments to make other chapters of the RTA consistent with the amendments being made to chapter 5 of the RTA to implement, interpret, and clarify RTC section 40, and address clean-up and housekeeping issues that Board staff or interested parties have suggested based on their common experience with the RTA since it was promulgated in 2008.

Additional Amendments to Chapter 2 of the RTA

Board staff determined that article 1 of chapter 2 of the RTA, which is entitled "Application of Chapter 2 and Definitions," does not contain any definitions and that Regulation 5200, *Application of Chapter 2 and Definitions*, which is in article 1, does not need to expressly provide that the definitions in Regulations 5511 and 5512, *Construction*, apply to chapter 2 because the definitions in those regulations apply to chapter 2 pursuant to the provisions of Regulations 5511 and 5512. Therefore, in the Second Discussion Paper, Board staff proposed to delete the references to "definitions" from the titles of article 1 and Regulation 5200 and delete the provisions of Regulation 5200 that refer to Regulations 5511 and 5512. In addition, Board staff determined that Regulation 5200 would be more concise if staff replaced the regulation's references to the various types of appeals that are provided for in chapter 2 with the term "appeal" as proposed to be defined in the amendments to Regulation 5511 (discussed above). Furthermore, Board staff determined that Regulation 5200 would read more clearly if the citations to the various tax and fee laws listed in the regulation were reformatted as parenthetical citations. Therefore, staff also proposed to amend Regulation 5200 to make those clarifying changes.

Board staff proposed to make the text of Regulation 5212, *Contents of Petitions for Redetermination, and Supporting Arguments and Evidence*, more consistent with the terms "taxpayer" and "Board hearing" as defined or proposed to be defined in Regulation 5511.

Board staff proposed to amend Regulations 5215, *Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law*, and 5215.4, *Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee*, to update the references to the California Department of Toxic Substance Control. Board staff proposed to amend Regulations 5215 and 5230, *Persons Who May File a Claim for Refund; Limitations on Certain Claims*, to replace the references to the "State Director of Health Services" and "State Department of Health Care Services" with references to the "California Department of Public Health" due to statutory changes. Board staff also proposed to replace the term "petitioner" with the term "taxpayer" throughout Regulations 5215 and 5230 and amend Regulation 5230, subdivisions (b) and (e) so that they are fully consistent with the Motor Vehicle Fuel Tax Law and Water Code, respectively. Furthermore, Board staff proposed to amend Regulation 5215.6, *Scope of Petition for Redetermination Filed Under Water Rights Fee Law*, to make it fully consistent with the provisions of Water Code section 1537, and proposed to amend Regulation 5224, *Review of Petition for Redetermination of Jeopardy Determination*, to make it more fully consistent with Regulations 5215, 5215.4, and 5215.6.

Board staff proposed to clarify the procedures for acknowledging petitions for redetermination in Regulation 5217, *Assignment and Acknowledgment of Petitions for Redetermination*, and make the regulation more concise.

Board staff proposed to clarify the procedures for accepting untimely petitions as administrative protests in Regulation 5220, *Premature or Untimely Petition May Be Treated as an Administrative Protest*, and make the text of Regulation 5220 more consistent with the terms "taxpayer," "Board hearing," and "appeal" as defined or proposed to be defined in Regulation 5511.

Regulations 5218, *Review of the Petition by the Assigned Section*, and 5219, *Mailing the Summary Analysis and Scheduling the Appeals Conference*, prescribe the procedures for the initial review of a petition for redetermination. Regulation 5235, *Action on Claim for Refund*, explains the types of actions the Department may take when initially reviewing a claim for refund. Regulations 5264, *Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear*, and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*, prescribe the procedures that apply when the Appeals Division subsequently conducts an appeals conference, and issues a Decision and Recommendation regarding an appeal. Board staff understands that taxpayers have been confused and sometimes frustrated by the process in Regulation 5218 for referring petitions to another office for further investigation and comment. Board staff understands that some taxpayers have been confused by the provisions in Regulations 5218 and 5235 requiring taxpayers to request appeals conferences and Board hearings or confirm prior requests for appeals conferences and Board hearings in order to obtain an appeals conference. And, Board staff understands that some taxpayers have also been confused by the provisions in Regulation 5264 regarding the submission of additional arguments and evidence to the Appeals Division and the provisions in Regulation 5266 requiring them to file requests for reconsideration and requests for Board hearings to continue to contest Decisions and Recommendations. Therefore, Board staff proposed substantial revisions to Regulations 5218, 5219, 5235, 5264, and 5266 to fully clarify all of these appeal processes and procedures so that taxpayers can keep track of their appeals and understand when they are required to take additional action to continue to appeal in the event of an adverse recommendation from a Department or the Appeals Division.

Regulation 5237, *Board Approval Required for Refunds Over $100,000*, currently prescribes procedures for the Board's approval of the Departments' recommendations on claims for refunds. Regulation 5266 currently prescribes the procedures for the Board's approval of the Appeals Division's recommendations, and both Regulations 5237 and 5266 prescribe the requirements for making the Departments' and the Appeals Division's recommendations a public record when required by statute. However, Board staff realized that there is no regulation prescribing the procedures for the Board's approval of the Department's recommendations on petitions for redetermination or administrative protests, Regulations 5237 and 5266 are no longer fully consistent with all of the Board's policies requiring Board approval of the Departments' and Appeals Division's recommendations, and the regulations' provisions for public records could be more concise. Therefore, Board staff proposed to update the provision regarding Board approval and public records in Regulations 5237 and 5266, move the provisions in Regulation 5266 to 5267, *Issuance of Post Appeals Conference Notices*, and add similar provisions for Board approval to Regulation 5218, which provides

for the review of petitions for redetermination and administrative protests (as provided in Regulation 5220, subd. (b)). Board staff also proposed to clarify the procedures for the issuance of post appeals conference notices in Regulation 5267 so that they are fully consistent with the Board's current practices.

Regulations 5216, *Filing Petitions for Redetermination*, 5222, *Persons Who May File a Petition for Redetermination of a Jeopardy Determination*, 5225, *Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition*, 5233, *Filing Claims for Refund*, 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, Including State-Administered Local Sales, Transactions, and Use Taxes)*, 5250, *Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes*, and 5262, *Requests to Reschedule or Postpone Appeals Conference*, prescribe the procedures for filing petitions for redetermination, petitions for redetermination of jeopardy determinations, applications for administrative hearings, claims for refund, requests for innocent spouse relief, petitions for reallocation of local and district tax, and requests to reschedule and postpone appeals conferences, respectively. All of these regulations explain that the Board encourages the use of electronic means for the filing of appeals and appeals related documents, but the regulations do not provide any specific guidance on how to file documents via electronic means. As a result, Board staff has determined that the best way for the Board to continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available, and provide taxpayers with updated contact information for the recently reorganized Property and Special Taxes Department. Therefore, Board staff proposed to amend Regulations 5216, 5222, 5225, 5233, 5240, 5250, and 5262 in order to delete the language encouraging the use of electronic means for filing such documents. Board staff proposed to add more specific information regarding the filing of documents to Regulations 5216, 5222, 5225, 5233, 5240, and 5262, and the Property and Special Taxes Department's new contact information to Regulation 5216. However, staff understands that the Board intends to provide more electronic services through the "eservices" link on its website at www.boe.ca.gov, and it is possible that the eservices link may provide additional instructions for the electronic filing of these documents in the future. Therefore, Board staff did not recommend and still does not recommend deleting the current provisions of Regulations 5216, 5222, 5225, 5233, 5240, and 5262 permitting documents to be filed in accordance with instructions on the Board's website.

In addition, Board staff determined that Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, already prescribe the procedures for filing petitions for reallocation of local and district tax, and staff proposed to amend Regulation 5250 so that it simply cross-references the provisions for filing such petitions in Regulations 1807 and 1828. Furthermore, Board staff is aware that some taxpayers are confused by the provisions for deferring and postponing appeals conferences in Regulation 5262, and Board staff proposed to clarify those provisions to better explain the differences between deferrals and postponements and the procedures applicable to requests for deferrals and postponements.

Moreover, Regulation 5240 provides for the filing of requests for innocent spouse relief under the Sales and Use Tax Law; however, taxpayers may also file requests for innocent spouse relief under the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law,

Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law. Therefore, Board staff proposed to amend Regulation 5240 so that it provides for the filing of requests for innocent spouse relief under all of these laws and amend Regulations 5240, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, so that they all cross-reference the applicable provisions of Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, which are applicable to requests for innocent spouse relief filed under the additional tax and fee laws.

Regulation 5247, *Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice*, incorporates and cross-references provisions in Regulation 1705, *Relief from Liability*, and Regulation 4902, *Relief from Liability*. Therefore, Board staff proposed to amend Regulation 5247 to make it fully consistent with the provisions of Regulations 1705 and 4902.

Board staff understands that the RTA does not cross-reference the Board's current regulations pertaining to Cigarette and Tobacco Products Licensing Act appeals and petitions for the recovery of seized cigarette and tobacco products. Therefore, Board staff proposed to add a new article 5.5 to chapter 2 and add new Regulations 5255, *Cigarette and Tobacco Products Licensing Act Appeals*, and 5256, *Petitions for Recovery of Seized Cigarette and Tobacco Products*, to new article 5.5 to cross-reference the Board's current regulations pertaining to Cigarette and Tobacco Products Licensing Act appeals.

A Board hearing is a taxpayer's opportunity to appear before the Board and present oral arguments regarding issues of fact and law relevant to the taxpayer's appeal. Board staff understands that it is common for taxpayers with business tax and fee appeals, whether represented or not, to submit briefs to the Board during the week prior to and on the day of their Board hearings. Staff also understands that the Board Members now generally prefer to consider all the written arguments submitted by these taxpayers prior to the start of their Board hearings, rather than reject untimely briefs under the RTA. Therefore, Board staff proposed to amend subdivision (g) of Regulation 5270, *Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing*, to make it consistent with the Board's current practice and explain that the Board may, but is not required to, accept untimely briefs at Board hearings regarding appeals subject to chapter 2 of the RTA. Board staff also proposed to amend Regulation 5270 to clarify the introductory language to subdivision (a), make subdivision (b) cross-reference the identical filing provisions in Regulation 5570, *Mailing Address*, of chapter 5 of the RTA, rather than fully restate the filing provisions, and delete an unnecessary reference to Regulation 5264 from subdivision (b).

Written Comments

On April 22, 2013, Board staff received an email from Ms. Victoria Katz, Rules Attorney for Aderant. In the email, Ms. Katz said that several of the regulations in chapter 2 of the RTA that staff proposed to amend in the second discussion paper "include 15 or 30-day deadlines for taxpayers to act without specifying the triggering event for the respective period,"

including Regulations 5218, 5235, 5264, and 5267. She also said that staff's proposed amendments adding new subdivision (h) to Regulation 5218 incorrectly numbered new paragraph (h)(3) as (h)(C). Therefore, Ms. Katz requested that staff revise its proposed amendments to clarify the triggering events for the deadlines in Regulation 5218, 5235, 5264, and 5267, and correct the numbering of new paragraph (h)(3). As a result, staff's proposed amendments have been revised to clarify the deadlines in Regulations 5218, subdivisions (e) through (h), 5235, subdivision (c), 5264, subdivision (d)(1), and 5267, subdivision (c)(3), and correct the numbering of new subdivision (h)(3) to Regulation 5218.

Other Changes to Staff's Proposed Amendments to Chapter 2

While making the revisions discussed above, staff realized that it would be helpful to clarify the new provisions staff proposed adding to Regulations 5218, subdivision (f)(2)(A), and 5266, subdivision (b)(2), by changing the technical phrase "acquiesces in" to the more common term "accepts," and staff has included the changes in its proposed amendments to Regulations 5218 and 5266. Staff noted that the word "are" had been inadvertently omitted from the title to Regulation 5218, subdivision (e), and staff has inserted the word into its proposed amendments to Regulation 5218, as well. Staff also noted that it had inadvertently used the word "scheduled" instead of the word "schedule" in its proposed amendments adding new subdivision (h)(3) to Regulation 5218 and new subdivision (c)(3) to Regulation 5267, and that the last sentence of Regulation 5218, subdivision (h)(3) and the third sentence in Regulation 5267, subdivision (c)(3) would both be more grammatically correct if staff replaced ", and" with a semicolon. Therefore, staff made both edits to its proposed amendments adding subdivision (h)(3) to Regulation 5218 and subdivision (c)(3) to Regulation 5267.

In addition, staff noticed that it had not deleted an unnecessary "and" from the existing language in Regulation 5216, subdivision (b)(2), and staff has deleted the unnecessary word from its proposed amendments to Regulation 5216. Staff noticed that it had included an unnecessary "the" in the proposed amendments to Regulation 5220, subdivision (a), and needed to change "request" to "requests" in the proposed amendments to Regulation 5220, subdivision (b), and staff has deleted the unnecessary "the" from and inserted "requests" into its proposed amendments to Regulation 5220. Staff noticed that it had proposed amendments to Regulation 5215, subdivision (a) to add "the California Department of" before the references to "Toxic Substances Control," but had failed to propose conforming changes to the references to "Toxic Substances Control" and "Department of Toxic Substance Control" in Regulation 5230, subdivisions (c)(1) and (2) and (d). Therefore, staff has included the conforming changes so that its proposed amendments to Regulation 5230 consistently refer to the "the California Department of Toxic Substances Control." Staff noticed that it inadvertently proposed to delete the word "section" from its proposed amendments to Regulation 5237, subdivision (a), and staff has revised its proposed amendments so that the word is not deleted. Board staff noticed that the current language in Regulation 5241, subdivision (a) incorrectly uses the word "acknowledge," instead of the word "acknowledgement," and that staff had not deleted an unnecessary reference to "Board Staff in" the Offer in Compromise Section from subdivision (d) of its proposed amendments to Regulation 5241. Therefore, staff has changed "acknowledge" to "acknowledgement" and deleted the unnecessary reference to "Board Staff in," as part of its proposed amendments to Regulation 5241. Staff also noticed that it did not include instructions for electronically

transmitting documents to the Board Proceedings Division, including the Board Proceedings Division's email address, in its proposed amendments to Regulation 5262 and staff has included the omitted information in the current drafts of its proposed amendments.

Finally, staff realized that it had omitted provisions from its proposed amendments to Regulation 5266 to require the Appeals Division to acknowledge the receipt of requests for reconsideration, and explain that the Appeals Division may request additional information from the parties that may be relevant to the preparation of a Supplemental Decision and Recommendation. Staff also discussed the appeals conference process with Mr. Joseph Vinatieri, and agreed to address two housekeeping issues he identified by proposing to amend Regulation 5266 so that it requires the Appeals Division to notify the parties when the Appeals Division is required to or has decided to issue a Supplemental Decision and Recommendation, and requires the Appeals Division to issue Supplemental Decisions and Recommendations within 90 days after the submission of any additional information the Appeals Division needs to prepare the document. Therefore, staff added all of these provisions to its proposed amendments to subdivision (d) of Regulation 5266. In addition, staff noticed that its proposed amendments to Regulation 5266, subdivision (d) needed to be reformatted to accommodate the newly added provisions and that staff's previously proposed amendments to subdivision (d) should cross-reference subdivision (b) generally, rather than subdivisions (b)(1) and (b)(2) specifically. Therefore, staff also reorganized and renumbered some of the previously proposed amendments to subdivision (d) and corrected the cross-references to subdivision (b) in the current drafts of its proposed amendments.

During staff's discussion with Mr. Vinatieri, he also indicated that he felt that the 30-day deadline for the Department to submit a request for reconsideration in Regulation 5266, subdivision (c) is not being sufficiently enforced because the Appeals Division is inclined to exercise its discretion to issue a Supplemental Decision and Recommendation when an untimely request for reconsideration raises issues or provides evidence that the Appeals Division has determined that it needs to address. Mr. Vinatieri suggested that Regulation 5266 be amended to prohibit the Appeals Division from exercising such discretion when a Department files an untimely request for reconsideration, unless there is a high probability that the information in the request is so material to the appeal that it would change the Appeals Division's prior recommendation or recommendations. Board staff thoroughly considered Mr. Vinatieri's suggested standard, but did not agree to impose such a standard because:

- RTC section 7081 provides that "the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability." And, Board staff believes that RTC section 7081 often requires the Appeals Division to consider and prepare Supplemental Decisions and Recommendations to respond to information submitted by taxpayers in untimely requests for reconsideration that would not satisfy the standard suggested by Mr. Vinatieri. Therefore, staff does not believe that it would be consistent with RTC section 7081 to impose such a standard on information submitted by taxpayers, and staff does not agree that it would be consistent, appropriate, or fair to only impose the standard on the Departments;

- The Appeals Division's core function is to provide relevant, accurate, and up to date information, analysis, and conclusions to the Board. And staff believes that precluding the Appeals Division from addressing potentially relevant information, unless there is a high probability that the information would actually change the outcome of the appeal, would compromise the quality and integrity of the advice the Appeals Division provides to the Board; and
- A standard limiting the Appeals Division's discretion would be problematic to enforce in situations where the Appeals Division and a party disagree about the materiality of information.

Staff's proposed amendments to chapter 2 of the RTA are illustrated in strikeout and underline format in Attachment B. Since staff issued the Second Discussion Paper, staff's only changes to its proposed amendments to chapter 2 are the changes to Regulations 5216, 5218, 5220, 5230, 5235, 5237, 5241, 5262, 5264, 5266, and 5267 discussed above.

Additional Amendments to Chapter 3 of the RTA

During its review of Regulation 5311, Board staff determined that the provisions of subdivision (a) were duplicative of the introductory language in Regulation 5511. Staff also noticed that there are two separate definitions for the term "County-Assessed Properties Division" in Regulation 5311. Therefore, in the Second Discussion Paper, Board staff proposed to delete subdivision (a) from Regulation 5311, combine the definitions for the County-Assessed Properties Division in Regulation 5311, and make minor formatting changes to the regulation.

Regulation 5322, *Information Available to Assessees; Assessment Factor Hearings*, provides that the Board generally holds Assessment Factor Hearings during its February meeting in Sacramento. However, Board staff understands that the Board conducts a Board meeting in Sacramento during January or February, but not both, during some years, and that, in years when the Board does not conduct a meeting in Sacramento during February, the Board will hold the Assessment Factor Hearings during its January meeting. Therefore, Board staff proposed to amend Regulation 5322 to provide that the Board generally conducts Assessment Factor Hearings at the Board's "January or February meeting in Sacramento."

Regulation 5323.6, *Submission of Petition*, currently requires taxpayers to submit 10 copies of petitions for reassessment of unitary or nonunitary values and correction of allocated values, and petitions for reassessment of private railroad car values, or, alternatively, to submit a compact disk containing an electronic copy. However, the State-Assessed Properties Division is now able to accept any electronic copy of a petition in lieu of 10 hard copies, not just an electronic copy on a compact disk. In addition, Regulation 5323.6 instructs taxpayers to file their petitions in accordance with Regulation 5335, *Submission of Petitions, Briefs, and Related Documents*, and then Regulation 5335 further cross-references the filing procedures in chapter 5 of the RTA. Therefore, Board staff proposed to amend Regulation 5323.6 so that it no longer requires 10 hard copies of a petition that is submitted electronically, and Board staff proposed to amend Regulations 5323.6 and 5335 so that they both similarly explain how to file documents electronically, by hand delivery, and by mail and both directly cross-reference the Board Proceedings Contact information in Regulation 5570 (as proposed to be amended below). Furthermore, Board staff also proposed amendments to Regulations 5324,

Timeliness of Petition, 5332, *Time of Filing of Application*, 5332.6, *Submission of Application and Board-Appraised Property*, 5333, *Time for Filing of Petitions*, 5333.6, *Submission of Petitions*, 5334, *Time for Filing of Petition*, 5334.6, *Submission of Petition*, and 5336.5, *Perfecting a Petition*, to make the regulations' filing provisions consistent with the proposed amendments to Regulations 5323.6 and 5335 and the regulations' terms consistent with the definitions in Regulation 5511.

The contents of a "Hearing Summary" or "Summary Decision" prepared for a property tax appeal are currently prescribed in the definitions for those terms set forth in Regulation 5311. As part of staff's (previously discussed) decision to delete the definitions for those terms from Regulation 5311, Board staff determined that it was more appropriate to prescribe the contents of a Hearing Summary or Summary Decision prepared for a property tax appeal in subdivision (a) of Regulation 5325.6, *Prehearing Review of All Other Petitions*, which currently provides for the preparation of both types of documents. Therefore, Board staff proposed to amend Regulation 5325.6, subdivision (a) to incorporate the provisions prescribing the contents of a Hearing Summary or Summary Decision for a property tax appeal, which are currently in Regulation 5311.

There are generally four types of property tax appeals, which are specified by Regulation 5310:

1. Petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, and petitions for reassessment of private railroad car value;
2. Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution;
3. Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the RTC, denials of claims for supplemental clearance certificates under RTC section 214, subdivision (g), and claims for the veterans' organization exemption under RTC section 215.1; and
4. Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

Regulation 5345, *Finality of Board Action; Written Findings and Decision,* currently provides that the Board's decision on a property tax appeal is final, that the Board will not reconsider or rehear such a decision, and that the Board may only modify such a decision to correct a clerical error. The provisions of Regulation 5345 track the provisions of Property Tax Rule 326, *Reconsideration and Rehearing*, which similarly provide that a county board's decision on a property tax appeal is final and that a county board will not reconsider or rehear a property tax appeal, except to correct a clerical error or when its decision was entered due to the taxpayer's failure to appear at the county board's hearing. The provisions of Regulation 5345 continue to appear to staff to be appropriate for applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution because these are essentially appeals in which the Board reviews a county property tax assessment in a similar manner as a county board. In addition, the provisions of Regulation 5345 appear to staff to

continue to be required for petitions for reassessment of unitary or nonunitary values and correction of allocated values, which the Board must decide by December 31 of each year and petitions for reassessment of private railroad car values, which the Board must decide by January 31 each year, as explained in Regulation 5327.4, *Oral Hearings - Scheduling of Hearings*.

However, Board staff has not been able to find a sufficient reason to continue the Board's current policy regarding the finality and reconsideration of petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate, denial of a claim for a supplemental clearance certificate, or denial of a claim for the veterans' organization exemption, and petitions filed with the Board by county assessors under Government Code section 15640 et seq. Therefore, Board staff proposed to amend Regulation 5345 so that the Board's decisions on these types of petitions become "final 30 days after the date notice of the Board's decision is mailed to the petitioner, unless the petitioner files a Petition for Rehearing in accordance with the procedures provided in chapter 5 of this division within that 30-day period." Board staff also proposed to amend Regulation 5561, *Petition for Rehearing*, in chapter 5 of the RTA so that its provisions for filing petitions for rehearing apply to these types of petitions.

All of Board's staff's proposed amendments to chapter 3 of the RTA, including staff's proposed amendments to Regulation 5311 (discussed in regard to the amendments implementing RTC § 40) are illustrated in strikeout and underline format in Attachment C. Staff has not received any comments in response to its proposed amendments to chapter 3 of the RTA and has not made any changes to the proposed amendments to chapter 3 since staff issued the Second Discussion Paper.

Additional Amendments to Chapter 4 of the RTA

Regulation 5421, *Methods for Delivery of Written Documents and Correspondence*, prescribes the procedures for filing documents with regard to an appeal from the FTB. The regulation explains that the Board encourages the use of electronic means for the filing of appeals and appeals related documents, but the regulation does not provide any specific guidance on how to file documents via electronic means. As a result, Board staff has determined that the best way for the Board to continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available. Therefore, in the Second Discussion Paper, Board staff proposed to amend Regulation 5421 in order to delete the language encouraging the use of electronic means for filing such documents and add more specific information regarding the filing of documents in appeals from the FTB. However, staff understands that the Board intends to provide more electronic services through the "eservices" link on its website at www.boe.ca.gov, and it is possible that the eservices link may provide additional instructions for the electronic filing of these documents in the future. Therefore, Board staff did not recommend and still does not recommend deleting the current provisions of Regulations 5421 permitting documents to be filed in accordance with instructions on the Board's website.

Subdivision (e) of Regulation 5435, *Additional Briefing*, requires the Board Chair to be promptly notified about requests for additional briefing in appeals from the FTB. However, staff has found that it is more appropriate to promptly notify the Chief of Board Proceedings regarding such requests and allow the Chief of Board Proceedings to contact the Board Chair if necessary. Therefore, Board staff proposed to amend subdivision (e) to refer to the Chief of Board Proceedings instead of the Board Chair. Staff also proposed to replace the reference to Appeals Staff with a reference to the Appeals Division in subdivision (a) of Regulation 5435.

Subdivision (a) of Regulation 5444, *Hearing Summary*, defines the term "Hearing Summary" and prescribes the contents of hearing summaries prepared for appeals from the FTB. Board staff has determined that the definition is unnecessary because Regulation 5511 already defines the term "Hearing Summary." Therefore, Board staff proposed to delete subdivision (a) of Regulation 5444, move the provisions prescribing the content of hearing summaries to current subdivision (b) and renumber subdivision (b) as subdivision (a), then reformat the second paragraph of current subdivision (b) as new subdivision (b).

RTC section 19047 requires the Board to hear and determine appeals from the FTB and notify the parties of its determination. When the Board does not adopt a written opinion for an appeal from the FTB, Board staff prepares a "Letter Decision" in accordance with Regulation 5450, *Letter Decisions*, which contains a short explanation of the Board's decision in the appeal. As part of its review of the amendments to Regulation 5551, staff determined that the Board's current practice of referring to these notices as "Letter Decisions" might create additional, unwarranted confusion regarding the differences between decisions and written opinions. Therefore, Board staff proposed to repeal Regulation 5450 and add new Regulation 5453, *Notice of Board's Determination*, which will provide for the preparation of a notice of determination when the Board does not adopt a written opinion for an appeal from the FTB.

During its review of Regulations 5451 and 5452, Board staff determined that subdivisions (a) of Regulations 5451 and 5452 are no longer necessary because staff is proposing to add definitions for the terms "Summary Decision" and "Formal Opinion" to Regulation 5511. Board staff determined that the provisions of subdivision (c) of Regulation 5451 and subdivision (d) of Regulation 5452 regarding the date of adoption of a Summary Decision or Formal Opinion are no longer necessary because staff is addressing the same subject matter in its proposed amendments to Regulation 5551. Board staff also determined that the provisions of subdivision (d) of Regulation 5451 and subdivision (f) of Regulation 5452 regarding the ability to cite a Summary Decision or Formal Opinion are no longer necessary because staff is addressing the same subject matter in its proposed amendments to Regulation 5551. Therefore, staff proposed to delete these unnecessary subdivisions from Regulations 5451 and 5452. Staff also proposed to renumber the remaining subdivisions in Regulations 5451 and 5452, and add provisions to make the regulations consistent with the provisions of Regulation 5551 as proposed to be amended and 5552 as proposed to be added.

During the first interested parties meeting on February 21, 2013, FTB staff indicated that additional amendments to chapter 4 of the RTA might be needed to ensure that the parties to an appeal from the FTB understand when the time to file a petition for rehearing starts and when the Board's decision on an appeal from the FTB becomes final. Therefore, in the Second Discussion Paper, staff proposed to:

- Replace references to the word "decision" with reference to the word "determination" in Regulations 5460, *Finality of Decision*, and 5463, *Decisions on Petitions for Rehearing*, to make the regulations more consistent with the phrasing of RTC section 19047 and to further aid FTB staff in distinguishing written opinions from "determinations" on appeals from the FTB; and
- Add language to Regulation 5460, subdivision (a), explaining when the Board's determination on an appeal from the FTB becomes final in situations where the determination is held in abeyance under staff's proposed amendments to Regulation 5551.

Board staff also understands that there has been some historic confusion about how many petitions for rehearing a taxpayer may submit with regarding to a single appeal, including an appeal from the FTB. Therefore, Board staff proposed to add provisions to Regulation 5460, subdivision (c) to incorporate the Board's existing policy with regard to appeals from the FTB, which is that "no party may file a Petition for Rehearing in response to a Decision on Petition for Rehearing or the Board's vote to determine an appeal after a rehearing." Furthermore, Board staff proposed that language be added to subdivision (c) of Regulation 5562, *Recommendation on Petition for Rehearing*, to incorporate the Board's existing policy with regard to other types of appeals, which is that a taxpayer may not file a petition for rehearing in response to the Board's decision to deny a prior petition for rehearing in the same appeal.

Finally, Board staff also proposed to delete unnecessary language from the definition of "Decision on Petition for Rehearing" in Regulation 5463, subdivision (a) and make minor clarifying amendments to Regulation 5463, subdivision (c). All of Board's staff's proposed amendments to chapter 4 of the RTA, including staff's proposed amendments to Regulations 5451 and 5452 (discussed in regard to the amendments implementing RTC § 40), are illustrated in strikeout and underline format in Attachment D. Staff has not received any comments in response to its proposed amendments to chapter 4 of the RTA and has not made any changes to the proposed amendments to chapter 4 since staff issued the Second Discussion Paper.

Additional Amendments to Chapter 5 of the RTA

Regulation 5510, *General Application of Chapter 5*, currently provides that chapter 5 of the RTA applies to Board hearings under specified tax and fee laws. However, chapter 5 already contains some provisions, such as Regulation 5522.6, *Notice of Board Hearing and Response*, that are applicable to the submission of appeals as nonappearance matters, and Board staff is proposing a number of amendments that add additional references to nonappearance matters to chapter 5, including defining the term "nonappearance matter" in Regulation 5511 (as discussed above). Therefore, in the Second Discussion Paper, Board staff proposed to amend the title of chapter 5 and Regulation 5510, subdivisions (a) and (b) so that it is clear that

chapter 5 applies to all the types of appeals submitted to the Board for decision under the tax and fee laws specified in subdivision (a) of Regulation 5510, not just appeals scheduled for a Board hearing. In addition, Board staff proposed to clarify the citations to the tax and fee laws specified in subdivision (a), including adding a separate reference and citation to the Fee Collection Procedures Law and clarifying that the Hazardous Substances Tax Law is applicable to appeals of the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee and that such appeals are not filed under the tax and fee laws.

Regulation 5512, *Construction*, defines commonly used terms, including "must," "may," "will" and "should." Board staff does not believe that the regulation's definition for the word "will" is correct in the context of the RTA because the definition indicates that the word "does not signify a mandatory duty," but staff believes that the term "will" is often used to signify a mandatory duty in the context of the RTA. Furthermore, Board staff does not believe that it is necessary to define such commonly used terms as "must," "may," and "should" specifically because they are so commonly used. Therefore, Board staff proposed to delete Regulation 5512 in its entirety.

Regulation 5522.8, *Dismissal, Deferral, and Postponement*, provides procedures for the dismissal, deferral, and postponement of appeals. However, Board staff believes that it is unnecessary for the regulation to refer to both deferrals and postponements because the terms essentially have the same meaning in the context of Regulation 5522.8, which is to put something off until a later time. Therefore, Board staff proposed to delete all of the references to deferrals from Regulation 5522.8 and just leave the references to postponements. Board staff understands that there has been confusion as to the meaning of Regulation 5522.8, subdivision (b)(3)'s provisions providing for postponements due to pending civil or criminal litigation. In particular, some taxpayers have suggested that the provision requires an appeal to be postponed if pending litigation may have "any" bearing on the appeal whatsoever; however, the provision is intended to give the Chief Counsel discretion to postpone an appeal if the Chief Counsel determines that pending litigation is likely to have a material bearing on the appeal and that the Board should wait to decide the appeal until after the Board knows the outcome of the litigation. Therefore, Board staff proposed to clarify the provisions of Regulation 5522.8, subdivision (b)(3) accordingly. Board staff is not aware of any need to notify the Board when an appeal from the FTB is postponed as a result of a pending bankruptcy proceeding, and staff proposed to delete the requirement from Regulation 5522.8, subdivision (b)(4). In addition, Board staff understands that there has been some confusion regarding the meaning of the provision in Regulation 5522.8, subdivision (c) regarding the Chief Counsel's authority to grant additional postponements for extreme hardship because the provision incorrectly cross-references subdivision (a). Therefore, staff proposed to delete the reference to subdivision (a) from Regulation 5522.8, subdivision (c). Finally, Board staff proposed minor amendments throughout Regulation 5522.8 to make the regulation more clear and make the regulation's terminology more consistent with Regulation 5511 as proposed to be amended.

Board staff understands that electronic presentations are becoming increasingly more common and that people are regularly requesting permission to make electronic presentations during their Board hearings. Therefore, Board staff proposed to add a new subdivision (f) to Regulation 5523.6, *Presentation of Evidence or Exhibits*, to provide procedures allowing for the use of electronic presentations at Board hearings. The procedures only permit materials to

be presented electronically if the Board has sufficient equipment to allow electronic presentations, and the procedures require materials to be submitted at least five days prior to a Board hearing so that staff has sufficient time to make sure the materials are ready to be electronically presented at the Board hearing. After the second interested parties meeting, staff realized that it had inadvertently used the word "equipment," instead of the word "equipped" in its proposed amendments adding subdivision (f)(1) to Regulation 5523.6, and staff has now replaced the word "equipment" with "equipped" in its proposed amendments. In addition, Board staff proposed clarifying amendments to Regulation 5523.6 to delete the reference to "Exhibits" from the title of the regulation because exhibits are not referred to in the regulation, revise the phrasing of the second sentence in subdivision (a) and the second sentence in subdivision (b), make the regulation's terminology more consistent with Regulation 5511 as proposed to be amended, and replace the word "refute" with the word "contest" in subdivision (d).

The Board requires that a taxpayer's petition for rehearing be signed by the taxpayer or the taxpayer's authorized representative to ensure that the petition is authentic. Therefore, Board staff proposed to clarify the requirements for filing a petition for rehearing by adding this requirement to subdivision (a) of Regulation 5561. Board staff has also determined that it is unnecessary for Regulation 5561 to provide procedures for filing petitions for rehearing because Regulation 5570 already provides procedures for filing documents during the Board hearing process, which are substantially similar to the provisions in Regulation 5561. Therefore, Board staff proposed to delete the filing provisions from Regulation 5561, subdivision (b) and replace them with a cross-reference to the filing provisions in Regulation 5570. In addition, Board staff understands that the Board Proceedings Division gives taxpayers 30 days to complete timely filed submissions which are intended as petitions for rehearing, but do not satisfy all the requirements of Regulation 5561, subdivision (a). Therefore, Board staff proposed to clarify the current provisions in Regulation 5561, subdivision (c) regarding the review of submissions that are intended as petitions for rehearing, and add paragraphs (4) through (6) to Regulation 5561, subdivision (c) to incorporate the Board Proceedings Division's current practice of giving taxpayers time to complete timely filed submissions, clarify that the Board Proceedings Division will notify the taxpayer if its submission is ultimately rejected, and explain that a taxpayer may only file one petition for rehearing with regard to the same appeal.

When a taxpayer files a timely petition for rehearing, the Board has discretion to revise its decision on the taxpayer's appeal with or without granting a rehearing. As a result, there are situations where the Appeals Division may recommend that the Board revise its decision on an appeal based on information presented in a taxpayer's petition for rehearing, but still recommend that the Board deny the taxpayer's request for a rehearing after revising its decision. Therefore, Board staff proposed to add this procedure to Regulation 5562, subdivision (a) to avoid potential confusion. Board staff also understands that there is some confusion as to how the Board decides whether to grant or deny a petition for rehearing and how that decision affects the finality of the Board's decision in the appeal to which the petition relates. Therefore, Board staff proposed to amend Regulation 5562, subdivision (c) to more clearly explain the options the Board has for deciding a petition for rehearing, how the Board's decision to choose each option affects the underlying appeal to which the petition relates, and when the Board's decision in the underlying appeal will become final.

Furthermore, Board staff determined that Regulation 5563, *Rehearings*, was no longer necessary because Regulation 5562, as proposed to be amended, will cover all of the same subject matter as Regulation 5563 currently covers. Therefore, Board staff proposed to delete Regulation 5563.

Finally, Board staff has determined that the best way for the Board to continue to encourage the use of electronic means for the filing of documents related to appeals is to be more specific about how such documents may be filed via electronic means, where currently available. Therefore, Board staff proposed to amend Regulation 5570 to delete the first sentence of subdivision (a), which encourages the use of electronic means for the filing of documents related to Board hearings, and update the Board Proceedings Divisions contact information so that it includes the division's current email address and fax number where the division receives documents related to Board hearings. However, staff understands that the Board intends to provide more electronic services through the "eservices" link on its website at www.boe.ca.gov and it is possible that the eservices link may provide additional instructions for the electronic filing of documents related to Board hearings in the future. Therefore, Board staff did not recommend and still does not recommend deleting the current provisions of Regulation 5570 permitting documents to be filed in accordance with instructions on the Board's website.

All of Board's staff's proposed amendments to chapter 5 of the RTA, including staff's proposed amendments to Regulation 5511, staff's proposed changes to the title of article 5, staff's revised amendments to Regulation 5551, staff's revised amendments adding Regulation 5552, and staff's revised and additional amendments to Regulations 5573 and 5574 (discussed in regard to the amendments implementing RTC § 40), are illustrated in strikeout and underline format in Attachment E. Staff has not received any comments in response to its proposed amendments to chapter 5 of the RTA that did not relate to the amendments implementing RTC section 40 (discussed earlier in this memorandum) and staff has only made changes to Regulations 5511, 5523.6, 5551, and 5552 in chapter 5 since staff issued the Second Discussion Paper.

Summary

Board staff believes that the proposed amendments to chapter 5 of the RTA illustrated in Attachment A and discussed above are necessary to incorporate and implement the publication requirements of RTC section 40. Board staff also believes the proposed amendments to chapters 2 through 4 of the RTA illustrated in Attachments B through D are necessary to make chapters 2 through 4 consistent with the amendments being made to chapter 5 of the RTA to implement, interpret, and clarify RTC section 40. Board staff also believes that the additional amendments to chapters 2 through 5 of the RTA illustrated in Attachments B through E are necessary to address clean-up and housekeeping issues. All of the changes to staff's proposed amendments that were made after staff issued the Second Discussion Paper are listed in Attachment F for ease of reference.

If you have any questions, please feel free to contact me.

Approved:

Cynthia Bridges/RMF

Cynthia Bridges
Executive Director

RF:kbs:yg

Attachments:
Attachment A - Proposed Amendment Implementing RTC section 40
Attachment B - Proposed Amendments to Chapter 2 of the RTA
Attachment C - Proposed Amendments to Chapter 3 of the RTA
Attachment D - Proposed Amendments to Chapter 4 of the RTA
Attachment E - Proposed Amendments to Chapter 5 of the RTA
Attachment F - Changes Made After the Second Discussion Paper

cc:	Ms. Cynthia Bridges	MIC:73
	Mr. Robert Tucker	MIC:82
	Mr. Jeff Vest	MIC:85
	Mr. Bradley Heller	MIC:82
	Mr. David Levine	MIC:85
	Mr. Grant Thompson	MIC:85
	Mr. Lou Ambrose	MIC:85
	Mr. David Gau	MIC:63
	Mr. Jeffrey McGuire	MIC:43
	Ms. Susanne Buehler	MIC:92
	Mr. Todd Gilman	MIC:70

ATTACHMENT A

5511. Definitions.

The following definitions apply to this ~~chapter, and also apply to chapters 2, 3, and 4 of this~~ division, unless otherwise indicated ~~as provided therein~~:

(a) "Appeal" means:

(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing;

(2) Administrative protest;

(3) Claim, including a claim for refund;

(4) Appeal from an action of the Franchise Tax Board under chapter 4;

(5) Application, including, but not limited to, an application for administrative hearing; and

(6) Any other item that may be scheduled for a Board hearing conducted in accordance with chapter 5 of this division, including, but not limited to, requests for relief of taxes, interest, or penalties.

An appeal is also referred to as a "matter."

(~~a~~b) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.

(~~b~~c) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(~~c~~d) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.

(e) "Board hearing" means a taxpayer's opportunity to appear, along with the Department, before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's appeal, also referred to as an "oral hearing" or "hearing."

(~~d~~f) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.

(~~e~~g) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.

(~~f~~h) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.

(~~g~~i) "Brief" means a written document that contains an argument supporting a party's position, whether citing specific laws, regulations, or other authorities or making arguments without citing to specific authorities~~ including arguments on how laws or regulations apply to the facts presented in a party's matter~~. ~~Notwithstanding this definition, affidavits and declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.~~

(~~h~~j) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.

~~(i) "Claimant" means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5510. The term "claimant" includes a taxpayer's authorized representative, where appropriate.~~

(~~j~~k) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

(~~k~~l) "Delivery Service" means a trade or business~~, if such trade or business~~ that delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records the date on which it accepts each document for delivery, either electronically to its database, kept in the regular course of its business, or on the cover in which a document is delivered, or both~~electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery~~.

(~~l~~m) "Department" means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Investigations and Special Operations Division of the Legal Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.

(~~m~~n) "Deputy Director" means the Deputy Director of the State Board of Equalization's Sales and Use Tax Department or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.

(~~n~~o) "Executive Director" means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.

(~~o~~p) "Extreme hardship" means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person's control, such as illness, death, or disaster.

(q) "Formal Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal from an action of the Franchise Tax Board and sets precedent.

~~(p) "Hearing" means a taxpayer's opportunity to appear before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's matter.~~

(~~q~~r) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on an appeal~~a matter~~ for which a Board~~an oral~~ hearing has been scheduled~~requested~~.

(s) "Memorandum Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal, other than an appeal from an action of the Franchise Tax Board and sets precedent.

(t) "Nonappearance matter" means an appeal submitted to the Board for decision or a written opinion submitted to the Board for potential adoption on the basis of the existing record.

(u) "Nonprecedential opinion" means a Summary Decision.

~~(r) "Matter" means:~~

~~(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, or petition for review of district tax redistribution inquiries;~~

~~(2) Claim, including a claim for refund;~~

~~(3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4;~~

~~(4) Application for administrative hearing;~~

~~(5) Petition for rehearing; and~~

~~(6) Any other item scheduled for a Board hearing in any program listed in section 5510, including, but not limited to, requests for relief of taxes, interest, or penalties.~~

(~~s~~v) "Party" means the taxpayer and the Department~~ as defined in this section~~.

~~(1) In any matter where an agency has requested an oral hearing in accordance with chapter 2 and the taxpayer has not requested an oral hearing, the agency requesting the oral hearing shall be the Department for purposes of this chapter, and neither the Property and Special Taxes Department nor the Appeals Division shall be the Department.~~

~~(2) For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.~~

(~~t~~w) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.

(x) "Precedential opinion" means a Formal Opinion or Memorandum Opinion.

(~~u~~y) "Reasonable cause" means ~~such~~ circumstances that~~as~~ would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.

(z) "Summary Decision" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is not intended to set precedent.

(~~v~~aa) "Tax" means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of an appeal~~matter~~ before the Board.

(~~w~~bb) "Taxpayer" means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, applicant, claimant, or any other person who has an appeal before the Board~~liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board,~~ or who is a person directly interested in an appeal~~any matter~~ before the Board~~ under any of the programs listed in section 5510. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes except as provided in California Code of Regulations, title 18, section 1807 or 1828.~~ The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

(~~x~~cc) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

(dd) "Written opinion" means a Formal Opinion, Memorandum Opinion, or Summary Decision.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Article XIII, Section 17, California Constitution; Sections 15606 and 15640, Government Code; and Sections 20, 40, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

ARTICLE 5. VOTING, ~~AND~~ DECISIONS, AND OPINIONS

5551. Voting and Decisions.

(a) Timing of Board's Vote on an Appeal. ~~At the conclusion of an oral hearing, the~~The Board may vote to decide an appeal after considering the appeal at a Board hearing or as a nonappearance~~the~~ matter, or the Board may take the appeal~~it~~ under submission and vote to decide it later at the same meeting or at a subsequent meeting.~~, or~~The Board may also continue a Board~~the~~ hearing to a later date. ~~The Board may also adopt a Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.~~

(b) Written Opinions. The Board may, but is not required to, adopt a written opinion to decide an appeal. The Board may vote to decide an appeal by adopting a written opinion containing its decision, or the Board may vote to decide an appeal without adopting a written opinion at the time of the vote.

(1) Before or after the Board votes to decide an appeal, the Board may direct Board staff to draft a written opinion and submit the opinion to the Board for consideration as a nonappearance matter at a subsequent meeting.

(2) If the Board votes to decide an appeal for which a written opinion is required by section 5552, but the Board does not adopt a written opinion or direct staff to draft a written opinion at the time of the vote, then Board staff shall draft a nonprecedential opinion and submit it to the Board for consideration as a nonappearance matter at a subsequent meeting. In such cases, the Board's vote to decide the appeal is not tentative and shall not be held in abeyance, unless the Board expressly directs staff to hold its decision in abeyance before the decision becomes final.

(3) If the Board votes to decide an appeal and then directs staff to draft a precedential opinion for the same appeal before the decision is final, then, unless the Board directs otherwise, the Board's vote to decide the appeal will be tentative, and shall be held in abeyance and subject to change until the Board subsequently votes to adopt a precedential opinion or votes not to adopt a precedential opinion. However, a vote to decide an appeal described in section 5310, subdivision (a)(1) or (2) is not tentative and shall be final when made.

(4) A precedential opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Nonprecedential opinions may not be cited as precedent in any matter or other proceeding before the Board.

(5) A written opinion is not confidential if the Board has already voted to decide the appeal to which the opinion relates and the Board's decision is not being held in abeyance pending the Board's consideration of the written opinion. In all other circumstances, a written opinion is confidential unless and until adopted by the Board. In addition, confidential taxpayer information included in a written opinion prepared for an appeal subject to chapter 2 or 3 of this division is confidential before and after the opinion is adopted, unless the taxpayer has waived the right to confidentiality as to such information as provided in section 5573 or the opinion is required to be published pursuant to section 5552.

(c~~b~~) Dissenting and Concurring Opinions.

(1) If a precedential opinion~~Memorandum Opinion or Formal Opinion~~ is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the opinion~~Memorandum Opinion or Formal Opinion~~; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the opinion~~decision~~, if different than the rationale set forth in the opinion~~Memorandum Opinion or Formal Opinion~~.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the precedential opinion~~Memorandum Opinion or Formal Opinion~~ to which it relates is adopted, and is publishable as a supplement to the precedential opinion~~Memorandum Opinion or Formal Opinion~~. A Dissenting Opinion or Concurring Opinion may be cited in any proceeding before the Board~~and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal~~.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 17, California Constitution; Sections 7.9, 11122.5, 11125, 15606 and 15640, Government Code; and Sections 40, 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5552. Publication.

(a) Adoption. The Board shall adopt a written opinion for each appeal decided by the Board, on or after January 1, 2013, in which the amount in controversy is five hundred thousand dollars ($500,000) or more.

(b) Publication. If the Board is required to adopt a written opinion pursuant to subdivision (a), then the Board shall adopt and publish the written opinion on the Board's Internet website within 120 days after the date upon which the Board's vote to decide the appeal became final.

(c) Content. All written opinions required to be adopted pursuant to subdivision (a) shall include all of the following:

(1) Findings of fact;

(2) The legal issue(s) presented;

(3) Citation(s) to applicable law;

(4) An analysis of the law and facts;

(5) The disposition of the matter; and

(6) The names of the adopting Board Members.

(d) Amount in Controversy. "Amount in controversy" means, for purposes of subdivision (a), the total amount of taxes, fees, penalties, interest and/or other charges directly contested by the parties to an appeal as of the date the Board's vote to decide that appeal becomes final. Consolidated appeals shall be treated as one appeal in calculating the amount in controversy. "Amount in controversy" does not include taxes, fees, penalties, interest, or other charges that may be ancillary or related to, or calculated with reference to, directly contested amounts, unless the taxes, fees, penalties, interest, or other charges are also directly contested. Amount in controversy shall equal one percent of the difference between the assessed values asserted by the parties in property tax appeals. If an appeal concerns the reallocation of local or district tax, amount in controversy includes directly contested taxes that were reported and paid to the Board prior to the date the Board's decision on the appeal became final (e.g., taxes reported and paid for the last quarter for which a return was filed prior to the finality date), and shall not include taxes that are reported and paid to the Board after the date the Board's vote to decide the appeal becomes final.

(e) Application. Subdivision (a) only applies to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including Board hearing and nonappearance matters, except for nonappearance consent calendar action items.

(f) For purposes of Revenue and Taxation Code section 40, the Board's decision on an appeal is rendered on the date that the Board's vote to decide the appeal becomes final.

Note: Authority: Section 15606, Government Code; Section 40, Revenue and Taxation Code.

5573. ~~Waiver of~~ Confidentiality.

~~Oral~~Board hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including, but not limited to, information contained in a hearing summary prepared under section 5444.

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for a Board~~an oral~~ hearing ~~before the Board~~ under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board~~oral~~ hearing ~~before the Board~~ or included in the hearing summary prepared for the taxpayer's Board~~oral~~ hearing ~~before the Board~~.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality when the taxpayer:

(A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) of chapter 3, and submits a written request for a Board~~an oral~~ hearing ~~before the Board~~; or

(B) Files an application described in section 5310, subdivision (a)(2) of chapter 3.

(2) The waiver described in paragraph (1) of this subdivision only applies to:

(A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The H~~h~~earing S~~s~~ummary or S~~s~~ummary D~~d~~ecision prepared for the taxpayer's Board~~oral~~ hearing ~~before the Board~~; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board~~oral~~ hearing ~~before the Board~~.

(d) Effective Date of Waiver.

(1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's Board~~oral~~ hearing to which the waiver applies.

(2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its Board~~oral~~ hearing ~~before the Board~~. At the time a taxpayer waives a Board~~an oral~~ hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's appeal as a nonappearance matter ~~on the basis of the written record on file without an oral hearing~~ or dismiss the taxpayer's appeal~~matter~~.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a Board~~an oral~~ hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of a Board~~an oral~~ hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a H~~h~~earing S~~s~~ummary, if any, containing information that is only scheduled to be discussed during a closed session.

(f) Published Opinions. Even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board or Board staff includes in a written opinion that is required to be published pursuant to section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution,; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609, Revenue and Taxation Code.

5574. Request for Portion of Board~~Oral~~ Hearing Conducted During Closed Session.

(a) Board's Discretion to Conduct ~~Oral~~ Hearings During Closed Session.

(1) In general, the Board may conduct portions of Board~~oral~~ hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct Board~~oral~~ hearings requested under the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of a Board~~an oral~~ hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the appeal~~matter~~ for which the taxpayer's Board~~oral~~ hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's Board~~oral~~ hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of a Board~~an oral~~ hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the appeal~~matter~~ involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's Board~~oral~~ hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The appeal~~matter~~ involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's Board~~oral~~ hearing is conducted solely during an open session at a public meeting.

(3) If a portion of a Board~~an oral~~ hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the Board~~oral~~ hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire Board~~oral~~ hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's Board~~oral~~ hearing must be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.

(A) The waivers described in subdivision (b) or (c) of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled Board~~oral~~ hearing.

(B) The waivers described in subdivision (b) or (c) of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its Board~~oral~~ hearing ~~before the Board~~.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of a Board~~an oral~~ hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

(g) Notwithstanding the foregoing provisions, nothing in this division shall prevent the Board from publishing a written opinion on its Internet website when required under section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609, Revenue and Taxation Code.

ATTACHMENT B

ARTICLE 1. APPLICATION OF CHAPTER 2 ~~AND DEFINITIONS~~

5200. Application of Chapter 2 ~~and Definitions~~.

This chapter applies to appeals~~petitions for redetermination, administrative protests, applications for administrative hearings, claims for refund, and requests for relief~~ filed with the Board under the:

(a) Sales and Use Tax Law~~. Part 1 of division 2 of the Revenue and Taxation Code.~~ (pt. 1 of div. 2 of the Rev. & Tax. Code).

(b) Motor Vehicle Fuel Tax Law~~. Part 2 of division 2 of the Revenue and Taxation Code.~~ (pt. 2 of div. 2 of the Rev. & Tax. Code).

(c) Use Fuel Tax Law~~. Part 3 of division 2 of the Revenue and Taxation Code.~~ (pt. 3 of div. 2 of the Rev. & Tax. Code).

(d) Tax on Insurers Law~~. Part 7 of division 2 of the Revenue and Taxation Code.~~ (pt. 7 of div. 2 of the Rev. & Tax. Code).

(e) Cigarette and Tobacco Products Tax Law~~. Part 13 of division 2 of the Revenue and Taxation Code.~~ (pt. 13 of div. 2 of the Rev. & Tax. Code).

(f) Alcoholic Beverage Tax Law~~. Part 14 of division 2 of the Revenue and Taxation Code.~~ (pt. 14 of div. 2 of the Rev. & Tax. Code).

(g) Timber Yield Tax Law~~. Part 18.5 of division 2 of the Revenue and Taxation Code.~~ (pt. 18.5 of div. 2 of the Rev. & Tax. Code).

(h) Energy Resources Surcharge Law~~. Part 19 of division 2 of the Revenue and Taxation Code.~~ (pt. 19 of div. 2 of the Rev. & Tax. Code).

(i) Emergency Telephone Users Surcharge Law~~. Part 20 of division 2 of the Revenue and Taxation Code.~~ (pt. 20 of div. 2 of the Rev. & Tax. Code).

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

(k) Integrated Waste Management Fee Law~~. Part 23 of division 2 of the Revenue and Taxation Code.~~ (pt. 23 of div. 2 of the Rev. & Tax. Code).

(l) Oil Spill Response, Prevention, and Administration Fees Law~~. Part 24 of division 2 of the Revenue and Taxation Code.~~ (pt. 24 of div. 2 of the Rev. & Tax. Code).

(m) Underground Storage Tank Maintenance Fee Law~~. Part 26 of division 2 of the Revenue and Taxation Code.~~ (pt. 26 of div. 2 of the Rev. & Tax. Code).

(n) Fee Collection Procedures Law~~. Part 30 of division 2 of the Revenue and Taxation Code.~~ (pt. 30 of div. 2 of the Rev. & Tax. Code).

(o) Diesel Fuel Tax Law~~. Part 31 of division 2 of the Revenue and Taxation Code.~~ (pt. 31 of div. 2 of the Rev. & Tax. Code).

~~The definitions in sections 5511 and 5512 of this division apply to this chapter. Where section 5511 conflicts with this chapter, this chapter controls.~~

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

5212. Contents of a Petitions for Redetermination~~, and Supporting Arguments and Evidence~~.

(a) A~~Every~~ petition for redetermination must:

(1) Be in writing.

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

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

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

(b) A petition for redetermination may include a request for an appeals conference~~ conducted under article 6 of this chapter~~, a request for a Board~~an oral~~ hearing~~ before the Board~~, or both. If a petition for redetermination only includes a request for an appeals conference, a Board~~an oral~~ hearing~~ before the Board~~ may still be requested in accordance with section 5266.

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

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

Note: Authority cited: Section 15606, Government Code; Sections 7051, 8251, 9251, 13170, 30451, 32451, 38442, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

5215. Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law.

(a) Hazardous or Extremely Hazardous Waste. A~~ll~~ petitions for redetermination filed under Revenue and Taxation Code section 43301 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A petition for redetermination based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and may not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) A petition for redetermination of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

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

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

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

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

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

5215.4. Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee.

A~~ll~~ petitions for redetermination of the Covered Electronic Waste Recycling Fee filed in accordance with section 5216 will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. A petition for redetermination based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

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

5215.6. Scope of Petition for Redetermination Filed Under Water Rights Fee Law.

~~Under Water Code section 1537, a petition for redetermination under the Fee Collection Procedures Law should be filed with the State Water Resources Board if the petition requests reconsideration of a~~A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code and is not subject to review by the Board as part of a petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Section~~s 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152,~~ 55301~~ and 60601~~, Revenue and Taxation Code. Reference: Section 1537, Water Code.

5216. Filing Petitions for Redetermination.

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

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

(1) Sales and Use Tax Law.

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

sutdpet@boe.ca.gov
916-324-0678
~~PETITIONS SECTION, MIC: 38~~
~~STATE BOARD OF EQUALIZATION~~
~~P.O. BOX 942879~~
~~SACRAMENTO, CA 94279-0038~~

(2) Hazardous Substances Tax Law ~~(Except Childhood Lead Poisoning Prevention Fee)~~, Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee, ~~and~~ Marine Invasive Species Fee Collection Law, Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, Natural Gas Surcharge, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Appeals and Data Analysis Branch, MIC: 33
State Board of Equalization
P.O. BOX 942879
Sacramento, CA 94279-0033
adab@boe.ca.gov
916-323-9497
~~ENVIRONMENTAL FEES DIVISION, MIC: 57~~
~~AUDIT UNIT~~
~~STATE BOARD OF EQUALIZATION~~
~~P.O. BOX 942879~~
~~SACRAMENTO057~~

~~(3) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.~~

~~EXCISE TAXES DIVISION, MIC: 56~~
~~REFUND AND PETITION GROUP~~
~~STATE BOARD OF EQUALIZATION~~
~~P.O. BOX 942879~~
~~SACRAMENTO, CA 94279-0056~~

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

~~FUEL TAX DIVISION, MIC: 30~~
~~PETITION GROUP~~
~~STATE BOARD OF EQUALIZATION~~

~~P.O. BOX 942879~~
~~SACRAMENTO, CA 94279-0030~~

(~~5~~3) Timber Yield Tax Law.

Timber Tax Section, MIC: 60
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0060
MeetingInfo@boe.ca.gov
(916) 324-3984
~~TIMBER YIELD TAX SECTION, MIC: 60~~
~~STATE BOARD OF EQUALIZATION~~
~~P.O. BOX 942879~~
~~SACRAMENTO, CA 94279-0057~~

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

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

5217. ~~Assignment and~~ Acknowledgment of Petitions for Redetermination.

(a) After receipt~~,~~ of a petition for redetermination~~, will be assigned to the appropriate section or group listed in section 5216 based upon the type of tax or fee at issue.~~

~~(b) Once a petition for redetermination is assigned, Board Staff from~~ the assigned section ~~or group~~ will promptly send the taxpayer~~petitioner~~ a letter acknowledging receipt of the petition for redetermination and containing the assigned section's~~, which will contain the~~ contact information ~~for the assigned section or group~~.

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

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

5218. Review of the Petition by the Assigned Section.

(a) Initial Review of Petition. ~~Board Staff from the~~The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition~~to District Office or Board Section~~. ~~Board Staff from the~~The assigned section may refer the petition to ~~Board Staff in~~ the district office or Board section~~Section~~ that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.

(c) Scope of Review. ~~Board Staff from the~~The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, ~~Board Staff from~~ the assigned section must advise the taxpayer of~~present~~ its findings in writing ~~to the petitioner~~.

(e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

(1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Board approval.

(2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer's Favor.

(1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Board approval if applicable, unless, within 30 days of the date of that letter, the taxpayer makes a written

request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Board approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Board approval if applicable.

(g) If the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the earlier of the date the Board approves the findings, if applicable, or the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's petition will be resolved in accordance with the change, subject to Board approval if applicable.

(h) Board Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of $100,000 should be refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the

appeal will be submitted to the Board for approval of the findings as a nonappearance item, at which time:

(1) The Board may approve the findings.

(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result based on the findings of the assigned section.

(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for an appeals conference or Board hearing after which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request an appeals conference or Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.

~~(e) Agreement or Disagreement. If the petitioner agrees with the Board staff's findings, or fails to request an appeals conference, and/or oral hearing, or both a notice of redetermination will be issued in accordance with such findings.~~

~~(If the petitioner disagrees with any portion of Board staff's findings, and indicates that disagreement by requesting an appeals conference conducted under article 6 of this chapter, or by requesting or confirming a previous request for an oral hearing, Board Staff from the assigned section must prepare a summary analysis.~~

~~(f) The summary analysis is a written summary of 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 Board Staff from the assigned section believes that the Department's position should be sustained in whole or in part.~~

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

5219. Preparation and Mailing of the Summary Analysis~~ and Scheduling the Appeals Conference~~.

Before the assigned section forwards an appeal to the Board Proceedings Division for the scheduling of an appeals conference, it will first prepare a summary analysis which sets forth the taxpayer's contentions regarding the notice of determination or notice of deficiency assessment, the position of the Department that issued the notice, and the reasons the assigned section believes that the Department's position should be sustained in whole or in part. ~~Once the summary analysis is completed, Board Staff from the~~The assigned section~~ or group~~ will then mail a copy of the summary analysis to the taxpayer and forward the petition file to the Board Proceedings Division ~~and mail a copy of the summary analysis to the petitioner. An~~for the scheduling of an appeals conference~~ will then be scheduled~~ in accordance with article 6 of this chapter.

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

5220. Premature or Untimely Petition May Be Treated as an Administrative Protest.

(a) If an appeal is filed as a petition for redetermination~~ is filed~~ prior to or after the expiration of the applicable time periods provided for in section 5211, the appeal does not qualify as a valid petition for redetermination. However, such an appeal may be treated as an administrative protest if the Deputy Director of the Department that issued the notice being disputed by the taxpayer determines, in his or her discretion, that there is a reasonable basis to believe that there may be an error in the taxpayer's notice.~~premature or untimely petition may be treated as an administrative protest when determined by the Deputy Director of the Department that issued the petitioned notice~~. ~~Board Staff shall advise persons filing premature petitions to file timely petitions.~~

(b) If a premature or untimely appeal~~petition~~ is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination, except that requests for an appeals conference or Board hearing may be denied, although such requests will be liberally granted.

~~(c) Notwithstanding subdivision (b) of this section:~~

~~(1) A request for an appeals conference conducted under article 6 of this chapter may be denied on an administrative protest, however, such requests will be liberally granted; and~~

~~(2) A request for an oral hearing before the Board may be denied on an administrative protest, however, such requests will be liberally granted.~~

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

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

5222. ~~Persons Who May File~~Filing a Petition for Redetermination of a Jeopardy Determination.

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

(b) ~~The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) to file petitions for redetermination and related documents.~~ A petition for redetermination of a jeopardy determination or related document may be filed as specified in section 5216. Such documents may also be mailed or electronically transmitted to the Board at the mailing address, fax number, or email address provided on the Notice of Jeopardy Determination. ~~electronically if an electronic copy of such document is transmitted to the appropriate section identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov.~~

(c) The provisions of section 5215.6 apply to a jeopardy determination issued under the Water Rights Fee Law.

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

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

5224. Review of Petition for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination may raise any objections the taxpayer~~petitioner~~ has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

(c) The scope of the Board's review of a~~A~~ petition for redetermination of a jeopardy determination issued under the Hazardous Substances Tax Law, ~~or~~ Covered Electronic Waste Recycling Fee, or Water Rights Fee Law is limited as provided in ~~will be reviewed in accordance with~~ sections 5215, ~~and~~ 5215.4, and 5215.6, respectively.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

5225. Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

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

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

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

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

(4) To request a stay of collection activities.

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

(b) ~~The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of applications for administrative hearings and related documents.~~ An application for an administrative hearing or related document may be filed in the manner specified in section 5222 for the filing of a petition for redetermination of a jeopardy determination ~~electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov. An application for an administrative hearing and related documents may also be filed by mailing the application and related documents to the address shown on the notice of jeopardy determination, or hand delivering the application and related documents to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any application for an administrative hearing or related document filed in any manner that is not authorized by this section~~.

(c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.

~~(d) A petition for redetermination of a jeopardy determination issued under the Tax on Insurers Law or Water Rights Fee Law must be filed in accordance with section 5214 and 5215.6, respectively.~~

Note: Authority cited: Section 15606, Government Code; and Sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46601, 50120.3, 50152, 55103, 55301, 60333 and 60601, Revenue and Taxation Code. Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 50120.3, 55103 and 60333, Revenue and Taxation Code.

5230. Persons Who May File a Claim for Refund; Limitations on Certain Claims.

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

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

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

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

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

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

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

(6) The claimant is a supplier that:

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

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

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

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

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

(c) Hazardous Substances Tax Law.

(1) All claims for refund filed under Revenue and Taxation Code section 43452 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452.

(2) A claim for refund required to be forwarded to the Director of the California Department of Toxic Substances Control under paragraph (1) will not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) All claims for refund of the Childhood Lead Poisoning Prevention Fee will be acknowledged. A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

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

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

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

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

Applications for reassessment shall~~should~~ be submitted to the California Department of Public Health~~State Department of Health Services~~ in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. ~~A claim for refund based upon these grounds should be directed to the State Water Resources Control Board.~~ However, the Board will accept a claim for refund based upon such grounds ~~This prohibition does not apply~~ if the determination referred to in the claim for refund has already been set aside by the State Water Resources Control Board or a court reviewing the determination. A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code; and Section 1537, Water Code.

5233. Filing Claims for Refund.

(a) ~~The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of claims for refund and related documents.~~ A claim for refund or related document may be filed as specified in section 5216 for the filing of a petition for redetermination. ~~electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) or (c) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.~~

~~(b)~~ However, a claim~~Claims~~ for refund or~~and~~ related document~~s~~ filed under the Sales and Use Tax Law must be directed to the section listed below, and, if mailed or electronically transmitted (via email or facsimile), must ~~may also~~ be mailed or transmitted to the:

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

ADRS@boe.ca.gov
(916) 445-2202

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

~~(1) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Covered Electronic Waste Recycling Fee, Integrated Waste Management Fee Law, Tire Recycling Fee, Occupational Lead Poisoning Prevention Fee, Water Rights Fee Law, and Marine Invasive Species Fee Collection Law.~~

~~Environmental Fees Division, MIC: 57~~
~~Audit Unit~~
~~State Board of Equalization~~
~~P.O. Box 942879~~
~~Sacramento, CA 94279-0057~~

~~(2) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.~~

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

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

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

~~(4) Timber Yield Tax Law.~~

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

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

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

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

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, ~~Board Staff from~~ the assigned section will recommend that the claim be:

(1) Granted in its entirety.

(2) Granted in part and denied in part.

(3) Denied in its entirety.

(b) If ~~Board Staff in~~ the assigned section ~~or group~~ recommends that a claim be granted in its entirety, it~~Board Staff~~ will:

(1) Send the taxpayer~~claimant~~ a notice of refund showing the amount to be refunded (subject to the Board approval requirements of section 5237, if applicable); and

(2) Have a refund warrant prepared and sent to the taxpayer~~claimant~~ after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If ~~Board Staff in~~ the assigned section recommends that any claim be denied in whole or in part, it~~Board Staff~~ will send the taxpayer~~claimant~~ a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Board approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Board approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

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

~~(1) If the claimant agrees with a recommendation to grant a partial refund, Board Staff in the appropriate section will send the claimant a notice of refund showing the partial refund (subject to the requirements of section 5237). Thereafter, Board Staff in the assigned section or group will have a refund warrant prepared and sent to the claimant, but only after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.~~

~~(2) If the claimant agrees with a recommendation to deny a refund in its entirety, Board Staff in the assigned section will send the claimant a notice of denial of claim for refund.~~

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

~~(A) Appeals conference conducted under article 6 of this chapter; and/or~~

~~(B) Oral hearing before the Board.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

5237. Board Approval Required for Refunds Over $100,000.

(a) If ~~Board Staff in~~ the assigned section ~~or group~~ determines that a refund in excess of $100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board for approval except where such a claim is for a duplicate or erroneous payment made through the electronic funds transfer program, where such a claim is one for overpayment of diesel fuel tax filed under Revenue and Taxation Code section 60501 or 60502, or where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part~~a refund is warranted and in what amount~~, and may~~will~~ do so without further documentation or testimony from the claimant. Where the Board approves a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of $100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

~~(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.~~

(~~f~~e) If ~~Board Staff in~~ the assigned section determines that a refund in excess of $100,000 should be denied, and the claimant has not requested~~disagreed with such determination by requesting~~ an appeals conference with the Appeals Division or Board~~oral~~ hearing ~~before the Board~~, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval ~~as provided in subdivision (a)~~. If the Board approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(g) If the assigned section~~Board Staff~~ determines that a refund in excess of $50,000 should be granted and the determination is not required to be submitted to the Board, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

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

5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief ~~(Sales and Use Tax, Including State-Administered Local Sales, Transactions, and Use Taxes)~~.

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

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

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

(1) In writing.

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

(3) Specifically request innocent spouse ~~tax~~ relief.

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

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

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

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1, subdivision (e), or section 4903, subdivision (e).

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

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

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

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, ~~and~~ 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.

5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.

(a) ~~Assignment and~~ Review. ~~Once received, a request for innocent spouse relief will be assigned to Board Staff in~~ When the Offer in Compromise Section receives a request for innocent spouse relief, it~~who~~ will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section.

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

(3) Evaluate the merits of the request.

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

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

(c) Denied Request for Innocent Spouse Relief. If ~~Board Staff in~~ the Offer in Compromise Section denies a request for innocent spouse relief, ~~Board Staff~~it will:

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

(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), ~~Board Staff in~~ the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.

(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, ~~Board Staff in~~ the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section~~Board Staff~~ will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, Revenue and Taxation Code. Reference: Section 6456, 7202, 7203, 7261, 7262 and 7270, Revenue and Taxation Code.

5242. Requests for Reconsideration by the Board.

(a) If a request for other equitable relief is denied, the individual requesting relief may request that the denial be reconsidered by the Board at a Board~~an oral~~ hearing as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). A request for a Board~~an oral~~ hearing may be denied on a request for other equitable relief, however, requests will be liberally granted.

(b) A Board~~An oral~~ hearing may be requested by following the instructions contained in~~on~~ the denial letter described in section 5241, subdivision (d).

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

Note: Authority cited: Section 15606, Government Code; and Section 7051, Revenue and Taxation Code. Reference: Section 6456, 7202, 7203, 7261, 7262 and 7270, Revenue and Taxation Code.

5247. Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

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

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

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

(3) Written advice in the form of an annotation or legal ruling of counsel~~given in a prior audit of that person~~ under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (d) or 4902, subdivision (d); or

(4) Written advice requested by a trade or industry association or franchisor, on the person's behalf, under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (e) or section 4902, subdivision (e).

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

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

(d) A request for relief due to reasonable reliance upon written advice must:

(1) Be in writing;

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

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

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

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

ARTICLE 5. ~~CLAIMS (INQUIRIES) OF INCORRECT OR NON DISTRIBUTION~~PETITIONS FOR REALLOCATION OF LOCAL AND DISTRICT TAXES

5250. ~~Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.~~

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

~~(b) The Board encourages the use of electronic means for the filing of claims and inquiries. A claim or inquiry, or supporting document, may be filed electronically under this section if it is transmitted to the Allocation Group in accordance with instructions provided on the Board's~~

~~website at www.boe.ca.gov. A claim or inquiry, or supporting document, may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:~~

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

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

~~(c)~~ A petition for reallocation of local or district tax must be filed~~claim or inquiry will be acknowledged~~ and shall be reviewed in accordance with the procedures contained in California Code of Regulations, title 18, section 1807 or 1828.

Note: Authority cited: Section 15606, Government Code; and Sections 7202, 7203, 7261, 7262, 7270, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

ARTICLE 5.5: CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT APPEALS AND PETITIONS FOR RECOVERY OF SEIZED CIGARETTE AND TOBACCO PRODUCTS.

Regulation 5255. Cigarette and Tobacco Products Licensing Act Appeals.

Petitions for redetermination regarding the denial of licenses to sell cigarette and tobacco products and appeals of Warning Notices and Notices of Violation issued under the Cigarette and Tobacco Products Licensing Act of 2003 must be filed in accordance with chapter 9.5 (commencing with section 4500) of division 2 of title 18 of the California Code of Regulations and shall be reviewed as provided therein.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22974.7, 22977.2, 22978.7, 22979 and 22979.7, Business and Professions Code.

Regulation 5256. Petitions for Recovery of Seized Cigarette and Tobacco Products.

Petitions to request the recovery of cigarette and tobacco products seized pursuant to the Cigarette and Tobacco Products Tax Law (Rev. & Tax. Code, § 30001 et seq.) or the Cigarette and Tobacco Products Licensing Act of 2003 (Bus. & Prof. Code, § 22970 et seq.) must be filed in accordance with chapter 9.5 (commencing with section 4500) of division 2 of title 18 of the California Code of Regulations and shall be reviewed as provided therein.

Note: Authority cited: Section 22971.2, Business and Professions Code; and Section 30451, Revenue and Taxation Code. Reference: Sections 22974.3, 22978.2 and 22980.2, Business and Professions Code; and Section 30438, Revenue and Taxation Code.

5262. Requests to Reschedule or Postpone Appeals Conferences.

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

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097
ConferenceInfo@boe.ca.gov
(916) 324-3984

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

(b) Rescheduling. An appeals conference will be rescheduled only to a date within 30 days of the previously scheduled conference date, and only for a video or telephone conference or an in-person conference either at the Board's headquarters or at an office in southern California designated by the Board Proceedings Division. A party's initial written request to reschedule an appeals conference will be granted. A party's subsequent written request to reschedule an appeals conference will only be granted if the Chief of Board Proceedings determines that there is reasonable cause.~~ If there is a scheduling conflict for an appeals conference scheduled to be held in-person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled with the same conference holder generally within 30 days to accommodate the parties. At the discretion of the Chief Counsel, a second rescheduling may be allowed. Board Proceedings Staff may reschedule an appeals conference scheduled to be heard at a district office to a different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (c)~~.

(c) Postponement. An appeals conference will not be rescheduled to a date more than 30 days after the previously scheduled conference date, but may, instead, be postponed. ~~Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being~~When an appeals conference is postponed, the appeal is placed back into the inventory of unassigned cases and reassigned to a conference holder at a later date. When that appeal is thereafter scheduled for an appeals conference, the Board Proceedings Division

will notify the taxpayer as specified in section 5161. If a party files a written request for~~requests~~ a postponement of an appeals conference by~~to be held at a district office within 15 days after~~ the return date specified in~~of~~ the Response to Notice of Appeals Conference form~~sent by Board Proceedings Staff and has sufficient justification for requesting the postponement~~, the request will be granted if the Chief of Board Proceedings determines that there is reasonable cause~~may allow the postponement~~. If a party requests a postponement of the appeals conference~~later than 15 days~~ after the return date specified in~~of~~ the Response to Notice of Appeals Conference form, or files a second or subsequent request for a postponement, the request will be granted only if the Chief of Board Proceedings determines that there is reasonable cause and that the postponement will not unduly delay the appeal.~~and can demonstrate extreme hardship (e.g., illness, death, disaster) for requesting the postponement, the Chief Counsel may allow the postponement. The Chief Counsel may only grant a party's second or subsequent request to postpone a previously postponed appeals conference if the party requesting postponement can demonstrate extreme hardship, however, a previously postponed appeals conference may be rescheduled as provided in subdivision (b).~~

(d) The Board Proceedings Division may also reschedule or postpone an appeals conference at the request of the Appeals Division for reasonable cause, including unavailability of the scheduled conference holder due to illness or because of the departure of the scheduled conference holder from the Appeals Division.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5264. Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Additional Submissions~~Failure to Appear~~.

(a) ~~Appeals Staff.~~ The appeals conference will be held by an Appeals Division conference holder who~~Appeals Staff that~~ has not had any prior involvement in the appeal~~matter~~ being discussed at the appeals conference. It is the responsibility of the Appeals Division~~Appeals Staff~~ to take a

fresh look at the law and the facts and make the Appeals Division's~~Appeals Staff's~~ own objective recommendation.

(b) ~~Department Representative.~~ Generally, one or more representatives~~Board Staff~~ from the appropriate Department will be present at the appeals conference to provide the Department's position in the appeal~~reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted~~. Where appropriate, other Board Staff may be present at the appeals conference.

(c) ~~Other Agency Representatives.~~ A representative from another state agency may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency. Such a representative will provide his or her agency's position in the appeal~~reasons for determining that the tax or fee at issue is due or should not be refunded~~.

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

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

(~~2~~1) If any party requests permission to submit additional written arguments, ~~and~~ documentary evidence, or both after ~~at~~ the appeals conference and the conference holder concludes that the additional submission should be accepted, he or she will~~Appeals Staff may~~ grant that party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, ~~after the appeals conference~~ to submit such arguments and evidence from the date the request is made. The conference holder will also grant the other party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, to respond after that submission.~~If there is sufficient justification, Appeals Staff may also grant the requesting party an additional 15 days to submit additional written arguments and documentary evidence. Appeals Staff may not grant further extensions of time to submit additional written arguments and documentary evidence without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee.~~

(2) The Appeals Division may, at any time before the appeal is final, request additional written argument, analysis, or documentation from any party, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

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

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

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

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5266. Appeals Staff Recommendations; Requests for Reconsideration; Requests for Board~~Oral~~ Hearings; Supplemental Decision and Recommendation.

(a) The Appeals Division~~Staff~~ may make the following recommendations in the Decision and Recommendation:

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

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

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

(4) That ~~Board Staff in~~ the appropriate Department perform a reaudit~~re-audit the issues raised in the petition, claim, or request for relief~~ as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the appeal~~petition, claim, or request for relief~~ in whole or in part or a reaudit, the taxpayer~~petitioner, claimant or person requesting relief~~ may submit, within 30 days after the issuance of the Decision and Recommendation or the issuance of the letter from the Appeals Division explaining the results of the reaudit:

(1) ~~File a~~A written request for reconsideration to the Appeals Division~~Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued~~. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the taxpayer disagrees with the Decision and Recommendation, the results of the reaudit, or both; or

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

~~(A) If an oral hearing is or was previously requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.~~

(~~B~~A) If a Board~~an oral~~ hearing has been requested, but the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or it is unclear whether the taxpayer~~petitioner, claimant or person requesting relief~~ disagrees with any portion of its Decision and Recommendation, the Appeals Division may ask the taxpayer to confirm the request for Board hearing. ~~(or supplemental Decision and Recommendation) Board Staff will:~~

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

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

(B) If a Board hearing is requested and, if applicable, confirmed, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

~~(3) Agree with the Decision and Recommendation.~~

(c) If the Decision and Recommendation recommends that the appeal~~a petition, claim, or request for relief~~ be granted in whole or in part or a reaudit~~, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:~~

(1) ~~File~~The Department and any state agency represented at the appeals conference may submit a written request for reconsideration to the Appeals Division~~for Appeals Staff to reconsider the petition, claim, or request for relief~~ within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit~~was issued~~. The request must identify the specific issue or issues for which

reconsideration is sought, and must explain the reasons the Department or other state agency disagrees with the Decision and Recommendation, the results of the reaudit, or both.

~~(2) Agree with the Decision and Recommendation.~~

(~~d~~2) ~~Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any~~Any state agency represented at the appeals conference may submit~~file~~ a written request for a Board~~an oral~~ hearing to the Board Proceedings Division,~~before the Board no later than~~ within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit~~was issued~~. If a Board~~an oral~~ hearing is requested, the Board Proceedings Division~~Staff~~ will schedule a Board~~an oral~~ hearing~~ before the Board~~, unless that request is waived. However, a Board~~an oral~~ hearing will not be provided if a request for a discretionary Board~~oral~~ hearing is denied.

(~~e~~d) If a party submits a timely~~If Appeals Staff receive a~~ request for reconsideration, as provided in subdivisions (b) and (c)(1) of this section, the Appeals Division ~~Appeals Staff~~ will prepare a Supplemental Decision and Recommendation to respond to~~addressing any new information provided in~~ the request for reconsideration and address any other matter the Appeals Division deems warranted~~, copies of which will be sent to all parties~~. The Appeals Division~~Appeals Staff~~ may also issue a Supplemental Decision and Recommendation when it deems it appropriate to do so, including where no party has filed a timely request for reconsideration~~as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation~~. For example, while the Appeals Division is not required to do so, it may issue a Supplemental Decision and Recommendation to respond to a request for reconsideration submitted in response to a Supplemental Decision and Recommendation or otherwise filed more than 30 days after the issuance of the Decision and Recommendation or the letter explaining the results of a reaudit.

(1) When the Appeals Division receives a request for reconsideration, it will send a letter to acknowledge receipt of the request and, if the request had not been submitted within the period specified in subdivisions (b) and (c)(1) of this section, to advise the parties whether the Appeals Division will issue a Supplemental Decision and Recommendation in response to the request. Where the Appeals Division will issue a Supplemental Decision and Recommendation, the letter will offer the other party the opportunity to respond to the request for reconsideration. Where the Appeals Division decides to issue a Supplemental Decision and Recommendation where no party has submitted a request for reconsideration, it will promptly send a letter to the parties to notify them of the forthcoming Supplemental Decision and Recommendation.

(2) The Appeals Division may request additional written argument, analysis, or documentation from any party if it determines that the information may be relevant to the preparation of a Supplemental Decision and Recommendation, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

(3) The Appeals Division must issue a Supplemental Decision and Recommendation within 90 days after the submission of any additional documents requested under paragraph (2), a copy of which will be sent to each party. The Chief Counsel may allow additional time beyond the 90 days to prepare a Supplemental Decision and Recommendation; however, both the request for additional time and the granting of additional time must be in writing and copies provided to each party to the appeal.

(4) A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c), as relates to the issues addressed in the Supplemental Decision and Recommendation, and may make the recommendations listed in subdivision (a) above.

(5) The provisions for requesting a Board hearing following the issuance of a Decision and Recommendation set forth in subdivisions (b) and (c)(2) of this section are applicable to the issuance of a Supplemental Decision and Recommendation.

~~(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds $100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.~~

~~(g) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds $50,000 be refunded, credited or canceled and the recommendation does not require Board approval, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds $15,000, which was determined pursuant to the Integrated Waste Management Fee Law, be canceled and the recommendation does not require Board approval, the proposed determination to cancel such amount must be available as a public record for at least 10 days prior to its effective date.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452,

43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

(1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;

(2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and

(3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding $100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of $100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Board for approval as a nonappearance item, at which time:

(1) The Board may approve the recommendation.

(2) The Board may exercise its discretion to make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer, but may do so with respect to an appeal for which the taxpayer has a statutory right to a Board hearing only if the result will be more favorable to the taxpayer than the result recommended by the Appeals Division.

(3) Where the appeal is one for which the taxpayer has a statutory right to a Board hearing, the Board may order that the taxpayer be offered the opportunity for a Board hearing after

which the Board will make its own determination as to whether the appeal should be granted, denied, or granted in part and denied in part. The Board Proceedings Division will thereupon send a letter to the taxpayer advising that the taxpayer may request a Board hearing within 30 days of the date of the letter, and otherwise the matter will be presented to the Board for decision. If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing; otherwise, the appeal will be presented to the Board for decision as a nonappearance item, at which time the Board will make a determination as to whether the appeal should be granted, denied, or granted in part and denied in part, without further documentation or testimony from the taxpayer.

(d) If a Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation, recommends that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding $15,000 be canceled, or otherwise recommends that an amount exceeding $50,000 be refunded, credited, or canceled, and the recommendation does not require Board approval, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.

~~(a) A Notice of Redetermination, Statement of Account, Notice of Refund, or Denial of Claim will be issued based on a Decision and Recommendation if:~~

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

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

~~(3) The petitioner, claimant, or person requesting relief's request for a discretionary oral hearing is denied.~~

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

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

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

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

~~(2) Appeals Staff recommends imposing a related liability on:~~

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

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

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

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

~~(c) For purposes of this section, references to "Decision and Recommendation" include Supplemental Decisions and Recommendations described in section 5266.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5270. Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing.

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

(b) Requirements for Briefs.

(1) Timeliness. All briefs must be filed within the time periods provided in this section unless an extension is granted by the Chief Counsel in accordance with section 5271.

(2) Filing. All briefs permitted or required to be filed by this section shall be filed in accordance with section 5570 of this division.

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

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

~~Chief of Board Proceedings, MIC: 80~~
~~State Board of Equalization~~
~~P.O. Box 942879~~
~~Sacramento, CA 94279-0080~~

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

~~(D) Notice.~~ All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Department represented at the appeals conference ~~under section 5264, subdivision (b)~~.

(3) Format. Briefs may not exceed:

(A) 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced;

(B) 8 1/2" by 11" pages;

(C) Printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent;

(D) Excluding exhibits.

(4) The Chief Counsel may extend the page limit in paragraph (3) prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event a brief does not conform to the form and page limits specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party will be given 10 days to comply with the form and page limits, and failure to do so within the 10-day period constitutes a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing under section 5266 may file an opening brief. An opening brief must contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs must be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

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

(e) Response to Reply Brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief may only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief must be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing. The Chief of Board Proceedings must reject a response to a reply brief that exceeds the scope permitted by this subdivision.

(f) Additional Briefing.

(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions are permitted only by order of the Board, on the subject matter specified, and within the time limits prescribed by the Board.

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

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

(g) Untimely Briefs ~~Filed by Unrepresented Parties~~. Notwithstanding subdivisions (c), (d), and (e), a party ~~who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief,~~ may, at the discretion of the Board, submit a brief on the day of the party's Board hearing. Although the Board may permit a party to submit a brief at the party's Board hearing, the Board is not required to delay or postpone the party's Board hearing in order to consider the brief at the hearing.~~A party who receives representation from a Board-approved pro bono or clinical program is considered to be unrepresented for purposes of this subdivision.~~

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

ATTACHMENT C

5311. Definitions.

~~(a) The definitions contained in sections 5511 and 5512 of this division apply to this chapter unless otherwise indicated.~~

~~(b)~~ The following definitions ~~also~~ apply to this chapter:

(~~1~~a) "Appeals Conference" means a conference conducted by the Appeals Division, at which all parties are entitled to attend and at which issues raised in the petition are to be discussed, and if possible, resolved.

(~~2~~b) "Appraisal Data Report" means, for state assesses subject to the provisions of article 2 of this chapter, a document and data sheet that accompany the Board's value determination required to be mailed to each state assessee between the first day of January and the first day of June of each year. The appraisal data report sets forth the State-Assessed Properties Division's value recommendation to the Board and a summary of the State-Assessed Properties Division's value indicators.

(~~3~~c) "County-Assessed Properties Division" means the unit of the Board's Property and Special Taxes Department responsible for making determinations of eligibility for organizational clearance certificates and supplemental clearance certificates~~.~~

~~(4) "County-Assessed Properties Division" means~~ or the unit of the Board's Property and Special Taxes Department responsible for reviewing the assessment practices of county assessors under Government Code section 15640 et seq., where appropriate.

~~(5) A "Hearing Summary" is a written document intended to assist the Board in its consideration of and decision on a petition for which an oral hearing has been scheduled. The Hearing Summary will contain:~~

~~(A) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;~~

~~(B) A discussion of the appeals conference, if one was held, including any additional information, stipulations, and resolutions resulting therefrom;~~

~~(C) The Appeals Division's analysis and comments, including questions to be posed to the parties; and~~

~~(D) Conclusions and recommendations of the Appeals Division after applying the relevant law to all of the relevant information.~~

(~~6~~d) "Organizational Clearance Certificate" means a certificate issued by the Board under Revenue and Taxation Code section 254.6.

(~~7~~e) "Party" means:

(~~A~~1) For petitions described in section 5310, subdivision (a)(1), the petitioner and the State-Assessed Properties Division;

(~~B~~2) For applications described in section 5310, subdivision (a)(2), the petitioner and the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(~~C~~3) For petitions described in section 5310, subdivision (a)(3), the petitioner and the County-Assessed Properties Division;

(~~D~~4) For petitions described in section 5310, subdivision (a)(4), the petitioner and the County-Assessed Properties Division.

(~~8~~f) "Petition" means a petition or application described in section 5310.

(~~9~~g) "Petitioner" means an individual or entity that filed a petition described in section 5310, and the individual or entity's authorized representative where appropriate, and includes:

(~~A~~1) A county, city, city and county, or municipal corporation that filed a petition with the Board under subdivision (g) of section 11 of article XIII of the California Constitution.

(~~B~~2) The claimant of an Organizational Clearance Certificate for the property tax welfare exemption under Revenue and Taxation Code section 254.6 or Supplemental Clearance Certificate under Revenue and Taxation Code section 214, subdivision (g). For purposes of a petition from the denial of a Supplemental Clearance Certificate under Revenue and Taxation Code section 214, subdivision (g), the limited partnership is the petitioner.

(~~C~~3) The county assessor and the taxing agency that filed a petition described in section 5310, subdivision (a)(4).

(~~10~~h) "Respondent" means:

(~~A~~1) For petitions described in section 5310, subdivision (a)(1), the State-Assessed Properties Division;

(~~B~~2) For applications described in section 5310, subdivision (a)(2), the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(~~C~~3) For petitions described in section 5310, subdivision (a)(3), the County-Assessed Properties Division;

(~~D~~4) For petitions described in section 5310, subdivision (a)(4), the County-Assessed Properties Division.

(~~11~~i) "Sample finding" refers to the sampling of assessments from the county assessment roll under Government Code section 15640, subdivision (c).

~~(12) "Summary Decision" means a written document intended to assist the Board in its consideration of and decision on a petition without a Boardan oral hearing. The Summary Decision must contain:~~

~~(A) Sufficient facts, contentions, law, and evidence to enable the Board to evaluate the merits of the petition;~~

~~(B) A discussion of the appeals conference or other Appeals Division review, including any findings, stipulations, and resolutions resulting therefrom; and~~

~~(C) The Appeals Division's analysis and recommended decision.~~

(~~13~~j) "Supplemental Clearance Certificate" means a certificate issued by the Board under Revenue and Taxation Code section 214, subdivision (g).

(~~14~~k) "Tax and Fee Programs Division" means the unit of the Board's Legal Department responsible for representing the Department, as defined in chapter 5 of this division~~Chapter 5, General Board Hearing Procedures~~, in responding to petitions described in section 5310, subdivision (a)(1), (a)(3), and (a)(4).

(~~15~~l) "State-Assessed Properties Division" means the unit in the Board's Property and Special Taxes Department responsible for determining value indicators and recommending values of property under the Board's assessment jurisdiction and for administering the Board's state assessment responsibilities.

(~~16~~m) "State-Assessed Properties Division's Analysis" means a written summary that sets forth an analysis of all of the issues raised in the petition and the State-Assessed Properties Division's recommendation.

(~~17~~n) "Written Findings and Decision" means a document prepared by the Appeals Division that sets forth the Board's decision on a petition and the supporting reasons therefor.

Note: Authority cited: Sections 15606 and 15640, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840 and 11251, Revenue and Taxation Code.

5322. Information Available to Assessees; Assessment Factor Hearings.

(a) Each year, the State-Assessed Properties Division must perform capitalization rate studies and develop value indicators applicable to the valuation of the unitary property of each state assessee. The capitalization rate study, the value indicators, and all other appraisal data, calculations, and information developed or used by the State-Assessed Properties Division with

respect to the valuation of the assessee's state-assessed property must be made available to the state assessee upon a written request to the Chief of the State-Assessed Properties Division.

(b) At the discretion of the Board, but generally at the Board's January or February meeting in Sacramento, the Board may annually hold Assessment Factor Hearings to receive public testimony on issues relating to capitalization rates and other factors affecting values of state-assessed property and private railroad cars. At least 30 days before the Assessment Factor Hearing date, state assessees and private railroad car taxpayers, or other persons wishing to be listed on the agenda, must notify the Chief of Board Proceedings if they intend to make an oral presentation at the hearing. Testimony of persons who do not notify the Chief of Board Proceedings as set forth above may be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessees, private railroad car taxpayers, or other persons may submit written presentations to the Chief of Board Proceedings no later than the date of the hearing.

(c) At the discretion of the Board, but generally at the Board's April meeting in Sacramento, every state assessee may be given an opportunity to make an oral presentation to the Board in a public meeting regarding the value indicators to be used to value its state-assessed unitary property, or the value of its property. In lieu of an oral presentation, a state assessee may submit a written presentation to the Chief of Board Proceedings no later than the date of the hearing.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 110, 721, 721.5, 722, 723, 724, 725, 731, 746, 11251, 11291, 11292 and 11293, Revenue and Taxation Code.

5323.6. Submission of Petition.

The original petition and supporting documents, together with 10 copies thereof, must be mailed ~~submitted by mail or in person~~ to the Chief of Board Proceedings at the address~~as~~ provided in section 5570~~5335~~, hand delivered to the Board's headquarters office at 450 N Street, in Sacramento, California, or electronically transmitted (e.g., facsimile, e-mail, etc.) to the Chief of Board Proceedings at the email address or fax number provided in section 5570 or in accordance with instructions provided on the Board's website at www.boe.ca.gov. If the original petition and supporting documents are provided in an electronic format, then the petitioner is not required to provide 10 copies thereof.~~A compact disc containing an electronic file conforming to the requirements of the Board Proceedings Division will be accepted in lieu of the copies if submitted with the original petition.~~

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Section 741, Revenue and Taxation Code.

5323.8. Duplicate Petitions.

(a) In the event duplicate petitions are filed with the Chief of Board Proceedings, the Chief of Board Proceedings will determine which petition was authorized by the petitioner.

(b) The Chief of Board Proceedings will contact the petitioner ~~and/~~or the agent who filed the duplicate petitions, or both, by telephone, ~~electronic~~ email, or facsimile ~~machine~~ and also by registered or certified mail with return receipt, and will allow 10 days for a written response. In the event no written response is received after 10 days, the first petition received will be accepted and any~~all~~ other petitions will be rejected as a duplicate petitions.

(c) For purposes of this regulation, "duplicate petition" means a petition filed by the petitioner, or its agent on its behalf, subsequent to the petition previously filed by or on behalf of the same petitioner for the same assessment year at issue. A subsequent petition that seeks to correct or supplement a previously filed petition will not be considered a duplicate petition for purposes of this regulation.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Section 741, Revenue and Taxation Code.

5324. Timeliness of Petition.

(a) A petition is considered filed timely if it is mailed or delivered in accordance with ~~addressed and transmitted to the address set forth in~~ section 5323.6~~5335,~~ or received by the Board Proceedings Division~~or deposited personally at the headquarters office of the Board in Sacramento,~~ no later than the date provided in section 5323 or, if an extension is received, the date provided in section 5324.2.

(b) Timely performance and mailing date will be determined under the provisions of chapter 5 of this division.

(c) If the Chief of Board Proceedings determines that the Board requires original versions of documents filed ~~by~~ electronically ~~or facsimile transmission~~, the original documents must be mailed to the Board Proceedings Division at~~or delivered to~~ the address set forth in section 5570~~5335~~ or hand delivered to the Board's~~deposited personally at the~~ headquarters office at 450 N Street, in Sacramento, California, ~~of the Board in Sacramento~~ no later than the business day immediately following the Chief of Board Proceedings request for original versions of such documents~~the electronic or facsimile transmission date~~.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 733, 741, 743, 746, 747, 758, 759, 11338 and 11339, Revenue and Taxation Code.

5325.6. Prehearing Review of All Other Petitions.

(a) The Appeals Division will review and prepare a Hearing Summary or Summary Decision for all petitions for which the Tax and Fee Programs Division does not prepare the recommendation described in section 5325.4.

(1) A Hearing Summary must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed Board hearing;

(B) A discussion of the appeals conference, if one was held, including any additional information, stipulations, and resolutions resulting therefrom;

(C) The Appeals Division's analysis and comments, including questions to be posed to the parties; and

(D) Conclusions and recommendations of the Appeals Division after applying the relevant law to all of the relevant information.

(2) A Summary Decision must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to evaluate the merits of the petition;

(B) A discussion of the appeals conference or other Appeals Division review, including any findings, stipulations, and resolutions resulting therefrom; and

(C) The Appeals Division's analysis and recommended decision.

(b) If there has been a partial or complete resolution of issues between petitioner and the State-Assessed Properties Division after the Appeals Division has issued its Hearing Summary or Summary Decision, the Appeals Division will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary or Revised Summary Decision will state:

(1) The issues which have been resolved;

(2) The Appeals Division's~~Staff's~~ revised analysis and/or recommendation; and

(3) The issues remaining for decision by the Board, if any.

The case will remain on the agenda for Board action.

(c) At any time, the Appeals Division may request additional information or analysis from the petitioner or the State-Assessed Properties Division to assist in resolving any issue to be decided by the Board.

Note: Authority cited: Section 15606, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 741, 747 and 11340, Revenue and Taxation Code.

5332. Time of Filing of Application.

(a) If any county, city, city and county, or municipal corporation wants to secure a review, equalization, or adjustment of the assessment of its property by the Board under subdivision (g) of section 11 of article XIII of the California Constitution, it must file an application with the Board on or before the later of:

(1) July 20 of the year in which the assessment is made if the assessment appealed is made during the regular period for such assessments; or

(2) Within two weeks after the completion and delivery by the county assessor of the local roll containing the assessment to the county auditor as provided in Revenue and Taxation Code section 617.

(b) If the assessment appealed is made outside the regular period for such assessments, the application must be filed with the Board within 60 days from the date the tax bill was mailed to the applicant.

(c) An application is filed timely if it is mailed or delivered~~to~~ in accordance with section 5335 or received by the Board Proceedings Division~~at the mailing address provided in section 5335~~ within the time specified by this section.

(d) Failure to provide a timely application bars the applicant from relief under subdivision (g) of section 11 of article XIII of the California Constitution.

Note: Authority cited: Article XIII, Section 11, California Constitution; and Section 15606, Government Code. Reference: Section 1840, Revenue and Taxation Code.

5332.6. ~~Submission~~Filing of Application and Board-Appraised Property.

(a) The application and supporting documents, including the proof of filing under subdivision (b), must be ~~submitted by mail or in person to the Chief of Board Proceedings as provided in~~ filed in accordance with section 5335.

(b) A copy of the application, together with its separate statement of legal authorities, must also be filed by the applicant with the county assessor whose assessment is questioned and with the county board of supervisors. A proof of filing with the county assessor and the county board of supervisors must be enclosed with the application filed with the Board.

(c) Board-Appraised Property. If a property that has been appraised by the State-Assessed Properties Division becomes the subject of a proceeding under this article, both parties to the proceedings will be informed of the fact that the appraisal has been made.

(1) Each party, upon request, will have access to the appraisal records.

(2) Either party or the Board may call the State-Assessed Properties Division as a witness and may offer the appraisal records as an exhibit.

(d) A party desiring to call an employee of the State-Assessed Properties Division as a witness must notify the Chief of Board Proceedings of its intention to call such witness at least ten days before the Board hearing.

Note: Authority cited: Article XIII, Section 11, California Constitution; and Section 15606, Government Code. Reference: Section 1840, Revenue and Taxation Code.

5333. Time for Filing of Petitions.

(a) A petitioner has 60 days from the date of mailing of a final notice denying a claim for an Organizational Clearance Certificate or Supplemental Clearance Certificate or from the date of mailing of a notice of revocation of an Organizational Clearance Certificate or, Supplemental Clearance Certificate to file a petition objecting to ~~the Board for hearing on~~ the denial of the claim or revocation of the certificate.

(b) A petition is timely if it is mailed or delivered in accordance with section 5335~~to~~ or received by the Board Proceedings Division~~at the headquarters office of the Board~~ within the time specified by subdivision (a).

Note: Authority cited: Section 15606, Government Code. Reference: Sections 214, 254.6 and 270, Revenue and Taxation Code.

5333.4. Contents of Petition.

The petition must:

(a) Be in writing and state all of the specific grounds upon which qualification is claimed;

(b) Include all documents the petitioner wishes the Board to consider in deciding the petition;

(c) Indicate whether a Board~~an oral~~ hearing is requested~~desired~~;

(d) Indicate whether a written findings and decision is requested~~desired~~; and

(e) Be signed by petitioner or an authorized representative of the petitioner. The Chief Counsel may require the representative to demonstrate the representative's authority to represent the petitioner.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 214, 254.6 and 270, Revenue and Taxation Code.

5333.6. ~~Submission~~Filing of Petition.

The original petition and supporting documents must be filed in accordance with~~submitted by mail or in person to the Chief of Board Proceedings as provided in~~ section 5335.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 214, 254.6 and 270, Revenue and Taxation Code.

5334. Time for Filing of Petitions.

(a) Any county assessor may file a petition to appeal appraisals made within his or her county where differences have not been resolved before completion of the field review of county assessment procedures by the County-Assessed Properties Division.

(b) A petition must be filed within 30 days from the date that the Deputy Director of the Property and Special Taxes Department mails the final notice of sample finding to the county assessor.

(c) The determination contained within the final notice of sample finding becomes final if a petition is not filed within the time period provided in subdivision (b).

(d) A petition or supporting document is timely filed if it is mailed or delivered in accordance with~~to or received at the address provided in~~ section 5335 or received by the Board Proceedings Division within the time specified in subdivision (b).

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code.

5334.4. Contents of the Petition.

(a) The petition must:

(1) Be in writing;

(2) Identify the assessor's parcel number or assessment number and sample item number the county assessor is contesting;

(3) State the specific issue(s) being appealed and the specific adjustment requested;

(4) Indicate whether a Board~~an oral~~ hearing is requested~~desired~~; and

(5) Be signed by the county assessor or his or her authorized representative.

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

(c) The county assessor is required to submit any supporting evidence with the petition.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code.

5334.6. ~~Submission~~Filing of Petition.

The petition and supporting documents must be filed in accordance with~~submitted by mail or in person to the Chief of Board Proceedings as provided in~~ section 5335.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code.

5335. ~~Submission of~~Filing Petitions, Briefs, and Related Documents.

(a) Original petitions, briefs, and related documents must be mailed to the Board Proceedings Division at the mailing address specified in section 5570 of this division or hand delivered to the Board's headquarters office at 450 N Street, in Sacramento, California~~submitted by mail or in person to the Chief of Board Proceedings, at the mailing address provided in chapter 5 of this division~~.

(b) Petitions, briefs, and related documents may be ~~filed~~ electronically transmitted (e.g., facsimile, e-mail, etc.) to~~under this section only if they are transmitted to and received by~~ the Chief of Board Proceedings at the email address or fax number provided in section 5570 or in accordance with instructions provided on~~by~~ the Board's website~~, including, but not limited to, the provisions of chapter 5 of this division~~.

(c) Applications and Other Submissions. For applications described in section 5310, subdivision (b), both the petitioner and the Respondent must file their submissions with the other party and enclose a proof of filing with the other party in each submission to the Board Proceedings Division.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Section 15640, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5336.5. Perfecting a Petition.

(a) Generally. The briefing and resolution of a petition cannot begin until the petition is perfected. For purposes of this part, a petition is "perfected" if it contains substantially all the information required by section 5332.4, 5333.4, or 5334.4, whichever is applicable. In addition, a petition is not "perfected" until it contains sufficient information to identify and contact each petitioner or authorized representative, along with the signature of each petitioner or authorized representative.

(b) Time to Perfect the Petition. If the Chief of Board Proceedings receives an incomplete petition, the Chief of Board Proceedings will notify the petitioner in writing of the need to perfect the petition. The notification will be included in the acknowledgement letter issued under

section 5336, subdivision (b). The notification will explain what information is necessary to perfect the petition.

(1) The petitioner must perfect the petition not later than 30 days from the date of the acknowledgement letter. The Chief of Board Proceedings may extend the deadline for perfecting the petition upon a showing of reasonable cause or upon written agreement by the parties. All parties must be notified in writing of any extension.

(2) Perfecting the petition is accomplished by filing~~submitting~~ the information necessary to perfect the petition in accordance with section 5335~~to the Chief of Board Proceedings~~.

(3) If the petitioner fails to perfect the petition within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the petition must be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority cited: Sections 15606 and 15640, Government Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270 and 1840, Revenue and Taxation Code.

5345. Finality of Board Action; Written Findings and Decision.

(a) The following provisions apply to ~~all~~ petitions filed under this chapter:

(1) The Board's decision ~~of the Board upon a property tax~~on a petition described in section 5310, subdivision (a)(1) or (2), is final. The Board's decision on a petition described in section 5310, subdivision (a)(3) or (4), becomes final 30 days after the date notice of the Board's decision is mailed to the petitioner, unless the petitioner files a Petition for Rehearing in accordance with the procedures provided in chapter 5 of this division within that 30-day period.

(2) The Board may not grant a rehearing to reconsider a final decision on~~or rehear~~ a petition.

(3) The Board may not modify a final decision on a petition, except to correct a clerical error.

(b) The petitioner may request that the Board adopt a Written Findings and Decision for a petition. The request must be made~~If requested by the petitioner at any time~~point before the commencement of the petitioner's Board~~oral~~ hearing or, if a Board hearing is not scheduled, the commencement of the meeting at which the petition is scheduled for Board action.~~,~~ If a timely request is made, the Board will prepare and send to the petitioner a Written Findings and Decision according to the following procedure:

(1) After the Board has decided the petition, the Appeals Division will draft the Written Findings and Decision.

(2) The Chief of Board Proceedings will schedule the Written Findings and Decision for Board consideration.

(3) Once the Board adopts the Written Findings and Decision, the Chief of Board Proceedings will promptly mail a copy of the Written Findings and Decision to petitioner.

The petitioner may waive its right to its requested Written Findings and Decision any time before the Board adopts~~approval of~~ the petitioner's Written Findings and Decision.

Note: Authority cited: Sections 15606 and 15640, Government Code; and Section 11651, Revenue and Taxation Code. Reference: Sections 15640 and 15645, Government Code; and Sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841 and 11251, Revenue and Taxation Code.

ATTACHMENT D

5421. Methods for Delivery of Written Documents and Correspondence.

(a) ~~The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of appeals~~Appeals, petitions for rehearing, briefs, and related documents and correspondence~~. Any document~~ may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division at the email address or fax number provided below or in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Appeals, petitions for rehearing, briefs, and related documents and correspondence may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to:

Board Proceedings Division, MIC: 81
State Board of Equalization
~~450 N Street~~
PO Box 942879
Sacramento, CA 94279-0081
MeetingInfo@boe.ca.gov
(916) 324-3984

(c) ~~Where Board Staff is required to provide~~When this chapter requires a written notification or written acknowledgement to one or more parties during the course of an appeal ~~under this chapter~~, ~~Board Staff will use~~ mail or personal delivery will be used, unless the party to whom the document is provided consents to delivery by facsimile or secure electronic means.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5435. Additional Briefing.

(a) Appeals Division~~Staff~~ Requests for Additional Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(c) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

(d) Timing of Request. A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.

(e) Notifying the Chief of Board Proceedings~~Notification of Board Chair~~. The Chief of Board Proceedings~~Board Chair~~ must be notified promptly of any request made under this section and may postpone the scheduling or hearing of an appeal.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5444. Hearing Summary.

~~(a) Definition. For purposes of this chapter, a "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of an appeal at an oral hearing. The Hearing Summary will contain:~~

~~(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;~~

~~(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5452, if the Appeals Division determines that such a recommendation is appropriate;~~

~~(3) A discussion of the pre-hearing conference, if one was held, including any additional information, stipulations, and concessions resulting therefrom; and~~

~~(4) The Appeals Division's analysis and comments, including any questions posed to the parties.~~

(~~b~~a) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to section 5522.6, the Appeals Division will prepare a Hearing Summary and submit the Hearing Summary to the Chief of Board Proceedings. The Hearing Summary will contain:

(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;

(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5452, if the Appeals Division determines that such a recommendation is appropriate;

(3) A discussion of the pre-hearing conference, if one was held, including any additional information, stipulations, and concessions resulting therefrom; and

(4) The Appeals Division's analysis and comments, including any questions posed to the parties.

(b) Except in the case of an appeal that involves a jeopardy determination, the Appeals Division will have at least 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

(c) Citation prohibited. Hearing Summaries may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

~~**5450. Letter Decisions.**~~

~~(a) Definition. A "Letter Decision" is a written decision that contains a short explanation of the reasons for the Board's decision on an appeal.~~

~~(b) Preparing the Letter Decision. If the Board votes to determine an appeal and a written opinion will not be provided Whenever the Board decides an appeal without adopting, or directing the preparation of, a Summary Decision or Formal Opinion, the Appeals Division will prepare a Letter Decision. The Appeals Division will provide one copy of a Letter Decision to each party not later than three business days from the date of the Board's decision.~~

~~(c) Date of Decision. The date on which the Board votes to decide the appeal is the date of the decision for purposes of this chapter.~~

~~(d) Citation prohibited. Letter Decisions may not be cited as precedent in any appeal or other proceeding before the Board.~~

~~Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.~~

5451. Summary Decisions.

~~(a) Definition. A "Summary Decision" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal. The Summary Decision does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.~~

(~~b~~a) ~~Preparing the Summary Decision.~~ The Appeals Division will prepare a Summary Decision for an appeal when ~~an appeal is submitted for decision under section 5441, or when the Board orders the preparation of a Summary Decision.~~:

(1) The appeal is submitted for decision under section 5441 and the Appeals Division has not prepared a Formal Opinion under section 5452;

(2) Board staff is required to draft a nonprecedential opinion for the appeal under section 5551; or

(3) The Board directs Board staff to draft a nonprecedential opinion for the appeal under section 5551.

(b) The Appeals Division must submit the Summary Decision to the Board Proceedings Division ~~either~~ upon completion ~~or~~ and within any deadline set by the Board, and, if section 5552 applies, at least 60 days prior to the expiration of the 120-day period described in section 5552, subdivision (b). The Chief Counsel may extend the time ~~period~~ for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair if such extension will not prevent compliance with section 5552, subdivision (b).

~~(c) Adoption; Date of Decision. When the appeals Division prepares a Summary Decision, the Decision will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Summary Decision, or votes to decide the appeal without adopting the Summary Decision, is the date of the Board's decision for purposes of this chapter.~~

~~(d) Citation prohibited. Summary Decisions may not be cited as precedent in any appeal or other proceeding before the Board.~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5452. Formal Opinions.

~~(a) Definition. A "Formal Opinion" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is intended to set precedent. The Formal Opinion does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.~~

(~~b~~a) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion for an appeal when the~~an~~ appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate~~, or when the Board orders the preparation of a Formal Opinion~~. The Appeals Division will also prepare a Formal Opinion when the Board directs Board staff to draft a precedential opinion for the appeal under section 5551. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division ~~either~~ upon completion and~~or~~ within any deadline set by the Board, and, if section 5552 applies, at least 60 days prior to the expiration of the 120-day period described in section 5552, subdivision (b). The Chief Counsel may extend the time ~~period~~ for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair if such extension will not prevent compliance with section 5552, subdivision (b).

(~~e~~b) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:

(1) A brief explanation of any Board action taken on the appeal, including any determination regarding~~decision on~~ the outcome of the appeal and the order to prepare a Formal Opinion;

(2) A statement explaining when the~~that the time~~ period for filing a Petition for Rehearing will ~~not~~ begin ~~until the Board adopts the Formal Opinion, or until the Board otherwise decides the appeal without adopting the Formal Opinion~~; and

(3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.

~~(d) Adoption; Date of Decision. When the Appeals Division prepares a Formal Opinion, the Opinion will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, is the date of the Board's decision for purposes of this chapter.~~

(~~e~~c) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

~~(f) Citation permitted. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board, unless the Opinion has been depublished, overruled, or superseded.~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5453. Notice of Board's Determination.

(a) If the Board votes to determine an appeal, the Board does not adopt a written opinion or direct the Appeals Division to prepare a written opinion for the appeal, at the time of the vote, and the Board is not required to adopt a written opinion for the appeal, then:

(1) The Appeals Division will prepare a notice of the Board's determination, which shall contain a brief statement of the reasons for the Board's determination; and

(2) A copy of the notice shall be mailed to each party not later than three business days from the date of the Board's determination.

(b) A notice may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5460. Finality of Determination~~Decision~~.

(a) Finality. ~~The~~Generally, the Board's vote to determine an appeal~~decision under article 5 of this chapter~~ becomes final 30 days from the date of the vote~~decision~~ unless, within that 30-day period, a party to the appeal files a Petition for Rehearing. However, if the Board votes to determine an appeal and the Board's determination is held in abeyance under section 5551, then the Board's determination in the appeal becomes final 30 days from the date of the Board's later vote to adopt a written opinion or determine the appeal without adopting a written opinion.

(b) Finality Independent of Notice. The finality of the Board's vote to determine an appeal~~decision~~ is not dependent upon the date of any notice of the determination~~decision~~. In addition, the determination~~decision~~ may become final even if~~though~~ Board Staff fails to send, or a party fails to receive, notice ~~of the decision~~.

(c) Number of Petitions for Rehearing~~Filings~~.

(1) The filing of a Petition for Rehearing by one party does not prevent the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed on time. However, no party may file more than one Petition for Rehearing.

(2) In addition, no party may file a Petition for Rehearing in response to a Decision on Petition for Rehearing or the Board's vote to determine an appeal after a rehearing. If the Board Proceedings Division receives a submission intended as such a Petition for Rehearing, the Board Proceedings Division must reject the submission.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

5463. Decisions on Petitions for Rehearing.

(a) Definition. A "Decision on Petition for Rehearing" is a written decision that provides~~contains the findings of fact and conclusions of law that form~~ the basis of the Board's decision to grant or deny a rehearing. The Decision on Petition for Rehearing does not represent or reflect the Board's decision to grant or deny the rehearing unless and until it is adopted by the Board.

(b) Preparing the Decision on Petition for Rehearing. Upon the conclusion of briefing under section 5462, the Appeals Division will prepare a Decision on Petition for Rehearing. Upon completion, the Appeals Division will submit the Decision on Petition for Rehearing to the Chief of Board Proceedings.

(c) Adoption,~~;~~ Confidentiality, and Date of Decision. The Decision on Petition for Rehearing will be submitted to the Board for adoption as a nonappearance~~non-appearance~~ matter and, unless otherwise directed by the Board, it remains confidential until adopted by the Board.

(1) If the Board grants a Petition for Rehearing, then the Board's initial determination in the appeal~~decision under article 5 of this chapter~~ will be held in abeyance pending resolution of the rehearing. The Board, in its discretion, may limit the scope of the rehearing.

(2) If the Board denies a Petition for Rehearing, then the Board's decision to deny the petition becomes final 30 days from the date on which the Board voted to deny the rehearing.

(d) Citation. A Decisions on Petition for Rehearing may not be cited as precedent in any appeal or other proceeding before the Board, unless the Board adopts the Decision on Petition for Rehearing as a Formal Opinion.

Note: Authority cited: Section 15606, Government Code. Reference: Section 657, Code of Civil Procedure; and Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

ATTACHMENT E

CHAPTER 5. GENERAL PROCEDURES FOR BOARD ACTION~~HEARING PROCEDURES~~

5510. General Application of Chapter 5.

(a) This chapter applies to appeals submitted to the Board for decision~~hearings~~ under any of the following laws:

(1) Administration of Franchise and Income Tax Laws (Rev. & Tax. Code, §§ 18401-19802).

~~Revenue and Taxation Code sections 18401-19802~~

(2) Alcoholic Beverage Tax Law (Cal. Const., art. XX, § 22; Rev. & Tax. Code, §§ 32001-32557).

~~California Constitution, article XX, section 22;~~

~~Revenue and Taxation Code sections 32001-32557~~

(3) California Tire Fee (Pub. Resources Code, §§ 42860-42895).

~~Public Resources Code sections 42860-42895;~~

~~Revenue and Taxation Code sections 55001-55381~~

~~(4) Childhood Lead Poisoning Prevention Fee~~

~~Health and Safety Code sections 105275-105310;~~

~~Revenue and Taxation Code sections 43001-43651~~

(~~5~~4) Cigarette and Tobacco Products Tax Law (Cal. Const., art. XIIIB, § 12; Health & Saf. Code, §§ 104555-104558; Rev. & Tax Code, §§ 30001-30482).

~~California Constitution, article XIIIB, section 12;~~

~~Health and Safety Code sections 104555-104558;~~

~~Revenue and Taxation Code sections 30001-30482~~

(~~6~~5) Diesel Fuel Tax Law (Rev. & Tax. Code, §§ 9401-9433 & 60001-60708).

~~Revenue and Taxation Code sections 9401-9433 and 60001-60708~~

(~~7~~6) Emergency Telephone Users Surcharge Law (Rev. & Tax. Code, §§ 41001-41176).

~~Revenue and Taxation Code sections 41001-41176~~

(~~8~~7) Energy Resources Surcharge Law (Rev. & Tax. Code, §§ 40001-40216).

~~Revenue and Taxation Code sections 40001-40216~~

(8) Fee Collection Procedures Law (Rev. & Tax. Code, §§ 55001-55381).

(9) Hazardous Substances Tax Law (Rev. & Tax. Code, §§ 43001-43651), which is applicable to the Childhood Lead Poisoning Prevention Fee (Health & Saf. Code, §§ 105275-105310) and Occupational Lead Poisoning Prevention Fee (Health & Saf. Code, §§ 105175-105197).

~~Revenue and Taxation Code sections 43001-43651~~

(10) Integrated Waste Management Fee Law (Pub. Resources Code, §§ 40000-40201, 44001-44006, 48000-48008; Rev. & Tax. Code, §§ 45001-45984).

~~Public Resources Code sections 40000-40201, 44001-44006, and 48000-48008;~~

~~Revenue and Taxation Code sections 45001-45984~~

(11) Marine Invasive Species Fee Collection Law (Pub. Resources Code, §§ 71200-71271; Rev. & Tax. Code, §§ 44000-44008).

~~Public Resources Code sections 71200-71271;~~

~~Revenue and Taxation Code sections 44000-44008, 55001-55381~~

(12) Motor Vehicle Fuel Tax Law (Cal. Const., art. XIX, §§ 1-9; Rev. & Tax. Code, §§ 7301-8526).

~~California Constitution, article XIX, sections 1-9;~~

~~Revenue and Taxation Code sections 7301-8526~~

(13) Natural Gas Surcharge Law (Pub. Util. Code, §§ 890-900).

~~Public Utilities Code sections 890-900;~~

~~Revenue and Taxation Code sections 55001-55381~~

~~(14) Occupational Lead Poisoning Prevention Fee~~

~~Health and Safety Code sections 105175-105197;~~

~~Revenue and Taxation Code sections 43001-43651~~

(~~15~~14) Oil Spill Response, Prevention, and Administration Fees Law (Gov. Code, §§ 8670.1-8670.51.1; Rev. & Tax. Code, §§ 46001-46751).

~~Government Code sections 8670.1-8670.51.1~~

~~Revenue and Taxation Code sections 46001-46751~~

(~~16~~15) Private Railroad Car Tax (Cal. Const., art. XIII, § 19; Rev. & Tax. Code, §§ 11201-11702).

~~California Constitution, article XIII, section 19;~~

~~Revenue and Taxation Code sections 11201-11702~~

(~~17~~16) Publicly Owned Property (Cal. Const., art. XIII, § 11, subd. (g); Rev. & Tax. Code, §§ 1840 & 1841).

~~California Constitution, article XIII, section 11(g);~~

~~Revenue and Taxation Code sections 1840 and 1841~~

(~~18~~17) Sales and Use Tax Law, Bradley-Burns Uniform Sales and Use Tax Law, and Transactions and Use Tax Law (Rev. & Tax. Code, §§ 6001-7176, 7200-7226, 7251-7279.6, respectively).

~~Revenue and Taxation Code sections 6001-7176, 7200-7226, and 7251-7279.6,~~ respectively

(~~19~~18) Senior Citizens Homeowners and Renters Property Tax Assistance Law (Rev. & Tax. Code, §§ 20501-20646).

~~Revenue and Taxation Code sections 20501-20646~~

(~~20~~19) State-Assessed Property (Cal. Const., art. XIII, § 19; Rev. & Tax. Code, §§ 721-868, 4876-4880, 5011-5014).

~~California Constitution, article XIII, section 19;~~

~~Revenue and Taxation Code sections 721-868, 4876-4880, 5011-5014~~

(~~21~~20) Tax on Insurers Law (Cal. Const., art. XIII, § 28; Rev. & Tax. Code, § 12001-13170).

~~California Constitution, article XIII, section 28;~~

~~Revenue and Taxation Code sections 12001-13170~~

(~~22~~21) Timber Yield Tax (Rev. & Tax. Code, §§ 423.5, 431-437, 38101-38908).

~~Revenue and Taxation Code sections 423.5, 431-437, 38101-38908~~

(~~23~~22) Underground Storage Tank Maintenance Fee (Health & Saf. Code, §§ 25280-25299.99.3; Rev. & Tax. Code, §§ 50101-50162).

~~Health and Safety Code sections 25280-25299.99.3~~

~~Revenue and Taxation Code sections 50101-50162~~

(~~24~~23) Use Fuel Tax (Rev. & Tax. Code, §§ 8601-9433).

~~Revenue and Taxation Code sections 8601-9433~~

(~~25~~24) Welfare Exemption (Cal. Const., art. XIII, § 4, subd. (b); Rev. & Tax. Code, §§ 214-214.15, 254.5-254.6, 270-272).

~~California Constitution, article XIII, section 4(b);~~

~~Revenue and Taxation Code sections 214-214.15, 254.5-254.6, 270-272~~

(b) This chapter sets forth rules of general application for all appeals submitted to the Board for decision~~hearings conducted~~ under the laws listed in subdivision (a) of this section. Where the procedure for a specific law differs from the general rule, the more specific procedure will be provided or cross-referenced.

(c) The rules and procedures in chapter 4 (commencing with section 5410) apply to appeals from the actions of the Franchise Tax Board. To the extent that provisions in this chapter conflict with chapter 4, the provisions of chapter 4 control.

(d) To the extent that provisions in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

5511. Definitions.

The following definitions apply to this ~~chapter, and also apply to chapters 2, 3, and 4 of this~~ division, unless otherwise indicated ~~as provided therein~~:

(a) "Appeal" means:

(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing;

(2) Administrative protest;

(3) Claim, including a claim for refund;

(4) Appeal from an action of the Franchise Tax Board under chapter 4;

(5) Application, including, but not limited to, an application for administrative hearing; and

(6) Any other item that may be scheduled for a Board hearing conducted in accordance with chapter 5 of this division, including, but not limited to, requests for relief of taxes, interest, or penalties.

An appeal is also referred to as a "matter."

(~~a~~b) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.

(~~b~~c) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(~~c~~d) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.

(e) "Board hearing" means a taxpayer's opportunity to appear, along with the Department, before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's appeal, also referred to as an "oral hearing" or "hearing."

(~~d~~f) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.

(~~e~~g) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.

(~~f~~h) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.

(~~g~~i) "Brief" means a written document that contains an argument supporting a party's position, whether citing specific laws, regulations, or other authorities or making arguments without citing to specific authorities ~~including arguments on how laws or regulations apply to the facts presented in a party's matter~~. ~~Notwithstanding this definition, affidavits and declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.~~

(~~h~~j) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.

~~(i) "Claimant" means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5510. The term "claimant" includes a taxpayer's authorized representative, where appropriate.~~

(~~j~~k) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

(~~k~~l) "Delivery Service" means a trade or business~~, if such trade or business~~ that delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records the date on which it accepts each document for delivery, either electronically to its database, kept in the regular course of its business, or on the cover in which a document is delivered, or both~~electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery~~.

(~~l~~m) "Department" means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Special Operations and Investigations Division of the Legal Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.

(~~m~~n) "Deputy Director" means the Deputy Director of the State Board of Equalization's Sales and Use Tax Department or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.

(~~n~~o) "Executive Director" means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.

(~~o~~p) "Extreme hardship" means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person's control, such as illness, death, or disaster.

(q) "Formal Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal from an action of the Franchise Tax Board and sets precedent.

~~(p) "Hearing" means a taxpayer's opportunity to appear before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's matter.~~

(~~q~~r) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on an appeal~~a matter~~ for which a Board~~an oral~~ hearing has been scheduled~~requested~~.

(s) "Memorandum Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal, other than an appeal from an action of the Franchise Tax Board and sets precedent.

(t) "Nonappearance matter" means an appeal submitted to the Board for decision or a written opinion submitted to the Board for potential adoption on the basis of the existing record.

(u) "Nonprecedential opinion" means a Summary Decision.

~~(r) "Matter" means:~~

~~(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, or petition for review of district tax redistribution inquiries;~~

~~(2) Claim, including a claim for refund;~~

~~(3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4;~~

~~(4) Application for administrative hearing;~~

~~(5) Petition for rehearing; and~~

~~(6) Any other item scheduled for a Board hearing in any program listed in section 5510, including, but not limited to, requests for relief of taxes, interest, or penalties.~~

(~~s~~v) "Party" means the taxpayer and the Department~~ as defined in this section~~.

~~(1) In any matter where an agency has requested an oral hearing in accordance with chapter 2 and the taxpayer has not requested an oral hearing, the agency requesting the oral hearing shall be the Department for purposes of this chapter, and neither the Property and Special Taxes Department nor the Appeals Division shall be the Department.~~

~~(2) For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.~~

(~~t~~w) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.

(x) "Precedential opinion" means a Formal Opinion or Memorandum Opinion.

(~~u~~y) "Reasonable cause" means ~~such~~ circumstances that~~as~~ would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.

(z) "Summary Decision" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is not intended to set precedent.

(~~v~~aa) "Tax" means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of an appeal~~matter~~ before the Board.

(~~w~~bb) "Taxpayer" means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, applicant, claimant, or any other person who has an appeal before the Board~~liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board,~~ or who is a person directly interested in an appeal~~any matter~~ before the Board~~ under any of the programs listed in section 5510. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes except as provided in California Code of Regulations, title 18, section 1807 or 1828.~~ The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

(~~x~~cc) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

(dd) "Written opinion" means a Formal Opinion, Memorandum Opinion, or Summary Decision.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and

Taxation Code. References: Article XIII, Section 17, California Constitution; Sections 15606 and 15640, Government Code; and Sections 20, 40, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

~~5512. Construction.~~

~~The following provisions of this division must be construed and applied in accordance with the following terminology:~~

~~(a) "Must" is mandatory.~~

~~(b) "May" is permissive.~~

~~(c) "May not" means not permitted to.~~

~~(d) "Will" expresses a future contingency or predicts an action in the ordinary course of events, but does not signify a mandatory duty.~~

~~(e) "Should" expresses a preference or a nonbinding recommendation.~~

~~Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.~~

5522.8. Dismissal~~, Deferral,~~ and Postponement.

(a) Dismissal. The Chief of Board Proceedings will dismiss an appeal~~a matter~~ under any of the following circumstances:

(1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;

(2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or

(3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.

(b) ~~Deferral or~~ Postponement of Board Hearing or Briefing. A Board Member, the Appeals Division~~Staff~~, or any party to an appeal~~a matter~~ may submit a request to the Chief of Board Proceedings to postpone~~that~~ a Board hearing or the due date of any brief ~~be deferred or postponed~~ for reasonable cause. ~~Requests for deferral or postponement must be submitted to the Chief of Board Proceedings.~~

(1) ~~Deferral or~~ Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a ~~deferral or~~ postponement for a period of 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel in any of the following circumstances:

(A) A party or a representative of a party cannot appear at a Board hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;

(B) A party or a representative of a party cannot appear at a Board hearing or meet a briefing deadline due to an unavoidable scheduling conflict;

(C) A party has obtained a new representative who requires additional time to become familiar with the case;

(D) The Chief of Board Proceedings has been informed that all parties desire a ~~deferral or~~ postponement;

(E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the appeal~~matter~~ is being reviewed for possible settlement consideration; or

(F) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.

(2) ~~Deferral or~~ Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a ~~deferral or~~ postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, if the parties to an appeal~~the matter~~ have entered into formal settlement negotiations.

(3) ~~Deferral or~~ Postponement for Litigation~~Other Actions~~. The Chief Counsel may, in his or her discretion, grant a ~~deferral or~~ postponement ~~for any determined period of time due to the following circumstances:~~

~~(A) The~~if the Chief Counsel determines that ~~related~~ civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a material bearing on the appeal~~matter~~ being deferred or postponed.

~~(B) The Chief Counsel determines that unrelated civil or criminal litigation pending in federal or state court contains similar issues to those claimed by parties to a matter and that the outcome of the unrelated litigation is likely to have a bearing on the matter being deferred or postponed~~.

(4) ~~Deferral or~~ Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone an appeal~~a matter that is~~ subject to chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify ~~the Board and~~ the parties that the appeal~~matter~~ is postponed until the taxpayer's bankruptcy is concluded.

(5) The Chief Counsel may, with the consent of the Board Chair, grant a ~~deferral or~~ postponement for any reason.

(c) Additional ~~Deferrals or~~ Postponements. ~~After the initial deferral or postponement period, the~~ The Chief Counsel may grant additional ~~deferrals and~~ postponements that are not described in subdivisions ~~(a) and~~ (b) of this section upon a showing of extreme hardship and only with the consent of the Board Chair.

(d) The Chief of Board Proceedings must provide written notification to the parties if a ~~deferral or~~ postponement has been granted.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 15606 and 15640, Government Code; and Sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4,

50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5523.6. Presentation of Evidence ~~or Exhibits~~.

(a) Admissible Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented ~~to the Board~~ at a Board hearing. Each party will be permitted to comment on or respond to any affidavits, declarations, or ~~any~~ other evidence ~~submitted~~.

(b) Submission of Evidence. Parties should submit documentary evidence to the Board Proceedings Division and to the opposing party at least 14 days prior to the Board hearing in order to facilitate the orderly consideration of the issues at the hearing. Although ~~the Board may permit~~ a party may~~to~~ submit documentary evidence at the hearing, the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. The Board will consider any objections to, and comments on, the evidence presented at the ~~oral~~ hearing in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

(c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to the submission of an appeal~~the matter~~ for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.

(d) Official Notice. The Board may on its own or at the request of a party take official notice of any fact that may be judicially noticed by the courts of this State. Any party may, at the Board hearing or in its petition for rehearing, contest~~refute~~ any matter thus noticed.

(e) Distribution. Board Proceedings Staff must provide copies of any documentary evidence that has been submitted or officially noticed, any written arguments concerning the relevance of the evidence, and any stipulations to the Board Members, each party, and the Appeals Division.

(f) Use of Electronic Presentation. A party may only use an electronic presentation during a Board hearing if:

(1) The hearing is held at the Board's headquarters office at 450 N Street, in Sacramento, or another location that is equipped for electronic presentations; and

(2) The presentation is submitted to the Board Proceedings Division at least five days prior to the scheduled hearing date.

Note: Authority cited: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Sections 15606 and 15640, Government Code; Sections 254.5, 254.6, 742, 748, 1840, 5148,

6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

ARTICLE 5. VOTING, ~~AND~~ DECISIONS, AND OPINIONS

5551. Voting and Decisions.

(a) Timing of Board's Vote on an Appeal. ~~At the conclusion of an oral hearing, the~~The Board may vote to decide an appeal after considering the appeal at a Board hearing or as a nonappearance~~the~~ matter, or the Board may take the appeal~~it~~ under submission and vote to decide it later at the same meeting or at a subsequent meeting.~~,~~ ~~or~~The Board may also continue a Board~~the~~ hearing to a later date. ~~The Board may also adopt a Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.~~

(b) Written Opinions. The Board may, but is not required to, adopt a written opinion to decide an appeal. The Board may vote to decide an appeal by adopting a written opinion containing its decision, or the Board may vote to decide an appeal without adopting a written opinion at the time of the vote.

(1) Before or after the Board votes to decide an appeal, the Board may direct Board staff to draft a written opinion and submit the opinion to the Board for consideration as a nonappearance matter at a subsequent meeting.

(2) If the Board votes to decide an appeal for which a written opinion is required by section 5552, but the Board does not adopt a written opinion or direct staff to draft a written opinion at the time of the vote, then Board staff shall draft a nonprecedential opinion and submit it to the Board for consideration as a nonappearance matter at a subsequent meeting. In such cases, the Board's vote to decide the appeal is not tentative and shall not be held in abeyance, unless the Board expressly directs staff to hold its decision in abeyance before the decision becomes final.

(3) If the Board votes to decide an appeal and then directs staff to draft a precedential opinion for the same appeal before the decision is final, then, unless the Board directs otherwise, the Board's vote to decide the appeal will be tentative, and shall be held in abeyance and subject to change until the Board subsequently votes to adopt a precedential opinion or votes not to adopt a precedential opinion. However, a vote to decide an appeal described in section 5310, subdivision (a)(1) or (2) is not tentative and shall be final when made.

(4) A precedential opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Nonprecedential opinions may not be cited as precedent in any matter or other proceeding before the Board.

(5) A written opinion is not confidential if the Board has already voted to decide the appeal to which the opinion relates and the Board's decision is not being held in abeyance pending the Board's consideration of the written opinion. In all other circumstances, a written opinion is confidential unless and until adopted by the Board. In addition, confidential taxpayer information included in a written opinion prepared for an appeal subject to chapter 2 or 3 of this division is confidential before and after the opinion is adopted, unless the taxpayer has waived the right to confidentiality as to such information as provided in section 5573 or the opinion is required to be published pursuant to section 5552.

(c~~b~~) Dissenting and Concurring Opinions.

(1) If a precedential opinion~~Memorandum Opinion or Formal Opinion~~ is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the opinion~~Memorandum Opinion or Formal Opinion~~; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the opinion~~decision~~, if different than the rationale set forth in the opinion~~Memorandum Opinion or Formal Opinion~~.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the precedential opinion~~Memorandum Opinion or Formal Opinion~~ to which it relates is adopted, and is publishable as a supplement to the precedential opinion~~Memorandum Opinion or Formal Opinion~~. A Dissenting Opinion or Concurring Opinion may be cited in any proceeding

before the Board~~and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal~~.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 17, California Constitution; Sections 7.9, 11122.5, 11125, 15606 and 15640, Government Code; and Sections 40, 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

5552. Publication.

(a) Adoption. The Board shall adopt a written opinion for each appeal decided by the Board, on or after January 1, 2013, in which the amount in controversy is five hundred thousand dollars ($500,000) or more.

(b) Publication. If the Board is required to adopt a written opinion pursuant to subdivision (a), then the Board shall adopt and publish the written opinion on the Board's Internet website within 120 days after the date upon which the Board's vote to decide the appeal became final.

(c) Content. All written opinions required to be adopted pursuant to subdivision (a) shall include all of the following:

(1) Findings of fact;

(2) The legal issue(s) presented;

(3) Citation(s) to applicable law;

(4) An analysis of the law and facts;

(5) The disposition of the matter; and

(6) The names of the adopting Board Members.

(d) Amount in Controversy. "Amount in controversy" means, for purposes of subdivision (a), the total amount of taxes, fees, penalties, interest and/or other charges directly contested by the parties to an appeal as of the date the Board's vote to decide that appeal becomes final. Consolidated appeals shall be treated as one appeal in calculating the amount in controversy. "Amount in controversy" does not include taxes, fees, penalties, interest, or other charges that may be ancillary or related to, or calculated with reference to, directly contested amounts, unless the taxes, fees, penalties, interest, or other charges are also directly contested. Amount in controversy shall equal one percent of the difference between the assessed values asserted by the parties in property tax appeals. If an appeal concerns the reallocation of local or district tax, amount in controversy includes directly contested taxes that were reported and paid to the Board prior to the date the Board's decision on the appeal became final (e.g., taxes reported and paid for the last quarter for which a return was filed prior to the finality date), and shall not include taxes that are reported and paid to the Board after the date the Board's vote to decide the appeal becomes final.

(e) Application. Subdivision (a) only applies to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including Board hearing and nonappearance matters, except for nonappearance consent calendar action items.

(f) For purposes of Revenue and Taxation Code section 40, the Board's decision on an appeal is rendered on the date that the Board's vote to decide the appeal becomes final.

Note: Authority: Section 15606, Government Code; Section 40, Revenue and Taxation Code.

5561. Petition for Rehearing.

(a) Generally. A taxpayer with an appeal ~~a matter~~ subject to chapter 2 of this division or described in section 5310, subdivision (a)(3) or (4), may file a Petition for Rehearing within 30 days of the date on which notice of the Board's decision is mailed to the taxpayer. The petition must be signed by the taxpayer or the taxpayer's authorized representative, and:

(1) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the taxpayer's appeal~~matter~~;

(2) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;

(3) Identify and provide newly discovered, relevant evidence, which the taxpayer~~party~~ requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or

(4) Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.

(b) ~~The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of Petitions for Rehearing and related documents.~~ A Petition for Rehearing or related document shall~~may~~ be filed in accordance with section 5570~~electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov~~.

~~A Petition for Rehearing or related document may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below:~~

~~Board Proceedings Division, MIC: 80 State Board of Equalization 450 N Street P.O. Box 942879 Sacramento, CA 94279-0081~~

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

(1) Upon receipt of a submission intended as a Petition for Rehearing, the Chief of Board Proceedings must determine whether the submission qualifies as a Petition for Rehearing and whether it is timely. The Chief of Board Proceedings may consult with the Appeals Division~~Staff~~ in making this determination.

(2) If the submission qualifies as a Petition for Rehearing and is ~~found to be~~ timely, the ~~Chief of~~ Board Proceedings Division must accept the submission as a Petition for Rehearing and mail a letter to all parties acknowledging its~~the~~ acceptance.

(3) If the Chief of Board Proceedings determines that a submission intended as a~~the~~ Petition for Rehearing is not timely, the ~~Chief of~~ Board Proceedings Division must reject the submission~~Petition for Rehearing and will advise the taxpayer regarding alternative rights or remedies~~.

(4) If the Chief of Board Proceedings determines that a submission intended as a Petition for Rehearing is timely, but does not otherwise qualify as a Petition for Rehearing, such as where the submission asks for a rehearing without identifying a basis for the rehearing or alleges that there is newly discovered and relevant evidence without providing that evidence, the Board Proceedings Division will notify the taxpayer in writing, identify the requirements of subdivision (a) that have not be satisfied, and allow the taxpayer up to 30 days to satisfy the necessary requirements. If the taxpayer satisfies the requirements of subdivision (a) within the time allowed, the Board Proceedings Division will accept the original submission and any subsequent submissions that satisfy the requirements of subdivision (a), combined, as a Petition for Rehearing and mail a letter to all parties acknowledging the acceptance. If the

taxpayer does not satisfy the requirements of subdivision (a) within the time allowed for that purpose, the Board Proceedings Division must reject the taxpayer's submission.

(5) If the Board Proceedings Division rejects a taxpayer's submission intended as a Petition for Rehearing, the Board Proceedings Division shall mail a letter to the taxpayer, which shall explain that the submission was not accepted as a Petition for Rehearing and will advise the taxpayer of any alternative rights or remedies.

(6) A taxpayer may not file more than one Petition for Rehearing with regard to the same appeal.

(d) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from actions of the Franchise Tax Board.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521 and 60581, Revenue and Taxation Code.

5562. Recommendation and Decision on Petition for Rehearing.

(a) After a Petition for Rehearing is accepted under section 5561, the~~The~~ Appeals Division will ~~should~~ prepare and submit a written recommendation to grant or deny the~~a~~ Petition for Rehearing to the Chief of Board Proceedings, ~~and parties to the matter at issue~~ generally within 90 days from the date of the letter accepting the Petition for Rehearing. The document may also recommend changes to the Board's decision on the appeal to which the Petition for Rehearing relates and that the Board deny the Petition for Rehearing after making such changes.

(b) The recommendation on Petition for Rehearing will be submitted to the Board for consideration as a nonappearance~~non-appearance~~ matter.

(c) The Chief of Board Proceedings must notify all the parties to an appeal~~the matter at issue~~ of the Board's decision on a Petition for Rehearing.

(1) If the Board grants a rehearing ~~based on the recommendation of the Appeals Division, or another rationale~~, then the Board's prior decision will be held in abeyance and subject to change until~~pending~~ the resolution of the rehearing, and the applicable briefing provisions of chapter 2 or 3 of this division and the Board hearing provisions of this chapter apply to that rehearing.

(A) Unless the taxpayer requesting the rehearing withdraws its request prior to the rehearing, the Board's prior decision on the taxpayer's appeal will be replaced by the Board's decision on the taxpayer's appeal following the rehearing.

(B) If, prior to the rehearing, the taxpayer requesting the rehearing notifies the Board Proceedings Division in writing that the taxpayer withdraws its request for a rehearing, the Board's prior decision on the taxpayer's appeal becomes final upon the receipt by the Board Proceedings Division of the taxpayer's withdrawal of its request for rehearing.

(2) If the Board denies a rehearing, notice of the Board decision will be issued to the taxpayer. If the Board has not voted to change its prior decision on the taxpayer's appeal, the notice will be based on the Board's prior decision and will become final 30 days after the notice is issued. If the Board has voted to change its prior decision on the taxpayer's appeal, the notice will be based on the revised decision and will become final 30 days after the notice is issued.~~If the Board denies a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision becomes final 30 days from the date the Chief of Board Proceedings mails the notice of the denial of the Petition for Rehearing.~~

(3) A taxpayer may not file a Petition for Rehearing in response to a notice described in paragraph (2). If the Board Proceedings Division receives a submission intended as such a Petition for Rehearing, the Board Proceedings Division must reject the submission.

(d) Chapter 4 of this division applies to Decisions on Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5,

55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521 and 60581, Revenue and Taxation Code.

~~**5563. Rehearings.**~~

~~(a) If the Board grants a rehearing in a matter subject to chapter 2 of this division, the Chief of Board Proceedings will:~~

~~(1) Consult with the Appeals Staff to determine a briefing schedule appropriate for the rehearing; and~~

~~(2) Inform all parties regarding such briefing schedule in writing.~~

~~(b) Chapter 4 of this division applies to rehearings granted in appeals from actions of the Franchise Tax Board.~~

~~Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521 and 60581, Revenue and Taxation Code.~~

5570. Filing Documents~~Mailing Address.~~

~~The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of all correspondence during the hearing process.~~ During the Board's consideration of an appeal under this chapter, documents related to the appeal~~Correspondence~~ may be filed electronically pursuant to this section if a~~n electronic~~ copy of such correspondence is transmitted to the Board Proceedings Division at the email address or fax number provided below or in accordance with instructions provided on the Board's website at www.boe.ca.gov.

Correspondence during the hearing process may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

Board Proceedings Division, MIC: 80
State Board of Equalization
~~450 N Street~~
P. O. Box 942879
Sacramento, CA 94279-0081
MeetingInfo@boe.ca.gov
(916) 324-3984

Note: Authority cited: Article XIII, Section 11, California Constitution; sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

5573. ~~Waiver of~~ Confidentiality.

~~Oral~~Board hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including, but not limited to, information contained in a hearing summary prepared under section 5444.

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for a Board~~an oral~~ hearing ~~before the Board~~ under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board~~oral~~ hearing ~~before the Board~~ or included in the hearing summary prepared for the taxpayer's Board~~oral~~ hearing ~~before the Board~~.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality when the taxpayer:

(A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) of chapter 3, and submits a written request for a Board~~an oral~~ hearing ~~before the Board~~; or

(B) Files an application described in section 5310, subdivision (a)(2) of chapter 3.

(2) The waiver described in paragraph (1) of this subdivision only applies to:

(A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The H~~h~~earing S~~s~~ummary or S~~s~~ummary D~~d~~ecision prepared for the taxpayer's Board~~oral~~ hearing ~~before the Board~~; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's Board~~oral~~ hearing ~~before the Board~~.

(d) Effective Date of Waiver.

(1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's Board~~oral~~ hearing to which the waiver applies.

(2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its Board~~oral~~ hearing ~~before the Board~~. At the time a taxpayer waives a Board~~an oral~~ hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's appeal as a nonappearance matter ~~on the basis of the written record on file without an oral hearing~~ or dismiss the taxpayer's appeal~~matter~~.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a Board~~an oral~~ hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of a Board~~an oral~~ hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a H~~h~~earing S~~s~~ummary, if any, containing information that is only scheduled to be discussed during a closed session.

(f) Published Opinions. Even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board or Board staff includes in a written opinion that is required to be published pursuant to section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution,; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609, Revenue and Taxation Code.

5574. Request for Portion of Board~~Oral~~ Hearing Conducted During Closed Session.

(a) Board's Discretion to Conduct ~~Oral~~ Hearings During Closed Session.

(1) In general, the Board may conduct portions of Board~~oral~~ hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct Board~~oral~~ hearings requested under the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of a Board~~an oral~~ hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the appeal~~matter~~ for which the taxpayer's Board~~oral~~ hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's Board~~oral~~ hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of a Board~~an oral~~ hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the appeal~~matter~~ involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's Board~~oral~~ hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The appeal~~matter~~ involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's Board~~oral~~ hearing is conducted solely during an open session at a public meeting.

(3) If a portion of a Board~~an oral~~ hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the Board~~oral~~ hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire Board~~oral~~ hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's Board~~oral~~ hearing must be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.

(A) The waivers described in subdivision (b) or (c) of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled Board~~oral~~ hearing.

(B) The waivers described in subdivision (b) or (c) of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its Board~~oral~~ hearing ~~before the Board~~.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of a Board~~an oral~~ hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

(g) Notwithstanding the foregoing provisions, nothing in this division shall prevent the Board from publishing a written opinion on its Internet website when required under section 5552.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and Sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Article XIII, Section 11, California Constitution; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609, Revenue and Taxation Code.

ATTACHMENT F

Changes to Proposed Amendments to the RTA after the Second Discussion Paper

Regulation	Change(s) Made
5216	Deleted the word "and" from subdivision (b)(2).
5218	Inserted the word "are" into the title of subdivision (e). Clarified the deadlines in subdivisions (e) through (h). Changed "acquiesces in" to "accepts" in subdivision (f)(2)(A). Renumbered subdivision (h)(C) as (h)(3), and changed "scheduled" to "schedule" and replaced ", and" with a semicolon in the last sentence of subdivision (h)(3).
5220	Deleted "the" from subdivision (a). Changed "request" to "requests" in subdivision (b).
5230	Inserted "the California Department of" in subdivision (c)(1) and (2). Inserted "California" in subdivision (d).
5235	Clarified the deadlines in subdivision (c).
5237	Removed strikeout marks from the word "section" in subdivision (a).
5241	Changed "acknowledge" to "acknowledgement" in subdivision (a)(1). Deleted "Board Staff in" from subdivision (d).
5262	Included previously omitted instructions for electronically transmitting documents to the Board Proceedings Division, including the Board Proceedings Division's email address, in subdivision (a).
5264	Clarified the deadline in subdivision (d)(1).
5266	Changed "acquiesces in" to "accepts" in subdivision (b)(2)(A). Added provisions to subdivision (d) to require the Appeals Division to acknowledge the receipt of requests for reconsideration, explain that the Appeals Division may request additional information that may be relevant to the preparation of a Supplemental Decision and Recommendation, require the Appeals Division to notify the parties when the Appeals Division is required to or has decided to issue a Supplemental Decision and Recommendation, and require the Appeals Division to issue Supplemental Decisions & Recommendations within 90 days after the submission of any additional information the Appeals Division needs to prepare the document. Changed the cross references to subdivision (b) in subdivision (d). Reformatted and reorganized subdivision (d).
5267	Clarified the deadline in subdivision (c)(3). Changed "scheduled" to "schedule" and replaced ", and" with a semicolon in the third sentence of subdivision (c)(3).

Changes to Proposed Amendments to the RTA after the Second Discussion Paper

Regulation	Change(s) Made
5511	Replaced "which is intended to set" with "sets" in subdivisions (q) and (s). Replaced "written record on file" with "existing record" in subdivision (t).
5523.6	Changed "equipment" to "equipped" in subdivision (f)(1).
5551	Deleted "vote to" from subdivision (a). Deleted discussion regarding reliance on Dissenting and Concurring Opinions from subdivision (c)(2).
5552	Changed "board members" to "Board Members" in subdivision (c)(6).