

TO INTERESTED PARTIES:

The Rules of Practice of the State Board of Equalization (Cal. Code of Regs., Title 18, Sections 5010 et seq.) are in the initial process of being revised and incorporated into the *Board of Equalization Rules for California Tax Administration and Appellate Review*. Draft language for the proposed rules has been posted on the Board's website at www.boe.ca.gov/regs/timelineCAtax.htm since September 14, 2005.

In response to public comments and continued review, Board staff has identified several important amendments to Parts 2 and 4 of the proposed rules which warranted public review and comment before the proposed rules are scheduled for a Board hearing. The amendments to the proposed rules are explained and set forth below.

Comments to the proposed rules, including these amendments, must be submitted to the Board by December 23, 2005, in order to ensure that they can be considered before the proposed rules are scheduled for a Board hearing. Comments Board staff has received regarding sections that are not included in the amendments set forth below are still being considered and will be responded to prior to the Board hearing.

As a reminder, the next interested parties meeting will be held at the Board's headquarters in Sacramento, 450 N Street, Room 121, on December 14, 2005. The December 14, 2005 meeting will be **divided into two sessions**. The first session will focus on Part 4 and will begin at 9:30 a.m. The second session will focus on Part 5 and will begin at 1:30 p.m.

Amendments to Part 2, Review of Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees:

Sections 2104 and 2106 of Part 2 of the proposed rules are being amended to:

- Permit all of the agencies that jointly administer taxes and fees with the Board to participate in Appeals Conferences;
- Permit those agencies to request reconsideration of Decisions and Recommendations (D&Rs) issued by the Appeals Division, and request oral hearings before the Board, in cases where they participate in the Appeals Conference;
- Permit the Board's audit department to request reconsideration of D&Rs;
- Require that requests for reconsideration be filed within 30 days after the issuance of D&Rs.; and
- Allow for the filing of briefs and other appeals related documents via facsimile and other electronic means.

Article 7 is being added to Part 2 to provide for pre-hearing briefing, the filing of responses to the audit department's reply brief, and to extend the time periods for filing opening and reply briefs so as to give all parties additional time to prepare and submit their briefs. In conjunction with these amendments Board staff has presented two alternatives.

Section 2110 (First Alternative) retains the Board’s current briefing process, which begins after the Notice of Hearing is issued, but extends the time periods for preparing and filing opening and reply briefs by 5 days. In connection with the First Alternative staff intends to propose that Section 5006 of Part 5 of the proposed rules be amended to require that the Board Proceedings Division issue Notices of Board Hearing at least 75 days prior to the scheduled hearing date. The First Alternative will add 15 days to the appeals process.

Section 2110 (Second Alternative) changes the briefing process so that it begins 30-days after the issuance of the Decision and Recommendation. It has the benefits of providing all parties with 30-days to prepare their opening and reply briefs, and permitting the Appeals Division and Board Proceedings Division to review opening briefs before scheduling hearings and preparing hearing summaries. Staff believes that the Second Alternative will help staff resolve more appeals and better prepare the Board for hearings. The Second alternative will extend the appeals process by 45 days, but only in cases with briefing. Staff does not intend to amend Section 5006 of the proposed rules in conjunction with the Second Alternative.

Amendments to Part 4, Appeals from Actions of the Franchise Tax Board:

Board staff has significantly revised Part 4 of the proposed rules. The revisions were made in response to suggestions to make all of the Board’s programs more uniform. If adopted by the Board, the revisions will require the Board’s Appeals Division to hold Appeals Conferences in appeals from actions of the Franchise Tax Board. The revisions are intended to make the appeals process more efficient by increasing the Appeals Division’s authority to obtain information and resolve disputes prior to an oral hearing before the Board. In addition, the revisions will allow for the filing of appeals, briefs, and other related documents by facsimile and other electronic means.

The revisions have not been provided in an “underline and strikethrough” format because the revisions are comprehensive, and represent a departure from the original proposal and existing procedures. Board staff believes that the revisions represent a considerable improvement that will make appeals from actions of the Franchise Tax Board more similar to the other Board administered programs.

Articles 3, 4, 5, and 6 of the proposed Rules, as posted to the website on September 14, 2005, will be replaced with revised articles 3, 4, and 5, as set forth below.

The following Table of Contents provides underlines and strikethroughs to show the locations of the revisions:

PART 4. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD

<i>Article 1</i>	<i>Application, Definitions, and Jurisdiction</i>
4010	Application of Part

- 4011 Definitions
- 4012 Jurisdiction

Article 2 How to File an Appeal from the Franchise Tax Board

- ~~4020~~ ~~Basic Appeal Requirements~~
- ~~4020~~ ~~Basic Appeal Requirements [subdivision (c) is revised]~~
- 4021 Time for Filing an Appeal
- 4022 Accepting or Rejecting an Appeal
- 4023 Perfecting an Appeal

Article 3 Briefing Schedules and Procedures

- 4030 General Requirements
- 4031 General Briefing Schedule
- 4032 Briefing Schedule for Innocent Spouse Appeals
- 4033 Simplified Briefing Schedule for Small Tax Appeals and HRA Appeals
- ~~4034~~ ~~Briefing Schedule for Homeowners' and Renters' Property Tax Assistance Appeals~~
- ~~4035~~ ~~Discretionary Supplemental Briefing~~

~~*Article 4 Requesting and Scheduling Oral Hearings*~~

- ~~4040~~ ~~Right to Oral Hearing~~
- ~~4041~~ ~~Submission for Decision Without Oral Hearing~~
- ~~4042~~ ~~Appeals Review; Scheduling an Oral Hearing~~
- ~~4043~~ ~~Hearing Summaries~~

~~*Article 5 Decisions, Opinions, and Frivolous Appeal Penalties*~~

- ~~4050~~ ~~Letter Decisions~~
- ~~4051~~ ~~Summary Decisions~~
- ~~4052~~ ~~Formal Opinions~~
- ~~4053~~ ~~Dissenting Opinions~~
- ~~4054~~ ~~Frivolous Appeal Penalty~~

~~*Article 4 Appeals Conferences; Board Hearings; Decisions and Opinions*~~

- ~~4040~~ ~~Appeals Conference~~
- ~~4041~~ ~~Decision and Recommendation~~
- ~~4042~~ ~~Board Hearing~~
- ~~4043~~ ~~Decision Without Oral Hearing~~
- ~~4044~~ ~~Formal Opinion~~
- ~~4045~~ ~~Dissenting Opinion~~
- ~~4046~~ ~~Frivolous Appeal Penalty~~

~~*Article 65 Petitions for Rehearing and Rehearings*~~

- ~~4060~~~~4050~~ ~~Finality of Decision~~
- ~~4061~~~~4051~~ ~~Petition for Rehearing~~
- ~~4062~~~~4052~~ ~~Decision on Petition for Rehearing~~
- ~~4063~~~~4053~~ ~~Rehearing~~