

# Chapter 5: General Board Hearing Procedures

For all types of appeals filed under  
chapters 2,3,4, and 6.

# Improving Board Hearing Process

---

- Gives every taxpayer the right to request an oral Board hearing.
- Highlights Government Code provisions applicable to oral Board hearings.
- Explains when taxpayers waive their rights to confidentiality.
- Publication of concurring and dissenting opinions.

# Overview of Hearing Process

---

- Hearing request is received and acknowledged.
- Hearing is scheduled and noticed.
- Hearing Summary is distributed.
- PAN is issued for the Board meeting.
- Oral Board hearing is conducted.

# Definitions and Meetings

---

Article 1 defines terms used throughout the RTA. Article 2, subarticle 1 explains that the Board holds monthly Board meetings in Sacramento and elsewhere and how to obtain a copy of the meeting calendar.

# Right to Request Hearing

---

- Under chapter 5, article 2, subarticle 2 written requests are due:
  - Chapter 2 – 30 days after D&R is issued.
  - Chapter 3 – In petition.
  - Chapter 4 – 30 days after briefing ends.
  - Board may always hold a hearing.

# Notice and Response

---

The Board must mail each party a Notice of Hearing at least 75 days before their oral Board hearing (45 days for state assessee appeals), and each party must return a completed response within 15 days.

# Dismissal, Postponement, and Deferral

---

- Dismissal may be based upon the taxpayer's request, the department's concession, or the parties' stipulation.
- The due date of a brief or the date of a hearing may be deferred or postponed.

# Consolidation

---

Article 2, subarticle 2 also allows Board Members, the Appeals Division, and the parties to request consolidation and provides a ***new*** process for the parties to file objections to consolidation.

# Article 2, Subarticle 3

---

- Contains information regarding:
  - Representation
  - Contribution disclosure
  - Hearing Summaries
  - Additional briefing
  - Presentation of evidence and witnesses
  - Hearing time
  - Communications with Board Members

# Representation

---

Subarticle 3 explains that:

- Taxpayers may be represented by any authorized person who is at least eighteen years of age; but
- Taxpayers may not be represented by persons who are suspended or disbarred from practice before the FTB in appeals from the FTB.

# Contribution Disclosure

---

Subarticle 3 explains that the Board is subject to the *Quentin L. Kopp Conflict of Interest Act of 1990* and that the Board Members and the parties must make certain contribution disclosures. (See disclosure regulations 7001-7011.)

# Hearing Summaries

---

Subarticle 3 requires the Appeals Division to prepare and submit objective Hearing Summaries 40 days before oral Board hearings on chapter 2 appeals and cross references similar provisions in chapters 3 and 4.

# Additional Briefing

---

Subarticle 3 allows the Board, a Board Member, or the Appeals Division to request additional briefing in business tax and property tax appeals, except state assessee appeals, after Hearing Summaries are distributed.

# Hearing Time

---

- Subarticle 3 explains that:
  - The Board considers the facts and issues in dispute during a hearing;
  - The Board ordinarily allocates 35 minutes for a hearing; and
  - The parties' time may be *extended* or *limited* by the Chair.

# Evidence

---

- The Board will consider any relevant evidence;
- The Board has discretion to allow parties to submit evidence at their hearings (but encourages advance submission);
- The Board may refuse to allow evidence that is “*irrelevant, untrustworthy, or unduly repetitious.*”

# Witness Testimony

---

- Subarticle 3 allows the parties to offer witness testimony:
  - Encourages advance identification.
  - Guarantees right to cross examination.
  - Witness may be required to take oath.

# Communications

---

**New** provisions for communications with Board Members allow the Board Members' constituents, Board staff, other governmental agencies, and taxpayers and their representatives, including **attorneys**, to contact the Board Members and their staffs at any time.

# Public Agenda Notice (PAN)

---

- Article 3 explains that the Board is required to issue a PAN at least 10 days before each meeting:
  - Interested persons may sign-up to receive the PAN, and
  - The PAN must be posted on the Board's website.

# Gov. Code Meeting Provisions

---

- Article 4 explains that Board meetings are conducted in accordance with:
  - The Bagley-Keene Open Meeting Act;
  - Government Code section 15625;
  - The Quentin L. Kopp Conflict of Interest Act of 1990; and
  - The Political Reform Act.

# Public Participation

---

Article 4 explains that the public may attend Board meetings, but the Board Chair may order the removal of people who “***willfully interrupt***” a portion of a meeting, such as a person who refuses to be quiet during an oral Board hearing.

# Article 5: Voting & Decisions

---

- A quorum must be present to vote.
- At least three Board Members must be present and participating to form a quorum.
- Disqualified Board Members cannot be counted.
- The Deputy Controller may not be counted in constitutional functions.

# Conclusion of Hearing

---

- The Board may:
  - Vote to decide a matter, take it under submission, or continue the hearing to a later date;
  - Order the Appeals Division to prepare a Summary Decision, Memorandum Opinion, or Formal Opinion;
  - Adopt a Memorandum Opinion (property tax or business tax appeals) or adopt a Summary Decision or Formal Opinion (appeals from the FTB).

# New Opinions

---

Article 5 allows each individual Board Member to include his or her own Dissenting or Concurring Opinion for publication when a Formal Opinion or Memorandum Opinion is submitted for adoption.

# Finality of Business Tax Decisions

---

Article 6 explains that the Board's decision on a business tax appeal becomes final 30 days after notice is mailed, unless a party files a petition for rehearing within that 30-day period or the Board Chair holds the decision in abeyance.

# Petitions for Rehearing

---

- Article 6 requires business tax petitions to establish one of the following grounds for a rehearing:
  - Irregularity in the original proceedings.
  - Accident or surprise that prevented a fair hearing.
  - Newly discovered relevant evidence.
  - The decision is contrary to law.

# What Becomes a Public Record

---

Article 7 explains that the PANs issued for, minutes and transcripts of, and documents incorporated into the record of oral Board hearings conducted during open session are disclosable public records.

# *New Confidentiality Provisions*

---

- Appellants waive their rights to confidentiality when they file appeals from actions of the FTB; and
- Business taxpayers' and property taxpayers' waivers are effective when the Board issues the first PAN for their oral Board hearings.
- The Board retains its attorney-client privilege.

# *New Closed Sessions*

---

Article 7 allows persons or entities, except state assesseees and persons appealing actions of the FTB, to file requests for a portion of their oral Board hearings to be conducted during a closed session to protect trade secrets or other confidential research, development, or commercial information.

# Due Dates

---

Article 7 explains that when the due date of a document falls on a Saturday, Sunday, or holiday, the due date is extended to the following business day.

# Highlights

---

- Government Code.
- Communications with Board Members.
- Concurring and Dissenting Opinions.
- Waivers of Confidentiality.

# Wrap Up

---

- Goals are to:
  - Create uniform procedures.
  - Increase transparency.
  - Clarify expectations.
  - Improve customer relations.

# References

---

- California Code of Regulations, title 18, section 5000 et seq.
- BOE Rules for Tax Appeals and history:  
<http://www.boe.ca.gov/regs/timelineCAtax.htm>.
- DONE!!!