



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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SEN. GEORGE RUNNER (RET.)
First District, Lancaster

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Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

October 23, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt

Amendments to California Code of Regulations,

Title 18,

Sections 5218, *Review of the Petition by the Assigned Section,*

5235, *Action on the Claim for Refund,*

5237, *Board Approval Required for Refunds Over \$100,000, and*

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

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code (RTC) sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 5218, *Review of the Petition by the Assigned Section*, 5235, *Action on the Claim for Refund*, 5237, *Board Approval Required for Refunds Over \$100,000*, and 5267, *Issuance of Post Appeals Conference Notices; Board Approval*. The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. The proposed amendments provide new procedures for the Board's Deputy Director's to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and provide taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 16 or 17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

AUTHORITY

Regulations 5218, 5235, 5237, and 5267: Government Code section 15606 and RTC sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601.

REFERENCE

Regulation 5218: RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Regulation 5235: RTC 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.

Regulation 5237: RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Regulation 5267: RTC 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.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO
GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)**

Summary of Existing Laws and Regulations

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

RTC 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, 41101.1, 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, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009,

the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

Regulation 5218 currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination. Regulation 5235 currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund. Regulation 5237 currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267 currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations 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. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 5218, 5235, 5237, and 5267

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper

recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size.

Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient

oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The Board has performed an evaluation of whether the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because Regulations 5218, 5237, and 5267 are the only state regulation's currently requiring that the Board approve Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000. Regulations 5218 and 5267 are the only state regulations currently requiring that the Board approve Board staff's recommendations to cancel fraud or evasion penalties in any amount. Regulation 5237 is the only state regulation currently requiring that the Board approve Board staff's recommendations to deny refunds in excess of \$100,000, and that the Board's Executive Director approve Board's staff's recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Regulation 5235 is the only state regulation that refers to the Board approval requirements in Regulation 5237. And, the proposed amendments replacing the provisions in Regulation 5218, 5237, and 5267 for Board and Executive Director approval with new provisions for Deputy Director approval, and the proposed amendments replacing the references to Board approval with references to Deputy Director approval in Regulation 5235 are consistent with each other and the current text of the regulations. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of Regulations 5218, 5235, 5237, and 5267 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Heller.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 5218, 5235, 5237, and 5267 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared copies of the text of the proposed amendments to Regulations 5218, 5235, 5237, and 5267. Additions to the regulations are underlined in the text and deletions from the regulations are shown in strikeout format in the text. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5218, 5235, 5237, and 5267 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the proposed amendments, with the change clearly indicated, will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the proposed amendments, with the change clearly indicated, will also be available to the public from Mr. Bennion. The Board will consider written comments regarding the sufficiently related change that are received prior to the Board's adoption of the resulting regulation(s).

EFFECTIVE DATE

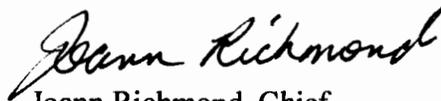
The Board is proposing to adopt amendments to Regulations 5218, 5235, 5237, and 5267 in order to eliminate the Board approval process for staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties in any amount, because the Board has determined that the process is no longer necessary to ensure sufficient oversight of such refunds, credits, and cancellations, and the Board has determined that the process unnecessarily delays the issuance of refunds of amounts in excess of \$100,000 by as much as three months. Therefore, the Board has determined that there is good cause to request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267 in order to help ensure that the amendments enable the Board to start expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud or evasion penalties, as soon as possible, and the Board may request an early effective date for the proposed amendments to Regulations 5218, 5235, 5237, and 5267, pursuant to Government Code section 11343.4, subdivision (b)(3).

October 23, 2015

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 5218, 5235, 5237, and 5267, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the December 16, 2015 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,
Sections 5218, *Review of the Petition by the Assigned Section,*
5235, *Action on the Claim for Refund,*
5237, *Board Approval Required for Refunds Over \$100,000, and*
5267, *Issuance of Post Appeals Conference Notices; Board Approval.***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS

Current Law

The State Board of Equalization (Board) is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code (RTC) 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, 41101.1, 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, 60581 provide for the Board to grant or deny petitions for redetermination, claims for refunds, and requests for relief (collectively "appeals") and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties, under specified circumstances.

The Board has previously voted to delegate authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, interest, and penalties. As relevant here, the Board limited that delegation of authority by requiring that Board staff's recommendations that tax and penalty in excess of \$50,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled be approved by the Board. The Board also initially required Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 to be approved by the Board's Executive Director, instead of the Board, so that refunds of these large erroneous overpayments could be expedited, but with sufficient oversight. Also, in 2009, the Board subsequently expanded the authority delegated to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees by increasing the \$50,000 limits on staff's delegated authority to \$100,000 because the \$50,000 limits needed to be revised to reflect inflation and because the expanded delegation enabled the Board to process more refunds more quickly.

California Code of Regulations, title 18, section (Regulation) 5218, *Review of the Petition by the Assigned Section*, currently prescribes the procedures applicable to Board staff's review of and initial determination to grant or deny petitions for redetermination under RTC sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352. Regulation 5235, *Action on the Claim for Refund*, currently prescribes the procedures applicable to Board staff's initial determination to grant or deny a claim for refund under RTC 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. Regulation 5237, *Board Approval Required for Refunds Over \$100,000*, currently prescribes the requirements for the Board's and Executive Director's approval of Board staff's recommendations to grant or deny refunds under RTC sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521.

Also, if a taxpayer timely requests an appeals conference or Board hearing following Board staff's initial determination to deny the taxpayer's appeal in whole or in part, then the Board's Appeals Division will generally conduct an appeals conference to reconsider staff's initial determination and the Appeals Division will issue its own Decision and Recommendation regarding the taxpayer's appeal. Regulation 5267, *Issuance of Post Appeals Conference Notices; Board Approval*, currently prescribes the procedures for the issuance of post appeals conference notices to taxpayers that have not timely requested a Board hearing or had a timely request for a discretionary Board hearing denied, after the Appeals Division has issued its Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation regarding their appeals under the provisions in RTC 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.

Furthermore, as relevant here, Regulations 5218, 5235, 5237, and 5267 incorporate the limits on the Board's delegations of authority to Board staff to grant or deny appeals and refund, credit, or cancel previously assessed taxes and fees, and penalties discussed above. Regulations 5218 and 5267 currently require the Board's approval of Board staff's recommendations 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. Regulation 5237 currently requires the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000 and the Executive Director's approval of Board staff's recommendations to grant claims for refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000. Also, Regulation 5235 clarifies that Board staff's recommendations to grant or deny claims for refund are subject to Board approval pursuant to Regulation 5237.

Proposed Amendments

Formal Issue Paper 15-005

Formal Issue Paper 15-005 explained that the Board delegates the authority to refund, credit, or cancel amounts of \$100,000 or less to Board staff, and raised the issue of whether the \$100,000 threshold for Board approval should be increased to \$250,000 or removed in its entirety in order to accelerate the refund process. The formal issue paper explained that it may take an additional three months to issue a refund that is subject to Board approval. The formal issue paper recommended raising the \$100,000 threshold to \$250,000 because raising the threshold for Board approval from \$100,000 to \$250,000 would reduce the number of Board staff's recommendations requiring Board approval by approximately 44 percent and allow taxpayers to receive refunds up to three months earlier on approved claims between \$100,001 and \$250,000. The formal issue paper also presented the Board with the alternatives of eliminating the requirement for Board approval so that even more refunds could be issued up to three months earlier, or making no change to the Board's current delegation of authority to Board staff to refund, credit, or cancel amounts of \$100,000 or less without Board approval. In addition, the formal issue paper explained that amendments to Regulations 5218, 5237, and 5267 would be

needed to implement the Board's decision to either raise the \$100,000 threshold to \$250,000 or eliminate the requirement for Board approval.

April 29, 2015, Board Meeting

Formal Issue Paper 15-005 was submitted to the Board Members for consideration during the Board's April 29, 2015, meeting. During the meeting, Board staff explained that staff thoroughly reviews its recommendations to refund, credit, or cancel amounts in excess of \$100,000. Board staff explained that such a recommendation is only submitted for Board approval if the taxpayer has not decided to appeal staff's recommendation by requesting an appeals conference or Board hearing, and that the Board has consistently agreed with and approved such recommendations when they have been presented to the Board for approval. Board staff also explained that the Board currently has general oversight over the way Board staff exercises its delegated authority, and may require reports on staff's recommendations to refund, credit, or cancel amounts regardless of their size.

Therefore, the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

As a result, at the conclusion of the Board's discussion of Formal Issue Paper 15-005 on April 29, 2015, the Board Members unanimously voted to eliminate the Board approval process in order to expedite the issuance of refunds in excess of \$100,000. The Board Members unanimously voted to direct staff to provide monthly reports to the Board Members regarding staff's determinations to refund, credit, or cancel amounts in excess of \$250,000 so that the Board Members can continue to monitor staff's determinations to refund, credit, or cancel substantial amounts. The Board Members also unanimously voted to direct staff to amend the Board's regulations to be consistent with the increased delegation of authority to Board staff to refund, credit, or cancel amounts without Board approval.

In addition, after the April 29, 2015, Board meeting, the Board determined that, in the absence of the Board approval process, it will now be necessary for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000, including recommendations to refund duplicate or erroneous payments made through the electronic funds transfer program, and recommendations to cancel fraud or evasion penalties in any amount. This will ensure that there is still sufficient oversight of Board staff's recommendations to refund, credit, and cancel amounts in excess of \$100,000 and cancel fraud or evasion penalties in any amount, but without unnecessarily delaying the issuance of refunds.

Furthermore, after the April 29, 2015, Board meeting, the Board determined that there are issues (or problems within the meaning of Gov. Code, 11346.2, subd. (b)) with Regulations 5218 and 5267 because they contain provisions for the Board's approval of Board staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, which are inconsistent with the

Board's decision to eliminate the Board approval process. There is an issue with Regulation 5237 because its title refers to "Board Approval," it contains provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and both the title and provisions for Board approval of refunds are inconsistent with the Board's decision to eliminate the Board approval process. There is also an issue with Regulation 5237 because it contains provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, which are inconsistent with the Board's determination that it is sufficient for the Board's Deputy Directors to approve such refunds. There is also an issue with Regulation 5235 because it refers to "Board approval pursuant to Regulation 5237." Therefore, the Board has determined that for the specific purposes of addressing these issues (or problems), it is reasonably necessary to:

- Amend Regulations 5218 and 5267 to replace their Board approval provisions with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel a fraud or evasion penalty in any amount, and providing taxpayers the opportunity to request an appeals conference or Board hearing to further appeal a Deputy Director's determination if it is less favorable than the Deputy Director's staff's recommendation;
- Amend Regulation 5237 to delete its provisions for the Board's approval of Board staff's recommendations to grant or deny refunds in excess of \$100,000, and its provisions for the Executive Director's approval of Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000, and replace them with new provisions providing for the Board's Deputy Directors to make the determinations as to whether to approve their staff's recommendations to grant or deny refunds in excess of \$100,000; and
- Amend Regulations 5218, 5235, 5237, and 5267 to replace the references to "Board" approval with references to "Deputy Director" approval in the text of the regulations and the title of Regulation 5237.

The Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 5218, 5235, 5237, and 5267 or the proposed amendments to Regulations 5218, 5235, 5237, and 5267.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-005, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its April 29, 2015, Board meeting in deciding to propose the amendments to Regulations 5218, 5235, 5237, and 5267, described above.

ALTERNATIVES CONSIDERED

The Board considered whether to amend Regulations 5218, 5237, and 5267 to raise the current \$100,000 threshold for the Board's approval of refunds, credits, and cancellations to \$250,000, delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267, or make no changes to the regulations. The Board determined that it is reasonably necessary to delete the requirements for the Board's approval of refunds, credits, and cancellations from Regulations 5218, 5237, and 5267 because the Board determined that the Board approval process is no longer needed for oversight purposes, and that the Board approval process now unnecessarily delays the issuance of thoroughly reviewed refunds in excess of \$100,000.

In addition, the Board considered whether to replace the requirements for the Board's approval of refunds, credits, and cancellations in excess of \$100,000 and cancellations of fraud or evasion penalties in any amount in Regulations 5218, 5237, and 5267 with requirements for the Board's Deputy Directors' approval of their staff's recommendations to refund, credit, or cancel amounts in excess of \$100,000 or cancel fraud or evasion penalties, or not to require additional approval of Board staff's recommendations. The Board determined that it is reasonably necessary to amend Regulations 5218, 5237, and 5267 to replace the requirements for the Board's approval with requirements for a Deputy Director's approval because the Board determined that, in the absence of Board approval, a Deputy Director's approval is needed to ensure that there is sufficient oversight of substantial refunds, credits, and cancellations.

Furthermore, the Board considered whether to eliminate the requirement in Regulation 5237 that the Board's Executive Director approve Board staff's recommendations to grant refunds of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$100,000 or to make no changes to the requirement. The Board determined that it was reasonably necessary to delete the requirement for the Executive Director's approval from Regulation 5237 because the Board determined that a Deputy Director's approval provides sufficient oversight of substantial refunds, credits, and cancellations, including refunds of duplicate or erroneous payments made through the electronic funds transfer program.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternatives have been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in

carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)(1)

The proposed amendments make Regulations 5218, 5235, 5237, and 5267 consistent with the Board's April 29, 2015, delegation of authority to Board staff to grant or deny appeals and refund, credit, or cancel amounts in excess of \$100,000 without the Board's approval. However, the proposed amendments do not change the substantive standards for determining whether an amount should be refunded, credited, or canceled. The proposed amendments will ensure that there continues to be sufficient oversight of substantial refunds, credits, and cancellations by requiring a Deputy Director's approval before Board staff can actually refund, credit, or cancel an amount in excess of \$100,000 or cancel a fraud or evasion penalty in any amount. And, the modified adjusted rate of interest currently paid on refunds and credits is zero percent (0%). (See, e.g., RTC, §§ 6591.5, subd. (d), and 6907.) Therefore, the Board has determined that the proposed amendments will make the Board's internal processing of refunds, credits, and cancellations more efficient and permit refunds in excess of \$100,000 to be issued up to three months earlier. However, the proposed amendments will not change the size of the refunds, credits, or cancellations made by the Board and will not change the amount of credit interest currently paid on refunds or credits.

As a result, the Board anticipates that the proposed amendments will benefit taxpayers by expediting the processing of refunds, credits, and cancellations of amounts in excess of \$100,000 and cancellations of fraud and evasion penalties, and helping taxpayers get refunds in excess of \$100,000 up to three months sooner. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, the Board has determined that the proposed amendments to Regulations 5218, 5235, 5237, and 5267 do not impose any costs on any persons, including businesses, and the Board has determined that there is nothing in the proposed amendments to Regulations 5218, 5235, 5237, and 5267 that would impact revenue. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will neither create nor eliminate jobs in the State of

California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulations 5218, 5235, 5237, and 5267 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 will not have a significant adverse economic impact on business.

The adoption of the proposed amendments to Regulations 5218, 5235, 5237, and 5267 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5218**

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 Deputy Director~~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 Deputy Director~~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 Deputy Director~~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 Deputy Director~~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 Deputy Director~~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 Deputy Director~~Board~~ approval if applicable.

(g) Deputy Director 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 assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

ngs, then the appeal will be

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) 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 resolved in accordance with the Deputy Director's findings.

~~(hg) If the assigned section's findings are not subject to Deputy Director approval, but 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 appeal 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.~~

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.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5235**

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, 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 the assigned section recommends that a claim be granted in its entirety, it will:

- (1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director~~Board~~ approval requirements of section 5237, if applicable); and
- (2) 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) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer 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 Deputy Director~~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 Deputy Director~~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.

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.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

5237. Deputy Director~~Board~~ Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department~~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 Deputy Director~~Board~~, the Deputy Director may approve the assigned section's recommendation or exercise ~~Board~~ has discretion to make the Deputy Director's~~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 taxpayer~~claimant~~.

(1) ~~If~~Where the Deputy Director~~Board~~ approves the assigned section's recommendation to grant 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.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

~~(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~~

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5237**

~~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.~~

(~~c~~e) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the taxpayer~~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 Deputy Director of the assigned section's Department Board for approval as provided in subdivision (b). If the Deputy Director 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.

(~~d~~f) If the assigned section or the Deputy Director of the assigned section's Department 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.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 5267**

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 Deputy Director of the Board's Department responsible for administering the tax~~Board~~ for approval ~~as a nonappearance item~~, at which time:

(1) The Deputy Director~~Board~~ may approve the recommendation.

(2) The Deputy Director~~Board~~ may exercise ~~its~~ discretion to make the Deputy Director's own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so 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. If the Deputy Director makes his or her own~~ determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

~~(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 advised 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 the Appeals Division or a Deputy Director 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.~~

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.

Regulation History

Types of Regulations: Rules for Tax Appeals

Regulations: 5218, 5235, 5237, 5267

Title: 5218, *Review of the Petition by the Assigned Section*,
5235, *Action on the Claim for Refund*,
5237, *Board Approval Required for Refunds Over \$100,000*, and
5267, *Issuance of Post Appeals Conference Notices; Board Approval*.

Preparation: Bradley M. Heller

Legal Contact: Bradley M. Heller

The State Board of Equalization proposes to adopt amendments to make the regulations consistent with the Board's delegation of authority to staff to refund, credit, or cancel amounts in excess of \$100,000 without Board approval.

History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 23, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 7, 2015	Notice to OAL
April 29, 2015	Other Administrative Matters P3.1, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA