



STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES
Executive Director

February 8, 2013

Dear Interested Party:

Enclosed is the Initial Discussion Paper regarding proposed amendments to the Board of Equalization's Rules for Tax Appeals (RTA) (Cal. Code Regs., tit. 18, div. 2.1) that staff believes are necessary to implement the provisions of Assembly Bill No. (AB) 2323 (Stats. 2012, ch. 788), which added section 40 to the Revenue and Taxation Code (RTC). The Board is scheduled to discuss the proposed amendments to the RTA during its June 11-13, 2013, meeting.

However, before the proposed amendments implementing RTC section 40's new publication requirements are presented to the Board, staff would like to provide interested parties an opportunity to discuss the amendments and present any suggested changes or comments. Accordingly, a meeting is scheduled in Room 122 at 10:00 a.m. on February 21, 2013, at the Board of Equalization, 450 N Street, Sacramento, California.

If you are unable to attend the meeting, but would like to provide input for discussion, please send your submission to the above address or send a fax to 1-916-322-0341 before February 20, 2013. In addition, please feel free to publish this letter and paper on your website or otherwise distribute it to your associates, members, or other persons that may be interested in attending the meeting or presenting their comments.

If you plan to attend the meeting on February 21, 2013, or would like to participate via teleconference, please let staff know by contacting Mr. Michael Patno at 1-916-327-2045 or Michael.Patno@boe.ca.gov prior to February 20, 2013. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses to staff's Initial Discussion Paper is March 11, 2013. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

You may also refer to the "[2013 Amendments to the Rules for Tax Appeals](#)" page for all of the materials regarding the 2013 amendments to the RTA, including the interested parties meeting calendar, which was released on January 30, 2013. If you have questions about the proposed amendments to the RTA, please contact Mr. Bradley Heller, Tax Counsel IV at 1-916-323-3091 or Bradley.Heller@boe.ca.gov.

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Thank you for your consideration. I look forward to your comments and suggestions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy Ferris", with a stylized flourish at the end.

Randy Ferris
Chief Counsel
Legal Department

RF:ek

Enclosure: Initial Discussion Paper

cc: Mr. Bradley Heller MIC: 82
 Mr. Michael Patno MIC: 50

INITIAL DISCUSSION PAPER

Proposed Amendments to the Rules for Tax Appeals Regulations 5000-5700

Issue

Whether the State Board of Equalization (Board) should amend the Board of Equalization's Rules for Tax Appeals (RTA) (Cal. Code Regs., tit. 18, div. 2.1 (§§ 5000-5700)) to:

- Incorporate, implement, and clarify the provisions of Assembly Bill No. (AB) 2323 (Stats. 2012, ch. 788), which added section 40 to the Revenue and Taxation Code (RTC); and
- Otherwise address clean-up and housekeeping issues that Board staff or interested parties have suggested based on their common experience with the RTA since they were promulgated in 2008.

Background

Adoption of the RTA

The RTA originally became effective on February 6, 2008. The RTA are the result of a two-year review, drafting, and approval process in which:

- Board staff prepared more than 25 drafts of the various chapters contained in the RTA;
- A broad variety of interested parties, including other state agencies, submitted hundreds of comments;
- Board staff held seven interested parties' meetings to hear and discuss the interested parties' comments; and
- The Board Members held 10 Board Meetings to hear from both Board staff and the interested parties, discuss new proposed regulations, and grant staff authority to begin the rulemaking process.

The Board eventually adopted the RTA in order to provide comprehensive regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board and specifically address public concerns regarding its administrative and appellate review processes. (See RTA § 5000.)

Chapter 1 (RTA § 5000) names the RTA, and provides a clear statement of the Board's primary intent for their implementation, which is to improve the Board's relationship with taxpayers and fee payers (hereafter, collectively, taxpayers).

Chapter 2 (RTA §§ 5200-5271) was intended to codify the Board's existing practices, at the time, for handling appeals involving revenue-generating tax and fee programs (business taxes and fees), including the Sales and Use Tax, administered by the Board. (See BOE Publication 41, *Taxes and Fees Administered by the California State Board of Equalization*, for a complete list.) Chapter 2 also improved the Board's existing practices by: (1) codifying the Board's policy of accepting untimely petitions for redetermination as administrative protests; (2) clarifying that taxpayers requesting relief

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Proposed Amendments to the Rules for Tax Appeals Regulations 5000-5700

have the right to request both an appeals conference and an oral hearing; (3) giving taxpayers and Board staff additional time to prepare briefs; and (4) guaranteeing taxpayers the right to file the last brief.

Chapter 3 (RTA §§ 5310-5345) codified the Board's existing practices, at the time, for handling property tax appeals, including the practice of having the Appeals Division review appeals prior to the Board's consideration, and provided a more detailed description of each step in the property tax appeals process than the Board's Rules of Practice (Cal. Code Regs., tit. 18, 5010-5095), which were repealed and replaced by the RTA.

Chapter 4 (RTA §§ 5410-5465) restated most of the Rules of Practice provisions and codified the Board's existing practices, at the time, for handling appeals from the Franchise Tax Board (FTB). Chapter 4 also improved the Board's existing practices in several ways. Chapter 4 added new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals. Chapter 4 provided notice of the criteria for the imposition of frivolous appeal penalties and established new procedures to help resolve jurisdictional issues. Chapter 4 also added new procedures for holding discretionary prehearing conferences that can be used to better develop the facts and issues raised in complicated or complex appeals when requested by the appellant or the FTB or deemed necessary either by the Board's Appeals Division or the Board Members.

Chapter 5 (RTA §§ 5510-5576) restated most of the Rules of Practice provisions and codified the Board's existing practices, at the time, for conducting oral hearings and deciding appeals in all of the Board's appeals processes. Chapter 5 also made several important improvements over the Rules of Practice, including:

- Clarifying that all appellants have the right to request an oral hearing;
- Describing the conflict-of-interest provisions applicable to the Board;
- Permitting individual Board Members to adopt their own dissenting and concurring opinions when the Board adopts a Formal Opinion or Memorandum Opinion;
- Codifying the Board's longstanding policy permitting all interested persons to communicate with the Board Members at any time;
- Making oral hearings more understandable to the public; and
- Protecting trade secrets and information that could be used to identify theft from disclosure.

Chapter 6 incorporated the Board's previously adopted regulations governing Taxpayer Bill of Rights reimbursement claims (RTA §§ 5600-5605), and the Board's previously adopted regulation governing the publication of annotations derived from legal rulings of counsel.

2010 Amendments to the RTA

At the time that the RTA were adopted, the Board had delegated authority to appropriate Board staff to grant or deny claims for refunds of specified taxes and fees, unless the refunds exceeded \$50,000, and that delegation of authority was codified in RTA Regulations 5237 and 5267. The Board subsequently changed the delegation of authority so that it applied to claims for refunds

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that did not exceed \$100,000, and the Board adopted amendments to RTA Regulations 5237 and 5267 to incorporate the change, which became effective on February 19, 2010. No other substantive amendments have been made to the RTA since they were originally adopted in 2008.

AB 2323 & RTC section 40

The Governor approved AB 2323 on September 29, 2012, and AB 2323 added section 40 to the RTC effective January 1, 2013. Section 40 provides as follows:

(a)(1) The board shall publish on its Internet Web site a written formal opinion, a written memorandum opinion, or a written summary decision for each decision of the board in which the amount in controversy is five hundred thousand dollars (\$500,000) or more, within 120 days of the date upon which the board rendered its decision. (2) A decision of the board shall not include consent calendar actions taken by the board.

(b) Each formal opinion, memorandum opinion, and summary decision as described in subdivision (a) shall include all of the following: (1) Findings of fact. (2) The legal issue or issues presented. (3) Applicable law. (4) Analysis. (5) Disposition. (6) Names of adopting board members.

(c) (1) A board member may submit a dissenting opinion setting forth his or her rationale for disagreeing with the memorandum opinion or formal opinion. (2) A board member may submit a concurring opinion setting forth the board member's rationale for agreeing with the result reached in the memorandum opinion or formal opinion, if different than the rationale set forth in the memorandum opinion or formal opinion. (3) A dissenting opinion and a concurring opinion shall be published in the same manner as prescribed in subdivision (a) for a formal opinion or memorandum opinion.

(d) A formal opinion or memorandum opinion adopted by the board may be cited as precedent in any matter or proceeding before the board, unless the opinion has been depublished, overruled, or superseded. A summary decision may not be cited as precedent in any matter or proceeding before the board.

Discussion of Proposed Amendments to RTA

The Board discussed AB 2323 during its meeting on December 19, 2012, and directed staff to draft proposed amendments to the RTA to incorporate, implement, and clarify the publication requirements of RTC section 40 and then meet with interested parties to discuss the proposed amendments prior to presenting them to the Board for potential publication. Therefore, Board staff has drafted proposed amendments to chapter 5 of the RTA to incorporate, implement, and clarify the publication provisions of RTC section 40, which include amendments to Regulations 5551, *Voting and Decisions*, 5573, *Waiver of Confidentiality*, and 5574, *Request for Portion of Oral Hearing Conducted During Closed Session*, and the addition of new Regulation 5552,

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Proposed Amendments to the Rules for Tax Appeals Regulations 5000-5700

Publication, to the RTA. The proposed amendments are illustrated in strikeout and underline format in Attachment A.

Board staff is recommending that the Board divide Regulation 5551, subdivision (a) into three new subdivisions. Board staff is recommending that revised subdivision (a) continue to explain the ways in which the Board may “vote” on a matter at the conclusion of an oral hearing. Board staff is recommending that new subdivision (b) clarify that the Board may vote to “decide” a matter with or without adopting a Summary Decision, Formal Opinion, or Memorandum Opinion. Board staff is recommending that new subdivision (c):

- Include the regulation’s current language providing for the Board to direct staff to prepare a Formal Opinion or Memorandum Opinion for the Board’s potential adoption, whenever the Board, in its discretion, determines that it might be appropriate to adopt such an opinion with regard to a specific matter;
- Include a new default rule, to preserve the Board’s discretion while it considers whether to adopt a Formal Opinion or Memorandum Opinion, that when the Board has previously voted to decide a matter and, before the decision is final, directs staff to draft a Formal Opinion or Memorandum Opinion for the same matter, then the Board’s initial decision in the matter will be held in abeyance and will be subject to change until the Board decides whether to adopt the Formal Opinion or Memorandum Opinion, unless the Board directs otherwise;
- Require Board staff to prepare a Summary Decision for the Board’s consideration and potential adoption, whenever the Board actually decides a matter without adopting a Summary Decision, Formal Opinion, or Memorandum Opinion and without directing staff to draft a Formal Opinion or Memorandum Opinion for the Board’s consideration, and the Board’s decision is subject to the provisions of RTC section 40 requiring the adoption and publication of a written decision or opinion;
- Clearly explain when non-approved drafts of Summary Decisions, Formal Opinions, and Memorandum Opinions are confidential; and
- Include the regulation’s current language regarding the precedential value of Summary Decisions, Formal Opinions, and Memorandum Opinions, which is virtually identical to similar language contained in RTC section 40, subdivision (d).

In addition, Board staff is recommending renumbering current subdivision (b) of Regulation 5551 as subdivision (d) and making minor edits to the subdivision to make it consistent with the provisions of RTC section 40, subdivision (c), regarding dissenting and concurring opinions.

Board staff is recommending that the Board propose to adopt new Regulation 5552, *Publication*, to incorporate the remaining provisions of RTC section 40 into the RTA and to specifically:

- Clarify the date upon which the Board renders a decision within the meaning of RTC section 40, subdivision (a)(1);

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- Clarify the meaning of the phrase “amount in controversy” as used in RTC section 40, subdivision (a)(1); and
- Clarify that RTC section 40’s publication requirements apply to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including non-appearance matters, except for non-appearance consent calendar action items (as provided in RTC § 40, subd. (a)(1)).

Board staff is recommending changing the name of Regulation 5573 from “Waiver of Confidentiality” to “Confidentiality.” Board staff is recommending revising subdivision (a) of Regulation 5573 to further emphasize the broad waiver of confidentiality associated with the filing of an appeal from the actions of the FTB with the Board. Board staff is also recommending adding a new subdivision (f) to Regulation 5573 to clarify that, even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board includes in a published decision or opinion in order to satisfy the requirements of RTC section 40, subdivision (c), regarding the content of decisions and opinions required to be published under RTC section 40.

Finally, Board staff is recommending adding a new subdivision (g) to Regulation 5574 to avoid potential confusion by clarifying that nothing in Regulation 5574 shall prevent the Board from publishing a written decision or opinion when required under RTC section 40.

Board staff will be prepared to discuss RTC section 40 and the proposed amendments to chapter 5 of the RTA (described above) with the interested parties during the interested parties meeting scheduled for Thursday, February 21, 2013, at 10:00 a.m. in Room 122 at the Board’s headquarters at 450 N Street, Sacramento, California.

Discussion of Further Amendments to the RTA

In addition, Board staff is drafting additional amendments to make the other chapters of the RTA consistent with the amendments to chapter 5 of the RTA illustrated in Attachment A. Board staff is also drafting additional amendments to the RTA to address clean-up and housekeeping issues that Board staff or interested parties have suggested based on their common experience with the RTA since they were promulgated in 2008. Staff’s second discussion paper will discuss and provide specific language for these amendments, and the interested parties will have an opportunity to comment on these amendments at the second interested parties meeting, which is scheduled for Thursday, April 11, 2013, at 10:00 a.m. in Room 122 at the Board’s headquarters at 450 N Street, Sacramento, California.

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Proposed Amendments to the Rules for Tax Appeals Regulations 5000-5700

Summary

Board staff believes that the proposed amendments to chapter 5 of the RTA illustrated in Attachment A and discussed above are necessary to incorporate and implement the publication requirements of RTC section 40. We invite the interested parties to attend the February 21, 2013, interested parties meeting to discuss the proposed amendments illustrated in Attachment A and note that Monday, March 11, 2013, is the deadline for interested parties to submit written comments to staff in response to this issue paper.

Board staff is scheduled to complete the current project and submit all of its proposed amendments to the RTA to the Board for consideration during the Board's June 11-13, 2013 meeting. Board staff also intends to request the Board's authorization to publish the proposed amendments at that time.

Prepared by the Legal Department
Current as of 2/04/2013

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5551. Voting and Decisions.

(a) Voting. At the conclusion of an oral hearing, the Board may vote to decide the matter, take it under submission and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.

(b) Decisions. The Board may vote to decide a matter without adopting a Summary Decision, Memorandum Opinion, or Formal Opinion, at the time of the vote, or the Board may vote to decide a matter by voting to adopt a Summary Decision or Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division.~~or~~

(c) Written Decisions.

(1) The Board may direct Board Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting.

(A) If the Board votes to decide a matter and, before the decision is final, directs staff to draft a Formal Opinion or Memorandum Opinion for the same matter and submit the opinion to the Board for potential adoption, then the Board's initial decision in the matter shall be held in abeyance and shall be subject to change until the Board votes to adopt the Formal Opinion or Memorandum Opinion, or votes to decide the matter without adopting a Formal Opinion or Memorandum Opinion, unless the Board directs otherwise. However, a decision on a matter described in section 5310, subdivision (a)(1) or (2) is final when made, shall not be held in abeyance, and is only subject to change as provided in section 5345.

(B) If the Board votes to decide a matter and, at the time of vote, the Board does not adopt a Summary Decision, Memorandum Opinion, or Formal Opinion or direct staff to draft and submit such a decision or opinion to the Board for consideration as a non-appearance matter, but the Board is required to adopt and publish such a decision or opinion for the matter pursuant to section 5552, then Board staff shall draft a Summary Decision for the matter and submit the decision to the Board for consideration as a non-appearance matter at a subsequent meeting, unless the Board directs otherwise. Under such circumstances, the Board's initial decision in the matter shall not be held in abeyance until the Board votes to adopt a written decision or opinion in accordance with section 5552, unless the Board expressly directs staff to hold its decision in abeyance before it becomes final.

(C) A Summary Decision, Formal Opinion, or Memorandum Opinion is confidential unless and until adopted by the Board, unless the Board has already decided the matter to which the decision or opinion relates and the Board's decision to resolve the matter is not being held in abeyance pending the Board's consideration of the written decision or opinion. Confidential taxpayer and feepayer information included in any Summary

Decision prepared for a matter subject to chapter 2 or 3 of this division is confidential prior to the adoption of the decision and remains confidential after the decision is adopted, unless the taxpayer or feepayer has waived the right to confidentiality as to such information as provided in section 5573 or the decision is required to be published pursuant to section 5552.

(2) A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.

(d) Dissenting and Concurring Opinions.

(1) If a Memorandum Opinion or Formal Opinion is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion or Formal Opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the Memorandum Opinion or Formal Opinion~~decision~~, if different than the rationale set forth in the Memorandum Opinion or Formal Opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the Memorandum Opinion or Formal Opinion to which it relates is adopted, and is publishable as a supplement to the Memorandum Opinion or Formal Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal.

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 17, California Constitution; Sections 7.9, 11122.5, 11125, 15606 and 15640, Government Code; and Sections 40, 254.5, 254.6, 742, 748, 1840, 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.

5552. Publication.

(a) Adoption. The Board shall adopt a written Formal Opinion, Memorandum Opinion, or Summary Decision for each matter decided by the Board, on or after January 1, 2013, in which the amount in controversy is five hundred thousand dollars (\$500,000) or more, as required by Revenue and Taxation Code section 40.

(b) Publication. If the Board is required to adopt a Formal Opinion, Memorandum Opinion, or Summary Decision pursuant to subdivision (a), then the Board shall publish the opinion or decision on the Board's Internet website within 120 days after the date upon which the Board rendered the decision that decided the matter to which the opinion or decision relates. For purposes of this section, the Board's decision to decide a matter is rendered on the date that the decision becomes final.

(c) Content. All Formal Opinions, Memorandum Opinions, and Summary Decisions required to be adopted pursuant to subdivision (a) shall include all of the following:

- (1) Findings of fact;
- (2) The legal issue(s) presented;
- (3) Citation(s) to applicable law;
- (4) An analysis of the law and facts;
- (5) The disposition of the matter; and
- (6) The names of the adopting board members.

(d) Amount in Controversy. "Amount in Controversy" means, for purposes of subdivision (a), the total amount of taxes, fees, penalties, interest and/or other charges directly contested by the parties in the matter before the Board as of the date the Board rendered its decision in that matter. Consolidated matters shall be treated as one matter in calculating the Amount in Controversy. "Amount in Controversy" does not include taxes, fees, penalties, interest, or other charges that may be ancillary or related to, or calculated with reference to, directly contested amounts, unless the taxes, fees, penalties, interest, or other charges are also directly contested. Amount in Controversy shall equal one percent of the difference between the assessed values

asserted by the parties in property tax matters.

(e) Application. Subdivision (a) only applies to decisions of the Board acting as a collective body in open session to resolve a pending dispute regarding an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer, or the reallocation of local or district tax, that has been scheduled and appears as a contested matter before the Board on a Board meeting notice, including non-appearance matters, except for non-appearance consent calendar action items, as provided in Revenue and Taxation Code section 40.

Note: Authority: Section 15606, Government Code; Section 40, Revenue and Taxation Code.

5573. ~~Waiver of Confidentiality.~~

Oral hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including, but not limited to, information contained in a hearing summary prepared under section 5444.

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for an oral hearing before the Board under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board or included in the hearing summary prepared for the taxpayer's oral hearing before the Board.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality when the taxpayer:

(A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) of chapter 3, and submits a written request for an oral hearing before the Board; or

(B) Files an application described in section 5310, subdivision (a)(2) of chapter 3.

(2) The waiver described in paragraph (1) of this subdivision only applies to:

(A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The hearing summary or summary decision prepared for the taxpayer's oral hearing before the Board; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board.

(d) Effective Date of Waiver.

(1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's oral hearing to which the waiver applies.

(2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its oral hearing before the Board. At the time a taxpayer waives an oral hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's matter on the basis of the written record on file without an oral hearing or dismiss the taxpayer's matter.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at an oral hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of an oral hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a hearing summary, if any, containing information that is only scheduled to be discussed during a closed session.

(f) Published Decisions. Even in the absence of a waiver, there is no right to confidentiality as to relevant information that the Board includes in a published decision or opinion in order to satisfy the requirements of section 5552, subdivision (c).

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.

5574. Request for Portion of Oral Hearing Conducted During Closed Session.

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

(1) In general, the Board may conduct portions of oral 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 oral 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 an oral hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the matter for which the taxpayer's oral 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 oral 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 an oral hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the matter 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 oral hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The matter 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 oral hearing is conducted solely during an open session at a public meeting.

(3) If a portion of an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the oral 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 oral hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's oral 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 oral 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 oral hearing before the Board.

(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 an oral 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 section 5574 or this division shall prevent the Board from publishing a written decision 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.