



Appeals Conferences and Optional Briefing for Business Tax and Fee Appeals

Chapter 2 of the Rules for Tax Appeals (RTA) (Regulations 5260-5271)

1. Articles 6 and 7 of chapter 2 of the RTA apply to appeals conferences and the optional briefing process for appeals regarding the Board's business tax and fee programs. (Regulations 5260-5271.)
2. Overview of article 6's appeals conference process:
 - A. The conference is scheduled and notice of appeals conference issued.
 - B. The taxpayer returns a completed Response to Notice of Appeals Conference.
 - C. The appeals conference is held.
 - D. The parties may submit and respond to additional information after the conference.
 - E. The Appeals Division prepares its Decision and Recommendation (D&R).
 - F. The parties may request reconsideration of the D&R.
 - G. The taxpayer (and any other agency) may request an oral Board hearing.
3. Article 6's important appeals conference provisions:
 - Article 6 explains how the Board schedules an appeals conference, issues a notice of appeals conference, and requires the taxpayer to return a Response to Notice of Appeals Conference within 15 days. (Regulations 5260 and 5261.)
 - Article 6 explains how to reschedule or postpone an appeals conference. (Regulation 5262.)
 - Article 6 explains how taxpayers can *expedite* the holding of their appeals conferences by agreeing to attend a conference in Sacramento, a videoconference or teleconference, or appear on shortened notice. (Regulation 5263.)
 - Article 6 requires conference holders to conduct an informal discussion, take a fresh look at the issues, and make their own objective recommendations during the appeals conference process. (Regulation 5264.)
 - Article 6 explains that appeals conferences are not recorded, unless taxpayers make prior arrangements. (Regulations 5261.)
 - Article 6 allows the parties to submit evidence and arguments to the conference holder up to the date of the appeals conference and request permission to submit information after the conference. (Regulation 5264.)
 - D&Rs must be issued within 90 days after any additional evidence is submitted, however, the Chief Counsel may grant extensions. D&Rs must include a concise statement of the taxpayer's issues, the Department's position, and the relevant law; a clear application of the law to the facts; the conference holder's conclusions and recommendations; and a summary of any additional, potentially relevant information. (Regulation 5265.)
 - Conference holders may recommend that an appeal be granted or denied in whole or in part or that the Department perform a re-audit. If the taxpayer or another agency disagrees, they may file a request for reconsideration and/or an oral Board hearing no later than 30 days after the date of the D&R. If the Department disagrees, the Department may file a request for reconsideration. (Regulation 5266.)



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- Article 6 also lists the post-appeals conference notices that may be issued when an oral Board hearing is not requested, and provides notice of an exception for certain appeals involving *resale certificates*. (Regulation 5267.)
- 4. Chapter 2, article 7, improves the Board practices by providing additional time to prepare briefs and giving taxpayers the right to file the last brief.
- 5. Application of article 7's optional briefing process to Sales and Use Tax appeals:
 - A. The notice of hearing is issued at least 75 days before the oral hearing.
 - B. The taxpayer **may** file an opening brief no later than 55 days before the hearing.
 - C. The Department may file a reply brief up to 35 days before the hearing.
 - D. The taxpayer may file a limited response at least 20 days before the hearing.
 - E. Non-party briefs may be filed no later than 20 days before the hearing and the parties' responses are due no later than 10 days before the hearing.
 - F. The Board or the Appeals Division may request additional briefing after the briefing process is complete and the Board may request post-hearing briefs.
- 6. Important briefing provisions:
 - Article 7 allows briefs to be filed electronically. (Regulation 5270.)
 - Article 7 prescribes the contents of briefs and requires the Chief of Board Proceedings to give parties 10 days to cure defects in briefs. (Regulation 5270.)
 - Article 7 allows taxpayers and other agencies to file an opening brief, but only if they requested an oral Board hearing. Opening briefs are due 55 days before the scheduled oral Board hearing, however, unrepresented taxpayers and taxpayers who participate in a *Board-approved pro bono or clinical program* may file their briefs at their hearings. (Regulation 5270.)
 - Article 7 allows any party to file a reply brief in response to another party's opening brief no later than 35 days before the hearing; and allows any party to file a response to another party's reply brief no later than 20 days before the hearing, but the response may only address new issues or arguments raised in the reply brief to which it responds. (Regulation 5270.)
 - Article 7 allows the Appeals Division and Board to request additional briefing and allows the Board to request post-hearing briefing. (Regulation 5270.) Regulation 5523.4 allows the Board Members to request additional briefing from the parties after Hearing Summaries are issued (see chapter 5).
 - Article 7 allows non-party (amicus) briefs to be filed at least 20 days before an oral Board hearing and allows the parties to file limited replies at least 10 days before the hearing. (Regulation 5270.).
 - Article 7 also gives the Chief Counsel authority to grant a reasonable extension of time for the filing of any brief for reasonable cause. (Regulation 5271.)