



Pre-Board and Post-Board Action Review of Appeals from the
Franchise Tax
Board (FTB) – Chapter 4 of the Rules for Tax Appeals (RTA) (Regulations
5410-5465)

1. Chapter 4 of the RTA applies to Franchise and Income Tax and Senior Citizens Homeowners and Renters Property Tax Assistance appeals. (Regulation 5410.)
2. Chapter 4 improves the Board’s practices by clearly explaining the deadlines for filing and the Board’s jurisdiction to hear appeals from actions of the FTB, and adding *new* provisions for Appeals Division review of appeals from the FTB. (Regulations 5412, 5422, and 5442-5444.)
3. Overview of chapter 4’s provisions for appeals from actions of the FTB:
 - A. Appeal filed and reviewed for timeliness, completeness, and jurisdiction.
 - B. The appellant has 90 days to perfect timely, but incomplete appeals.
 - C. Briefing starts when the appeal is perfected.
 - D. The Appeals Division reviews appeals scheduled for oral Board hearings and may request additional briefing or conduct pre-hearing conferences.
 - E. The Appeals Division prepares a Hearing Summary.
4. Article 1 explains that chapter 4 applies to appeals filed under the Franchise and Income Tax Laws and Senior Citizens Homeowners and Renters Property Tax Assistance Law and contains chapter specific definitions for the terms “appellant” and “respondent.” Article 1 also lists the 10 types of Franchise and Income Tax appeals the Board has jurisdiction to hear and lists 5 types of issues the Board does not decide, such as the constitutionality of statutes. (Regulations 5410-5412.)
5. Article 2 requires each appeal to identify the appellant(s), identify the years and amounts at issue or the amount of assistance claimed for each year, and include a copy of the notice(s) being appealed (except appeals from deemed denials). Article 2 allows appeals to be filed electronically and lists the statutory filing deadlines for the 10 different types of appeals, which generally require appeals to be filed within 30, 60, or 90 days after a notice is mailed. Article 2 provides a 5-day extension, if notices are mailed to addresses inside California, a 10-day extension, if notices are mailed to addresses outside of California, but in the U.S., and a 20-day extension, if notices are mailed to addresses outside the United States. Article 2 requires the Chief of Board Proceedings to review appeals and determine whether they are timely and complete, and whether the Board has jurisdiction to hear the issues raised by the appellant(s). Article 2 also requires the Chief of Board Proceedings to give appellants 90 days to perfect incomplete appeals and accept appeals that *raise a genuine issue* regarding timeliness or jurisdiction. (Regulations 5420-5424.)
6. Article 3’s general briefing schedule provides that the perfected appeal is the appellant’s opening brief, gives the respondent 90 days from the acknowledgement of a perfected appeal to file an opening brief, and gives the appellant 30 days from the acknowledgement of the respondent’s brief to file a limited reply brief. The respondent may request permission to file a reply brief and, if the request is granted, the appellant is allowed to file a limited supplemental brief. The briefing schedule for innocent spouse appeals allows both spouses to



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be treated as appellants in one consolidated appeal, and requires the Board to contact non-appealing spouses and invite them to participate in the briefing process. Article 3 also requires the parties to innocent spouse appeals to notify the Board of related federal action, permits the Appeals Division, Board Members, and the Board to request additional briefing or evidence, and provides for the filing of non-party briefs. (Regulations 5430-5435.)

7. Article 4 gives appellants and non-appealing spouses the right to an oral Board hearing, if requested within 30 days after briefing concludes, and allows the Board to accept late requests for reasonable cause. Spouses' oral Board hearings will be consolidated, unless doing so would be *unsafe, disruptive, or unjust*. Article 4 explains that appeals will be submitted for decision based upon the written record, if appellants do not request an oral Board hearing or do not respond to their hearing notices. The Appeals Division is required to review the parties' briefs and, if necessary, request additional briefing and/or conduct an informal, non-adversarial, pre-hearing conference to obtain adequate information. Also, the parties may request pre-hearing conferences and the Board may order pre-hearing conferences. Article 4 requires the Appeals Division to prepare Hearing Summaries for appeals scheduled for an oral Board hearing, which must contain the Appeals Division's analysis, comments, and questions for the parties. (Regulations 5440-5444.)
8. Oral Board hearings are conducted under chapter 5. Article 5 of chapter 4 explains that:
 - **Letter Decisions** contain a short explanation of the Board's reasons for its decision on an appeal and are issued by the Appeals Division when appeals are decided without the adoption of a summary decision or formal opinion;
 - **Summary Decisions** contain findings of fact and conclusions of law, and are prepared by the Appeals Division and submitted for Board adoption; and
 - **Formal Opinions** contain findings of fact and conclusions of law, they are adopted to *set a precedent*, and they are confidential until adopted.

Article 5 also lists four non-exclusive *factors* the Board may consider when deciding whether to adopt a formal opinion and lists four non-exclusive factors the Board may consider when deciding whether to impose a frivolous appeal penalty. (Regulations 5450-5454.)

9. Article 6 explains that the Board's decisions are final 30 days after issuance, unless a party files a petition for a rehearing within that 30-day period. Article 6 requires petitions for rehearing to contain sufficient facts and legal authorities to establish one or more of the listed grounds for a rehearing. Article 6 requires the Board Proceedings Division to reject late petitions and grant petitioners 30 days to perfect timely, but incomplete petitions. Article 6 allows the non-filing parties to file reply briefs in response to each petition for rehearing. Article 6 requires the Appeals Division to prepare a written decision and submit it to the Board for consideration as a non-appearance matter. The decision remains confidential until it is adopted and may not be cited as precedent, unless adopted as a formal opinion. Article 6 also contains a briefing schedule for rehearings. (Regulations 5460-5464.)