

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 7: CORRESPONDENCE, PUBLIC HEARING RECORDS, AND COPIES

5574. REQUEST FOR PORTION OF BOARD HEARING CONDUCTED DURING CLOSED SESSION.

(a) Board's Discretion to Conduct Hearings During Closed Session.

(1) In general, the Board may conduct portions of Board hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct Board hearings requested under the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of a Board hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the appeal for which the taxpayer's Board hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's Board hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of a Board hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the appeal involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's Board hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The appeal involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's Board hearing is conducted solely during an open session at a public meeting.

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

(3) If a portion of a Board hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the Board hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire Board hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's Board hearing must be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.

(A) The waivers described in subdivision (b) or (c) of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled Board hearing.

(B) The waivers described in subdivision (b) or (c) of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its Board hearing.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of a Board hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

(g) Notwithstanding the foregoing provisions, nothing in this division shall prevent the Board from publishing a written opinion on its Internet website when required under section 5552.

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. Reference: Article XIII, Section 11, California Constitution; Sections 6254, 11124.1, 11125.1, 15606, 15619 and 15640, Government Code; and Sections 40, 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601 and 60609, 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 replaced "Oral" with "Board" in the title of the regulation; deleted "Oral" from before "Hearings" in the title of subdivision (a); replaced "oral" with "Board" before "hearings" in subdivision (a)(1) and (2); replaced "an oral" with "a Board" before "hearing" in the first sentence of subdivision (b); replaced "matter" with "appeal" and replaced "oral" with "Board" before both references to "hearing" in the second sentence of subdivision (b); replaced "an oral" with "a Board" in subdivisions (d)(1) and (e); replaced "matter" with "appeal" in subdivision (d)(1)(A) and (2)(A); replaced "oral" with "Board" in subdivision (d)(2), (2)(B), (4)(A) and (4)(B); replaced "an oral" with "a Board" before the first reference to "hearing" and replaced "oral" with "Board" before the second and third references to "hearing" in subdivision (d)(3) and the first reference to "hearing" in subdivision (d)(4); deleted "before the Board" from the end of subdivision (d)(4)(B); added new subdivision (g) to make the regulation consistent with new Regulation 5552; and added a citation to Revenue and Taxation Code section 40 to the regulation's reference note.