

Memorandum

To: Mr. David Gau
Chief Deputy Director (MIC:101)

Date: February 2, 2016

From: 
Randy Ferris
Chief Counsel

Subject: **Board Meeting, February 23-25, 2016**
Item J - Chief Counsel's Rulemaking Calendar
Rules for Tax Appeals Regulations 5600, Definitions, Board Hearing Procedures; Taxes Affected by This Article, 5601, Eligible Claims, and 5603, Claim Procedure

We request your approval to place proposed changes to Rules for Tax Appeals (RTA) Regulations 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Article*, 5601, *Eligible Claims*, and 5603, *Claim Procedure*, on the Chief Counsel's Rulemaking Calendar for the February 23-25, 2016, Board meeting. The regulations are in chapter 6 of the RTA, which applies to statutorily authorized claims for reimbursement. Regulation 5600 incorporates specified definitions into chapter 6 and lists the tax and fee programs to which chapter 6 applies. Regulation 5601 currently specifies the expenses that may be reimbursed if a claim for reimbursement is granted. Regulation 5603 prescribes the procedures for filing and responding to a claim for reimbursement and incorporates a claim form by reference.

The proposed changes replace "Article" with "Chapter" in the title of Regulation 5600 because Regulation 5600 has specified the application of chapter 6 of the RTA since 2008. The proposed changes to Regulation 5600 delete a reference to repealed RTA Regulation 5512. The proposed changes to Regulation 5600 also clarify that chapter 6 of the RTA applies to claims for reimbursement related to franchise and income tax appeals to the Board filed under the provisions of part 10.2, *Administration of Franchise and Income Tax Laws*, of division 2 of the Revenue and Taxation Code (RTC) (RTC, §§ 18401-19802). (Attachment A illustrates the changes to Regulation 5600.)

The proposed changes to Regulation 5601 make it consistent with the current provisions of RTC section 21013 regarding reimbursable fees and expenses related to franchise and income tax appeals by:

- Deleting the provisions in the first and last sentences of Regulation 5601 regarding corporate franchise and income tax cases;
- Renumbering the remaining provisions of Regulation 5601 regarding business and property tax cases, as subdivision (a); and

- Adding a new subdivision (b) to Regulation 5601 to incorporate the current provisions of RTC section 21013, subdivisions (a)(2)(A) and (c)(1), respectively, providing that reimbursable fees and expenses do not include fees and expenses “incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted” to the Board, and are limited to “[f]ees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.”

The proposed changes to Regulation 5601 also make Regulation 5601 consistent with the current provisions of RTC sections 7091, 8269, 9269, 11657, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630 regarding reimbursable fees and expenses related to business and property tax cases by adding references to reimbursable “fees” before the references to reimbursable “expenses” in the first and second sentences in renumbered subdivision (a). (Attachment B illustrates the changes to Regulation 5601.)

The proposed change to Regulation 5603 replaces the reference to the current reimbursement claim form dated July 1998 with a reference to an updated claim form dated February 2016. (Attachment C illustrates the change to Regulation 5603). The front of the current claim form (shown in Attachment D) refers to “Corporate Franchise and Income Tax” and the front of the updated claim form (shown in Attachment E) refers to “Franchise and Income Tax” to further clarify that chapter 6, including Regulation 5603 and the claim form, currently applies to claims for reimbursement related to franchise and income tax appeals, not just “corporate” franchise and income tax appeals. Also, the back of the current claim form (shown in Attachment F) includes a sentence that alternatively requires claimants to provide either the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the parenthetical language following that sentence provides that “*Only expenses incurred after this date are subject to reimbursement.*” However, the parenthetical language is inconsistent with RTC section 23013, subdivision (c), which allows for the reimbursement of fees and expenses “incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund,” but before a franchise or income tax appeal is filed, when the statutory requirements for reimbursement are satisfied. Therefore, the back of the updated claim form (shown in Attachment G) has been reformatted so that separate sentences require claimants to provide the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter)” or “Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the parenthetical language only follows the first sentence regarding business taxes matters.

Staff will request the Board’s authorization to make the changes to Regulations 5600, 5601, and 5603 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes to Regulation 5600 are appropriate for processing under Rule 100 because the proposed changes update the regulation’s name, delete a reference to a repealed regulation, and clarify an existing reference to RTC sections 18401 through 19802 (pt. 10.2 of div. 2 of the RTC). The changes to Regulation 5601 are appropriate for processing under Rule 100 because the proposed changes make Regulation 5601 consistent with the current provisions in RTC sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630 regarding reimbursable fees and expenses. The change to Regulation 5603 is appropriate for processing under Rule 100 because the proposed change updates the front of the reimbursement claim form to clarify that the form

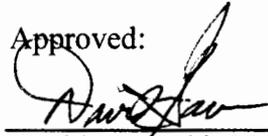
can currently be used to claim reimbursement related to all franchise and income tax appeals and makes the back of the form consistent with RTC section 21013. Also, the proposed changes to Regulations 5600, 5601, and 5603 do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at (916) 323-3091.

Recommendation by:


Randy Ferris, Chief Counsel

Approved:


David Gau, Chief Deputy Director

Approved:


Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 2/23/16 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

Attachment: Proposed Changes to Regulations 5600 and 5601

- cc: Mr. David Gau (MIC:101)
- Ms. Lynn Bartolo (MIC:57)
- Ms. Joann Richmond (MIC:80)
- Mr. Robert Tucker (MIC:82)
- Mr. Jeff Vest (MIC:85)
- Mr. Grant Thompson (MIC:85)
- Mr. Jeff Angeja (MIC:85)
- Ms. Susanne Buehler (MIC:92)
- Mr. Kevin Hanks (MIC:49)
- Mr. Bradley M. Heller (MIC:82)

Attachment A

Proposed Changes to Regulation 5600

5600. Definitions, Board Hearing Procedures; Taxes Affected by This ~~Chapter~~Article.

(a) The definitions in sections 5511 ~~and 5512~~ apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

~~Administration of the Corporate Franchise and Income Tax Laws -
Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802~~

Business and Property Taxes -

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law

Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge
Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees
Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax (including State-administered local sales,
transactions, and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that provisions in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Attachment B

Proposed Changes to Regulation 5601

5601. Eligible Claims.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Fees and expenses Expenses incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. ~~All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”~~

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in corporate franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Attachment C

Proposed Changes to Regulation 5603

5603. Claim Procedure.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/167/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and when applicable, Franchise Tax Board staff, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board Staff may be given an additional 30 days to respond to the new material.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Please type or print in ink.

TYPE OF TAX INVOLVED

Corporate Franchise and Income Tax

BUSINESS TAXES

Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)

Alcoholic Beverage Tax

Integrated Waste Management Fee

Childhood Lead Poisoning Prevention Fee

Motor Vehicle Fuel Taxes

Cigarette and Tobacco Products Tax

Occupational Lead Poisoning Prevention Fee

Diesel Fuel Tax

Tire Recycling Fee

Emergency Telephone Users Surcharge

Underground Storage Tank Maintenance Fee

Energy Resources Surcharge

Use Fuel Tax Law

Hazardous Substances Tax

TOTAL AMOUNT OF CLAIM

BREAKDOWN*

\$

Fees \$

Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT

REGISTRATION, FILE OR ACCOUNT NUMBER

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

NAME OF CLAIMANT'S REPRESENTATIVE

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

Please indicate where you would like official notices and other correspondence sent:

To Claimant's Address

Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILE WITH:

Board Proceedings Division MIC:81
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0081

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final.

If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Please type or print in ink.

TYPE OF TAX INVOLVED

Franchise and Income Tax

BUSINESS TAXES

- Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)
- Alcoholic Beverage Tax
- Childhood Lead Poisoning Prevention Fee
- Cigarette and Tobacco Products Tax
- Diesel Fuel Tax
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Hazardous Substances Tax
- Integrated Waste Management Fee
- Motor Vehicle Fuel Taxes
- Occupational Lead Poisoning Prevention Fee
- Tire Recycling Fee
- Underground Storage Tank Maintenance Fee
- Use Fuel Tax Law

TOTAL AMOUNT OF CLAIM	BREAKDOWN*	
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NAME OF CLAIMANT	REGISTRATION, FILE OR ACCOUNT NUMBER
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()
NAME OF CLAIMANT'S REPRESENTATIVE	
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()

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If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

SIGNATURE OF CLAIMANT OR ATTORNEY/REPRESENTATIVE (please see notice below)	Date
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NOTICE

Section 72 of the Penal Code provides:

“Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.”

CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Corporation Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

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