

Memorandum

To: Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date: September 15, 2006

From: Kristine Cazadd
Chief Counsel 

Subject: **Board Meeting – September 27, 2006**
Chief Counsel Matters – Item J1

Report and Recommendation to Adopt the New Rules of Practice

I. Status and Proposed Recommendation

The New Rules of Practice renamed as the Board of Equalization *Rules for Tax Appeals* (RTA) are the result of a year long effort to compile the Board's current procedures and practices for handling all property tax matters, business taxes and fees appeals, and appeals from the Franchise Tax Board (FTB); refine those procedures to make them more efficient and understandable; address various procedural issues; and determine which practices are best suited to being promulgated as regulations. The Rules for Tax Appeals will bolster the public nature and openness of the Board's operations, promote taxpayer accessibility to Board Members, and allow for the free flow of information in a manner that will allow the Board to continue to be fair and effective in its decision-making. The Rules for Tax Appeals will also guarantee a fair hearing and equal due process for all taxpayers, ensure that all taxpayers have a plain, speedy, and adequate remedy available to them as required by law, and thereby improve the Board's relationship with taxpayers and the public. Staff will recommend the Rules for Tax Appeals for adoption and publication at the September 27, 2006, meeting.

II. History/Timeline of Development

Staff provided the public with notice of the project in July 2005, released the first drafts of all five chapters of the New Rules in mid-September 2005, and then discussed the drafts with the Board and the interested parties in detail at the September 28, 2005, Board meeting. Following that meeting, each chapter followed its own timeline. The entire process culminating in the Rules for Tax Appeals included seven interested parties meetings, 5 Board meetings, and numerous drafts of each chapter. (See Attachment A, list of important formal written comments from the interested parties, and Attachment B, description of the interested parties and drafting processes, for more information.)

III. Important Improvements Made in Each Chapter

Chapter 1 contains the name for the New Rules of Practice, and provides a clear statement of the Board's intent for their implementation, which is to improve the Board's relationship with tax and fee payers. **Chapter 2** codifies all of the Board's existing practices for handling all the various types of business taxes and fees appeals and improves them by: (1) codifying the Board's policy of accepting untimely petitions for redetermination as late protests; (2) clarifying that appellants requesting relief have the right to request an appeals conference and an oral hearing; (3) giving appellants and Board staff additional time to prepare briefs; and (4) guaranteeing appellants the right to file the last brief.

Chapter 3 codifies the Board's current practices for handling property tax appeals, including the practice of having the Appeals Division review the appeal prior to the taxpayer's oral hearing. Chapter 3 also makes an improvement by requiring appeals conferences in all property tax appeals scheduled for an oral hearing, and allowing for appeals conferences in non-appearance matters.

Chapter 4 codifies the Board's existing practices for handling appeals from the FTB, and improves it in several ways. Chapter 4 adds new procedures permitting non-appealing spouses to materially participate in innocent spouse appeals. Chapter 4 provides notice of the criteria for the imposition of frivolous appeal penalties. Chapter 4 establishes new procedures to help resolve jurisdictional issues. Chapter 4 also contains 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 FTB, or deemed necessary by the Appeals Division or Board Members. (See Attachment C for a description of how the important issues in chapters 4 and 5 were resolved.)

Chapter 5 codifies the Board's existing practices for conducting oral hearings and deciding appeals in all of the Board administered tax and fee programs. Chapter 5 also makes several important improvements by:

- 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 for identity theft from disclosure.

III. Recommendation

Staff will recommend that the Board approve the publication of all five chapters of the New Rules of Practice at the September 27, 2006, Board meeting.

KC:ef

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Mr. David Gau, MIC: 63
Ms. Anita Gore, MIC: 86
Ms. Randie L. Henry, MIC: 43
Ms. Karen Johnson, MIC: 69