

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 4: Appeals from Actions of the Franchise Tax Board

ARTICLE 4: REQUESTING AND SCHEDULING ORAL HEARINGS

5443. PRE-HEARING CONFERENCE.

(a) Purpose. The purpose of a pre-hearing conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing.

(b) When to Hold a Pre-hearing Conference. A pre-hearing conference may be held only when an oral hearing has been granted under section 5440, and after the conclusion of briefing.

(1) The Appeals Division may order a pre-hearing conference in its discretion.

(2) Any party may make a written request for a pre-hearing conference. The request must be made not later than 15 days from the date on which the Chief of Board Proceedings acknowledges the request for an oral hearing. The Appeals Division may deny the request, with the approval of the Chief Counsel, if the Appeals Division determines that a pre-hearing conference is likely to be unproductive.

(3) The Board, at the oral hearing on the appeal, may order that a pre-hearing conference be held. In that circumstance, the hearing will be postponed until after the conclusion of the pre-hearing conference.

(c) Determining the Time and Location of the Pre-Hearing Conference. The Appeals Division will determine the time and location of the pre-hearing conference. Consistent with workload constraints, the Appeals Division will ensure that the pre-hearing conference is held at a time convenient to the appellant. The pre-hearing conference ordinarily must be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. With good cause and with the approval of the Chief Counsel, an in-person pre-hearing conference may be held outside of Sacramento.

(d) Notice and Scheduling. The Board Proceedings Division will schedule the pre-hearing conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties. The parties will be given notice no less than 15 days before the date of the pre-hearing conference, provided that the notice period may be waived upon agreement by all parties.

(e) Conduct and Nature of the Pre-hearing Conference. An employee of the Appeals Division will conduct the pre-hearing conference. To the extent possible, the conference holder will ensure that the pre-hearing conference is informal and non-adversarial. However, if the conference holder determines that the pre-hearing conference is unproductive or that a party is uncooperative, the conference holder may terminate the pre-hearing conference.

(f) Recording or Transcription. The conference holder will not record, videotape, or transcribe the pre-hearing conference. Any party may arrange for the pre-hearing conference to be recorded or transcribed, at that party's expense. If a transcript is made, the transcript must be made available to all participants and it will become a public record. However, in all cases, statements made by participants during the pre-hearing conference are not binding upon the Board.

(g) Additional Briefing and Evidence. The holding of a pre-hearing conference does not prevent the Appeals Division from requesting additional briefing or evidence under section 5435.

Note: Authority: Government Code section 15606.

Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.