

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 5: General Board Hearing Procedures¹

Article 1: Application of Chapter and Definitions

5511. DEFINITIONS.

The following definitions apply to this division, unless otherwise indicated:

(a) "Appeal" means:

- (1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing;
- (2) Administrative protest;
- (3) Claim, including a claim for refund;
- (4) Appeal from an action of the Franchise Tax Board under chapter 4;
- (5) Application, including, but not limited to, an application for administrative hearing; or
- (6) Any other item that may be scheduled for a Board hearing conducted in accordance with chapter 5 of this division, including, but not limited to, requests for relief of taxes, interest, or penalties.

An appeal is also referred to as a "matter."

(b) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.

(c) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(d) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.

(e) "BOARD HEARING" MEANS A TAXPAYER'S OPPORTUNITY TO APPEAR, ALONG WITH THE DEPARTMENT, BEFORE THE BOARD DURING A BOARD MEETING AND PRESENT ORAL ARGUMENTS REGARDING ISSUES OF FACT AND LAW RELEVANT TO THE TAXPAYER'S APPEAL, ALSO REFERRED TO AS AN "ORAL HEARING" OR "HEARING."

(f) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.

¹ Editorial change renaming subchapters to subarticles (Register 2008, No. 13.).

(g) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.

(h) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.

(i) "BRIEF" MEANS A WRITTEN DOCUMENT THAT CONTAINS AN ARGUMENT SUPPORTING A PARTY'S POSITION, WHETHER CITING SPECIFIC LAWS, REGULATIONS, OR OTHER AUTHORITIES OR MAKING ARGUMENTS WITHOUT CITING SPECIFIC AUTHORITIES.

(j) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.

(k) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

(l) "Delivery Service" means a trade or business that delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records the date on which it accepts each document for delivery, either electronically to its database kept in the regular course of its business, or on the cover in which a document is delivered, or both.

(m) "Department" means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Special Operations and Investigations Division of the Legal Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.

(n) "Deputy Director" means the Deputy Director of the State Board of Equalization's Sales and Use Tax Department or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.

(o) "Executive Director" means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.

(p) "Extreme hardship" means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person's control, such as illness, death, or disaster.

(q) "Formal Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal from an action of the Franchise Tax Board and sets precedent.

(r) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on an appeal for which a Board hearing has been scheduled.

(s) "Memorandum Opinion" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal, other than an appeal from an action of the Franchise Tax Board and sets precedent.

(t) "Nonappearance matter" means an appeal submitted to the Board for decision or a written opinion submitted to the Board for potential adoption on the basis of the existing record.

(u) "Nonprecedential opinion" means a Summary Decision.

(v) "Party" means the taxpayer and the Department.

(w) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.

(x) "Precedential opinion" means a Formal Opinion or Memorandum Opinion.

(y) "Reasonable cause" means circumstances that would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.

(z) "Summary Decision" means a written opinion adopted by the Board that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is not intended to set precedent.

(aa) "Tax" means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of an appeal before the Board.

(bb) "Taxpayer" means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, applicant, claimant, or any other person who has an appeal before the Board or who is a person directly interested in an appeal before the Board. The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

(cc) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

(dd) "Written opinion" means a Formal Opinion, Memorandum Opinion, or Summary Decision.

Note: Authority cited: Article XIII, Section 11, California Constitution; Sections 15606 and 15640, Government Code; and sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Article XIII, Section 17, California Constitution; Sections 15606 and 15640, Government Code; and Sections 20, 40, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 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, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 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, 46551, 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 November 19, 2013, effective April 1, 2014. The amendments deleted "chapter, and also apply to chapters 2, 3, and 4 of this" from before "division" and replaced "as provided therein" with ", unless otherwise indicated" in the unnumbered text at the beginning of the regulation; added new subdivisions (a), (e), (q) (s), (t), (u), (x), (z), and (dd); deleted subdivisions (i), (p), and (r); renumbered subdivisions (a) through (c), (d) through (h), (j) through (o), (q), (s), (t), (u), (v), (w), and (x) as subdivisions (b) through (d), (f) through (j), (k) through (p), (r), (v), (w), (y), (aa), (bb), and (cc), respectively; replaced all the text following the first comma and deleted the second sentence in renumbered subdivision (i); replaced ", if such trade or business" with "that" and replaced all the text after "records" in renumbered subdivision (l); inserted " Special Operations and Investigations Division of the Legal Department of the Board of Equalization," in renumbered subdivision (m); added ", such as illness, death, or disaster" to renumbered subdivision (p); replaced "a matter" with "an appeal," "an oral" with "a Board," and "requested" with "scheduled" in renumbered subdivision (r); deleted paragraphs (1) and (2) from and deleted "as defined in this section" from the end of renumbered subdivision (v); deleted "such" from before and replaced "as" with "that" after "circumstances" in renumbered subdivision (y); replaced "a matter" with "an appeal" in renumbered subdivision (aa); inserted "applicant," replaced "a liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board," with "an appeal before the Board," and replaced "any matter" with "an appeal" in and deleted the text following "Board" at the end of the first sentence

in renumbered subdivision (bb); deleted the second sentence from renumbered subdivision (bb); and added a citation to Revenue and Taxation Code section 40 to the regulation's reference note.