

## BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations  
Title 18. Public Revenues  
Division 2.1. State Board of Equalization – Rules for Tax Appeals

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

#### ARTICLE 6: APPEALS CONFERENCES

#### **5266. APPEALS DIVISION RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR BOARD HEARINGS; SUPPLEMENTAL DECISION AND RECOMMENDATION.**

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

- (1) Deny the appeal in its entirety.
- (2) Grant the appeal in its entirety.
- (3) Grant the appeal in part.
- (4) That the appropriate Department perform a reaudit as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the appeal in whole or in part or a reaudit, the taxpayer may submit, within 30 days after the issuance of the Decision and Recommendation or the issuance of the letter from the Appeals Division explaining the results of the reaudit:

(1) A written request for reconsideration to the Appeals Division. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the taxpayer disagrees with the Decision and Recommendation, the results of the reaudit, or both; or

(2) A written request for a Board hearing to the Board Proceedings Division if the taxpayer has not previously done so.

(A) If a Board hearing has been requested, but the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or it is unclear whether the taxpayer disagrees with any portion of its Decision and Recommendation, the Appeals Division may ask the taxpayer to confirm the request for Board hearing.

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

(c) If the Decision and Recommendation recommends that the appeal be granted in whole or in part or a reaudit:

(1) The Department and any state agency represented at the appeals conference may submit a written request for reconsideration to the Appeals Division within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the Department or other state agency disagrees with the Decision and Recommendation, the results of the reaudit, or both.

(2) Any state agency represented at the appeals conference may submit a written request for a Board hearing to the Board Proceedings Division, within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. If a Board hearing is requested, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(d) If a party submits a timely request for reconsideration, as provided in subdivisions (b) and (c)(1) of this section, the Appeals Division will prepare a Supplemental Decision and Recommendation to respond to the

request for reconsideration and address any other matter the Appeals Division deems warranted. The Appeals Division may also issue a Supplemental Decision and Recommendation when it deems it appropriate to do so, including where no party has filed a timely request for reconsideration. For example, while the Appeals Division is not required to do so, it may issue a Supplemental Decision and Recommendation to respond to a request for reconsideration submitted in response to a Supplemental Decision and Recommendation or otherwise filed more than 30 days after the issuance of the Decision and Recommendation or the letter explaining the results of a reaudit.

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

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

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

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

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

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.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.  
2. Amendments adopted October 6, 2009, effective February 19, 2010. Replaced \$50,000 with \$100,000 in subdivision (f), and added new subdivision (g).  
3. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments replaced "Staff" with "Division," replaced "Oral" with "Board," and inserted "; Supplemental Decision and Recommendation" in the title of the regulation; inserted "The" and replaced "Staff" with "Division" in subdivision (a); replaced "petition, claim, or request for relief" with "appeal" in subdivisions

(a)(1), (2), and (3) and (b); deleted "Board Staff in" from after "That" and replaced "re-audit the issues raised in the petition, claim, or request for relief" with "perform a reaudit" in subdivision (a)(4); inserted "or a reaudit," replaced "petitioner, claimant, or person requesting relief" with "taxpayer," and inserted the text after "may" in subdivision (b); replaced "File a" with "A" and replaced "Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued" with "reconsideration to the Appeals Division" in the first sentence in subdivision (b)(1); add the second sentence to subdivision (b)(1); replaced "Disagree and file a" with "A," replaced "an oral" with "a Board," and replaced "before the Board no later than 30 days after the Decision and Recommendation was issued" with "to the Board Proceedings Division if the taxpayer has not previously done so" in the first sentence in subdivision (b)(2); deleted the second sentence in subdivision (b)(2) and deleted subdivision (b)(2)(A); replaced "an oral" with "a Board," inserted "the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or," replaced "petitioner, claimant, or person requesting relief" with "taxpayer," and replaced "(or supplemental Decision and Recommendation) Board Staff will:" with ", the Appeals Division may ask the taxpayer to confirm the request for Board hearing." in subdivision (b)(2)(B); deleted subdivision (b)(2)(B)(i) and (ii); renumbered subdivision (b)(2)(B) as subdivision (b)(2)(A) and added a new subdivision (b)(2)(B); deleted subdivision (b)(3); replaced "a petition, claim, or request for relief" with "the appeal" and replaced ", the Department represented at the appeals conference, and any state agency represented at the appeals conference, may" with "or a reaudit" in subdivision (c); replaced "File" with "The Department and any state agency represented at the appeals conference may submit," replaced "for Appeals Staff to reconsider the petition, claim, or request for relief" with "for reconsideration to the Appeals Division," inserted "issuance of the," and replaced "was issued" with "or letter from the Appeals Division explaining the results of the reaudit" in the first sentence in subdivision (c)(1); added a new second sentence to subdivision (c)(1); deleted subdivision (c)(2); replaced "Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any" with "Any," replaced "file" with "submit," replaced "an oral" with "a Board," replaced "before the Board no later than" with "to the Board Proceedings Division, within," inserted "issuance of the," and replaced "was issued" with "or letter from the Appeals Division explaining the results of the reaudit" in the first sentence in subdivision (d); replaced "an oral" with "a Board" twice, inserted "the" before "Board Proceedings," replaced "Staff" with "Division," and deleted "before the Board" from after the second reference to "hearing" in the second sentence in subdivision (d); replaced "an oral" with "a Board" and replaced "oral" with "Board" in the third sentence in subdivision (d); renumbered subdivision (d) as subdivision (c)(2); replaced "If Appeals Staff receive a" with "If a party submits a timely," replaced "Appeals Staff" with "as provided in subdivision (b) and (c)(1) of this section, the Appeals Division," replaced "addressing any new information provided in" with "to respond to," and replaced ", copies of which will be sent to all parties" with "and address any other matter the Appeals Division deems warranted" in the first sentence in subdivision (e); replaced "Appeals Staff" with "The Appeals Division" and replaced all the text following "Recommendation" in second sentence in subdivision (e); added a new third sentence to subdivision (e); reformatted the last sentence in subdivision (e) as subdivision (e)(4) and added the text following "subdivision (c)" to subdivision (e)(4); added subdivisions (e)(1), (2), (3), and (5) and renumbered subdivision (e) as subdivision (d); and deleted subdivisions (f) and (g).