

Issue Paper Number 15-005



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

Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$100,000

I. Issue

Currently, the Board delegates the authority to issue refunds of \$100,000 or less¹ to staff. In addition to refunds², this approval threshold applies to credits, cancellations and denials (hereafter, for ease of expression, collectively referred to as “refunds”). These items appear on the Board Meeting agenda as “Nonappearance Matters, Matters for Consideration” and “Credits, Cancellations and Refund Matters” on either the Consent or Adjudicatory calendar. To accelerate the refund process, should the \$100,000 threshold for Board Member approval of refunds be changed?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board delegate the authority to issue refunds of \$250,000 or less to staff and raise the threshold for Board Member approval of refunds from \$100,000 to \$250,000.³

Staff also recommends that the Board approve the publication of proposed amendments to Board of Equalization (BOE) Rules for Tax Appeals Regulations 5218, *Review of the Petition by the Assigned Section, 5237, Board Approval Required for Refunds over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, to conform these regulations to the new delegation and the increase in the threshold for Board Member approval of refunds from \$100,000 to \$250,000. (See Exhibits 1, 2, and 3.)

Raising the threshold for Board Member approval of refunds from \$100,000 to \$250,000 will reduce the number of cases requiring Board approval by approximately 44% and allow taxpayers to receive their refunds up to three months earlier on approved claims between \$100,001 and \$250,000 (see Exhibit 4). This alternative will also reduce staff hours spent preparing those cases for the Board calendar.

III. Other Alternative(s) Considered

Alternative 2 - Delegate Board Approval Requirement to Staff

¹ The \$100,000 threshold includes credit interest and applies to all tax and fee programs the BOE administers, including the Private Railroad Car Tax. See Exhibit 5 for a list of included programs.

² This includes refunds related to petitions for redetermination being granted.

³ The \$250,000 threshold would include credit interest and apply to all tax and fee programs the BOE administers, including the Private Railroad Car Tax. See Exhibit 5 for a list of included programs.

Alternatively delegate authority to issue all refunds without Board Member approval. This alternative would also require amendments to Rules for Tax Appeals Regulations 5218, 5237, and 5267.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow affected claimants to receive their refunds up to three months earlier on approved claims of any amount. The cases brought before the Board and the related number of staff hours spent preparing those case summaries for the Board calendar would be eliminated.

Staff would continue to retain a public record on those items above \$50,000 by the Board Proceedings Division since various statutes regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.

Alternative 3 – Make No Change

Do not change the current requirement that Board Members approve claims for refund in excess of \$100,000.

IV. Background

Public Record Requirements. As initially introduced, Assembly Bill (AB) 3069 (Stats. 1994, Ch. 726) eliminated the requirement that the Board of Control (now named the Victim Compensation and Government Claims Board) review the BOE's and the Franchise Tax Board's (FTB) settlement agreements and refunds, credits, and cancellations of liabilities over \$50,000. In exchange, the legislation required that such matters be made available as a public record 10 days prior to the effective date of these determinations. However, unlike the BOE, FTB is not required to make any of its refunds a matter of public record. This requirement was deleted from AB 3069 before it was enacted, after the FTB expressed concerns regarding the 10-day public notice requirement.

FTB's analysis of the introduced version of AB 3069, which also imposed the 10-day public record requirement on FTB, questioned the need for a public record and pointed out that neither the Board of Control nor the public can technically prevent the issuance of a refund or obtain any additional information about the refund. Therefore, FTB indicated that both the Board of Control's oversight process, as well as the 10-day public notice required by AB 3069 (as introduced), served little useful purpose and was an improper disclosure of taxpayers' confidential tax information. In response to FTB's analysis, the 10-day notice requirement was deleted as to FTB, but not as to the BOE.

In accordance with AB 3069, Revenue and Taxation Code (RTC) section 6901, which authorizes the BOE to credit and refund overpaid amounts under Sales and Use Tax Law was amended to provide in the final sentence of subdivision (c):

"Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination."

The same public record requirement for cancellations in excess of \$50,000 is also found in RTC section 6981.⁴ Currently, to satisfy the public record requirement, staff's determinations to grant BOE claims for refund in excess of \$50,000 and up to \$100,000 are sent to the Board Proceedings Division at least 10 days prior to the effective date of these determinations. Also, staff's determinations to grant claims for

⁴ The only exception is that the public record requirement applies to cancellations in excess of \$15,000 under RTC section 45801 of the Integrated Waste Management Fee Law.

FORMAL ISSUE PAPER 15-005

refund in excess of \$100,000 are placed on either the BOE's Adjudicatory or Consent calendar for Board Member approval and are made available as a public record when the Public Agenda Notice is distributed 10 days before the meeting.

Delegation of Authority. RTC section 7, provides the Board's authority to delegate duties:

"Whenever a power is granted to, or a duty imposed on, any person or board by any provision of this code, it may be exercised or performed by any deputy or person authorized by the person or board to whom the power is granted or on whom the duty is imposed, unless it is expressly provided that the power or duty shall be exercised or performed only by the person or board to whom the power is granted or on whom the duty is imposed."

With regard to refunds, the Board has previously approved several delegations to staff:

On September 1, 1999, an issue paper was brought before the Board recommending a delegation of authority to the Executive Director for approving all refunds of Electronic Fund Transfer (EFT) overpayments for Sales and Use Tax Department (SUTD) and Special Taxes Programs due to errors or duplicate payments. This delegation was approved by the Board Members.

On June 25, 2003, the Board Chair requested a review of Consumer Use Tax cancellations that reduced the liability to zero. This was to ensure a taxpayer's privacy was protected when a tax was found not to be due. At the same time, staff brought forward a recommendation to reduce the number of Consent Items on the Board Calendar by increasing the current level of delegation from \$50,000 to \$250,000 for all cases brought before the Board. These cases may include refunds, credits, cancellations, redeterminations and relief of penalties. The Board did not approve staff's recommendation to increase the delegation of authority but did adopt staff's recommendation to delegate the authority to cancel (or redetermine to zero) all individual billings on vehicles, vessels and aircraft when tax is found not to be due. Currently, the public notice process includes sending the Board Proceedings Division a copy of the Consumer Use Tax billing cancellations at least 10 days prior to the effective date of these determinations. Board Proceedings maintains these documents in a binder. It is available to the public upon request.

On May 27, 2009, an issue paper was presented to the Board by the SUTD Deputy Director recommending that the threshold for Board Member approval of refunds in excess of \$50,000 be increased to \$100,000. The Board unanimously voted to approve this recommendation and delegated authority to staff to grant or deny refunds up to \$100,000. Additionally, the Board directed staff to amend the Board's regulations to incorporate the delegations for the relevant Revenue and Taxation Code sections. To satisfy the public record requirement for refunds in excess of \$50,000, but \$100,000 or less, which are not placed on the BOE's Adjudicatory or Consent calendar, SUTD and Special Taxes and Fees Department (STFD) staff forward the determination to the Board Proceedings Division at least 10 days in advance of the effective date of the determination.

V. Discussion

Staff is seeking Board approval to amend Regulations 5218, 5237, and 5267 to increase the current level of authority delegated to staff to grant refunds without Board Member approval. This will streamline the BOE's refund procedures by allowing staff to process claims up to three months earlier than with the current process. To be consistent with various statutes, a public record of all refunds over \$50,000 will continue to be maintained in the Board Proceedings Division.⁵ A statutory change would be required to

⁵ Also, a public record of all cancellations in excess of \$15,000 of the Integrated Waste Management Fee will continue to be maintained in the Board Proceedings Division.

eliminate the public record requirement for claims over \$50,000, or to raise the threshold for that public record requirement.

Claim Processing Procedures. The processing of SUTD claims for refund is coordinated by the staff in the Audit Determination and Refund Section. Claims may be verified by refund staff in Headquarters, or may be referred to a field office for investigation. If the claimant has an audit in process during the period of the claim for refund, SUTD refund staff will refer the claim to the district office. The processing of STFD claims for refund is handled internally by refund staff within the Appeals and Data Analysis Branch. Claims are verified by refund staff within STFD. If the claimant has an audit in process during the period of the claim for refund, the refund request will be included as part of the audit. (In general, this procedure benefits the taxpayer by allowing offsetting interest at the debit rate. The credit interest rate is currently 0% and has been since July 1, 2009.)

The process of preparing a claim for refund in excess of \$100,000 begins in Headquarters up to four months prior to the Board Meeting. SUTD and STFD auditors prepare Board Summaries for recommended refunds that are reviewed and approved for further processing by their respective Refund Section supervisors. A supervisor or designated reviewer personally reviews every refund in excess of \$5,000 (tax and credit interest). This approval is entered in the IRIS refunds subsystem. A refund cannot be released to the State Controller's Office without this approval. The approver is identified within the system. In addition to these controls, the section supervisor or designated reviewer reviews all refunds, credits, cancellations and denials in excess of \$100,000. A credit is a claim item that is granted but offset against another liability. To ensure there is adequate review before the summaries are forwarded to the Board Proceedings Division, summaries are due to the Refund Coordinator approximately two months (for STFD) to three months (for SUTD) prior to the appropriate Board Meeting.

Summaries are subsequently forwarded to the respective department's Petitions staff to combine with the entire Sales and Use Tax or Special Taxes Calendar. The deadline for forwarding the completed summaries to the Petitions staff is approximately ten weeks prior to the Board meeting. The summaries are compiled and forwarded for review and recommended changes to the appropriate Division Chief and the Assistant Chief Counsel of the Tax and Fee Programs Division. The SUTD and STFD summaries are reviewed by the respective Deputy Director. The Petitions Sections deliver the SUTD and STFD portions of the calendar to the Board Proceedings Division forty-five days prior to the scheduled Board meeting. Since the time frame between Board meetings may exceed one month, it is possible that a refund that just missed a prior deadline will wait an additional month before being heard for Board Member approval.

After Board approval of a refund item, the Refund Coordinators in SUTD and STFD send their refund schedule to Accounting, which forwards the schedule to the State Controller's Office. Claimants usually receive their refund checks within two weeks of the State Controller's receipt of the refund schedule.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board delegate the authority to issue refunds of \$250,000 or less to staff and raise the threshold for Board Member approval of refunds from \$100,000 to \$250,000.

Board staff also recommends that the Board authorize the publication of proposed amendments to BOE Rules for Tax Appeals Regulations 5218, 5237, and 5267 to conform these regulations to the new delegation and the increase in the Board Member approval threshold on refunds from \$100,000 to \$250,000. Since various RTC sections (see Exhibit 5 for a list of sections) require that a public record be

FORMAL ISSUE PAPER 15-005

maintained with respect to any refund in excess of \$50,000, staff also proposes that public records for determinations to refund amounts above \$50,000 continue to be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative will reduce the number of cases requiring Board approval by approximately 44%. This change would also allow claimants to receive their refunds up to three months earlier on approved claims between \$100,001 and \$250,000 and would reduce staff hours spent preparing those cases for Board calendar.

As shown in Exhibit 4 in FY 2013/2014, 275 refunds in excess of \$100,000 were prepared by SUTD and STFD equating to a dollar figure of \$202,171,481. If the approval threshold had been at \$250,000, 122 of these cases would not have required summary preparation. The dollar figure for these cases amounts to \$17,154,522. Refunds for these cases would have been granted to the claimant up to three months earlier. Under this proposal, the Board would still have approved \$185,016,959 in refunds for the 153 items in excess of \$250,000. In dollars, this represents over 92% of the refunds (see Exhibit 4).

There would also be a savings of staff hours. Board summaries related to each of these refunds can require several hours of staff time. After preparation of the summary by the auditor, there are added layers of staff and management review, such as the Refund Coordinator, Petitions Section, Division Chief, Assistant Chief Counsel, Department Deputy Director, Board Proceedings Division, and individual Board Member staff. Raising the threshold for Board Member approval would save hundreds of staff hours preparing these summaries for Board Calendar (see Operational Impact on the next page) while still maintaining the same internal processing and approval level of review.

B. Pros of Alternative 1

- Allows claimants to receive their refunds up to three months earlier.
- Reduces the number of cases requiring Legal Department and Board Member review.
- Substantially decreases staff workload in preparing summaries for Board Calendar.
- Maintains the consistency for Board Member approval of refunds between SUTD and STFD.
- Reduces the redundancy of summary reviews while maintaining sufficient supervisor management review.
- Retains Board Member approval of the highest dollar refund cases.

C. Cons of Alternative 1

Board Members will no longer be required to approve staff recommendations on refunds between \$100,001 and \$250,000. Although a public record will be maintained in the Board Proceedings Division, the cases will not be presented to the Board for approval.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation requires the amendment of Regulations 5218, 5237, and 5267 as shown in Exhibits 1, 2, and 3.

E. Operational Impact of Alternative 1

Multi-level reviews of Board summaries would be eliminated for refund cases ranging from \$100,001 to \$250,000 while maintaining the integrity of the refund process. These reviewers include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings

FORMAL ISSUE PAPER 15-005

Division; and individual Board Member staff. It is conservatively estimated that in addition to each Department's Refund staff's initial preparation of the summary, up to five additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2013/2014 on claims ranging from \$100,001 to \$250,000, this represents up to 610 hours expended in preparing cases for the Consent or Adjudicatory Calendars (122 cases x 5 hours). (See Exhibit 4.)

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the amended regulations is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 1

Taxpayers with approved refunds between \$100,001 and \$250,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

H. Critical Time Frames of Alternative 1

Implementation will take place following the approval of the amended regulations by the Office of Administrative Law.

VII. Alternative 2 – Delegate Approval Requirement to Staff**A. Description of Alternate 2**

Alternatively, staff could be delegated the authority to issue all refunds without Board Member approval, which would also require amendments to Regulations 5218, 5237, and 5267. Since various RTC sections regarding refunds require that a public record be maintained with respect to any refunds in excess of \$50,000, staff also proposes that a public record of determinations to grant refunds above \$50,000 continue to be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow claimants to receive their refunds up to three months earlier on all approved claims of over \$100,000. The cases brought before the Board and the related number of staff hours spent preparing those summaries for Board calendar will be eliminated.

During FY 2013/2014, the Board granted \$202,171,481 in SUTD and STFD refunds from the Consent and Adjudicatory Calendars.

B. Pros of Alternative 2

- Allows more claimants to receive their refunds up to three months earlier.
- Eliminates more refund summaries requiring Legal Department and Board Member reviews.
- Eliminates more staff workload in preparing summaries for Board Calendar.

- Eliminates more redundancy while maintaining sufficient supervisor and management review.

C. Cons of Alternative 2

Board Members will no longer be required to approve any staff recommendations on refunds.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, this alternative does require amendments to Regulation 5218, 5237, and 5267.

E. Operational Impact of Alternative 2

Multi-level reviews of Board summaries would be eliminated for all refund cases while maintaining the integrity of the refund process. These summary reviews include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings Division; and individual Board Member staff. It is conservatively estimated that in addition to Refund staff's initial preparation of the summary, up to 5 additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2013/2014 on claims over \$100,000, this represents up to 1,375 hours expended in preparing cases for the Consent or Adjudicatory Calendars (275 cases x 5 hours).

F. Administrative Impact of Alternative 2

1. Cost Impact

The workload associated with publishing the amended regulations is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 2

Taxpayers with approved refunds over \$100,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

H. Critical Time Frames of Alternative 2

Implementation will take place following the approval of the amendments of the regulations by the Office of Administrative Law.

VIII. Alternative 3 – Make No Change

A. Description of Alternative 3 – Make No Change

Do not change the current requirement that Board Members approve claims for refund in excess of \$100,000.

B. Pros of Alternative 3

FORMAL ISSUE PAPER 15-005

Board Members will continue to review and approve all refunds in excess of \$100,000.

C. Cons of Alternative 3

Claimants will continue to experience delays in receiving their refunds due to the requirements of the calendaring process for refunds in excess of \$100,000.

D. Statutory or Regulatory Change for Alternative 3

None.

E. Operational Impact of Alternative 3

None.

F. Administrative Impact of Alternative 3

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative 3

None.

H. Critical Time Frames of Alternative 3

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division

Current as of: April 3, 2015

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations

Title 18. Public Revenues

Division 2.1. State Board of Equalization – Rules for Tax Appeals

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

**ARTICLE 2A: PETITIONING NOTICES OF DETERMINATION
AND**

NOTICES OF DEFICIENCY ASSESSMENT

5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

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

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board 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. 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, the assigned section must advise the taxpayer of its findings in writing.

(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.

FORMAL ISSUE PAPER 15-005

(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~~250,000 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:

FORMAL ISSUE PAPER 15-005

(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.

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations

Title 18. Public Revenues

Division 2.1. State Board of Equalization – Rules for Tax Appeals

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 3: CLAIMS FOR REFUND

5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$100,000~~250,000.

(a) If the assigned section determines that a refund in excess of ~~\$100,000~~250,000 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, and may 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~~250,000 must be submitted to the Executive Director for approval. If the Executive Director approves, 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) If the assigned section determines that a refund in excess of ~~\$100,000~~250,000 should be denied, and the claimant has not requested an appeals conference with the Appeals Division or Board hearing, 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. 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.

(f) If the assigned section 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.

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations

Title 18. Public Revenues

Division 2.1. State Board of Equalization – Rules for Tax Appeals

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 6: APPEALS CONFERENCES

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~~250,000 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~~250,000 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

FORMAL ISSUE PAPER 15-005

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.

Refund Claims Requiring Board Approval

Exhibit 4

Analysis of SUTD and STFD Claims Requiring Board Approval FY 2013/2014

Board Meeting Date	# Cases greater than \$100,000, less than \$250,000	Dollar Amount	# Cases greater than \$250,000	Dollar Amount	Total # cases over \$100,000	Total Dollar Amount
7/17-7/18/13	11	\$ 1,803,370	19	\$ 25,474,304	30	\$ 27,277,674
8/13/13	6	799,097	11	7,602,818	17	8,401,915
9/10/13	16	1,812,976	16	7,673,965	32	9,486,941
10/22/13*						
10/29-10/31/13	5	636,673	10	9,447,385	15	10,084,058
11/19-11/20/13	8	1,110,905	9	2,697,601	17	3,808,506
12/17/13	14	1,988,281	12	10,023,898	26	12,012,179
1/16/14	13	1,881,876	17	20,681,884	30	22,563,760
2/25-2/27/14	7	1,103,020	19	39,712,763	26	40,815,783
3/25/14	5	875,215	8	18,409,860	13	19,285,075
4/22/14	15	1,929,989	11	17,648,182	26	19,578,171
5/22/14	10	1,586,001	9	8,354,788	19	9,940,789
6/24-6/26/14	12	1,627,119	12	17,289,511	24	18,916,630
Totals	122	\$17,154,522	153	\$185,016,959	275	\$ 202,171,481

*No Consent Items or Actions

Raising the threshold for Board Member approval to \$250,000

Reduction in number of cases to be approved by the Board: $275 - 153 = 122$

Percentage reduction in cases to be approved by Board: $122 \div 275 = 44\%$

Difference in dollar value: $\$202,171,481 - \$185,016,959 = \$17,154,522$

Percentage of SUTD and STFD cases still requiring Board approval based on dollars:

$$\$185,016,959 \div \$202,171,481 = 92\%$$

For redeterminations appeals, only cases that resulted in a refund to the taxpayer were included in the above data.

Revenue and Taxation Code Sections Relating to Refunds

Exhibit 5

Tax/Fee Program	Revenue and Taxation Code Refund Section
Sales and Use Tax	6901
Motor Vehicle Fuel Tax	8126
Use Fuel Tax	9151
Private Railroad Car Tax	11551
Insurance Tax	12977
Cigarette and Tobacco Products Tax	30361
Alcoholic Beverages Tax	32401
Timber Tax	38601
Energy Resources Users Surcharge	40111
Emergency Telephone Users Surcharge	41100
Natural Gas Users Surcharge	55221
California Tire Fee	55221
Fire Prevention Fee	55221
Lumber Products Assessment	55221
Electronic Waste Recycling Fee	55221
Marine Invasive Species Fee	55221
Water Rights Fee	55221
Childhood Lead Poisoning Prevention Fee	43451
Occupational Lead Poisoning Prevention Fee	43451
Hazardous Waste Fee Programs	43451
Integrated Waste Management Fee	45651
Oil Spill Response, Prevention, and Administration Fees	46501
Underground Storage Tank Fee	50139
Diesel Fuel Tax	60521