

## 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 5: DECISIONS, OPINIONS, AND FRIVOLOUS APPEAL PENALTIES

#### 5452. FORMAL OPINIONS.

(a) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion for an appeal when the appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate. The Appeals Division will also prepare a Formal Opinion when the Board directs Board staff to draft a precedential opinion for the appeal under section 5551. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division upon completion and within any deadline set by the Board, and, if section 5552 applies, at least 60 days prior to the expiration of the 120-day period described in section 5552, subdivision (b). The Chief Counsel may extend the time for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair if such extension will not prevent compliance with section 5552, subdivision (b).

(b) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:

- (1) A brief explanation of any Board action taken on the appeal, including any determination regarding the outcome of the appeal and the order to prepare a Formal Opinion;
- (2) A statement explaining when the period for filing a Petition for Rehearing will begin; and
- (3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.

(c) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are considered:

- (1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;
- (2) Whether the Opinion would resolve or create an apparent conflict in the law;
- (3) Whether the Opinion would involve a legal issue of continuing public interest; and
- (4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.  
2. Amendments adopted November 19, 2013, effective April 1, 2014. The amendments deleted subdivisions (a), (d), and (f), and renumbered subdivisions (b), (c), and (e), as new subdivisions (a), (b), and (c), respectively; added "for an appeal" between "Opinion" and "when," replaced "an" with "the" between "when" and "appeal," and deleted the text after "appropriate" in the first sentence of renumbered subdivision (a); added a new second sentence to renumbered subdivision (a); deleted "either" from after "Board Proceedings Division," replaced "or" with "and" after "completion," and inserted additional text after "Board" in the third sentence of renumbered subdivision (a); deleted "period" after "time" and inserted additional text after "Board Chair" in the

fourth sentence of renumbered subdivision (a); replaced “decision on” with “determination regarding” in renumbered subdivision (b)(1); and replaced “that the time” with “explaining when the,” deleted “not” after “will,” and deleted the text after “begin” in renumbered subdivision (b)(2).