AGENDA — April 18, 2006 Board Meeting

Proposed *Board of Equalization Rules for California Tax Administration and Appellate Review* - Chapter 1, *Title*, and Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*

Action 1 — Settled Language	Approve proposed language for *Board of Equalization Rules for California Tax Administration and Appellate Review:* • Chapter 1, *Title*; and • Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*, Articles 1 – 6 and Article 7, Section 5000.2111
Action 2 — Alternative Language for Section 5000.2110, Briefing Schedule	Approve proposed language from one of two alternative briefing schedules contained in section 5000.2110 of article 7 of chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees.*
Alternative 1 – (20/20/15 Schedule)	Staff recommends alternative 1 because it represents an improvement on the Board's current briefing schedule. Alternative 1 gives taxpayers and the Department an additional 5 days to prepare their opening and reply briefs, and also gives the Appeals Division an extra five days to prepare hearing summaries. If the language for alternative 1 is approved by the Board, staff will amend its proposed regulation regarding the issuance of notices of hearing to require the issuance of such notices at least 75 days prior to each scheduled hearing. This change will provide the additional briefing time required for alternative 1 without extending the length of the appeals process.
Alternative 2 – (15/15/15 Schedule)	Alternative 2 represents the Board's current briefing schedule contained in California Code of Regulations, title 18, section 5075. It gives taxpayers and the Department 15 days to prepare their opening and reply briefs, and gives the Appeals Division 15 days to prepare hearing summaries. This alternative presumes that a notice of hearing will be issued at least 60 days before the scheduled hearing.

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Action 2 -		
Adopt Pre-Hearing Briefing Schedule (see subdivision (c), Opening Briefs, subdivision (d). Reply Briefs, subdivision (e) Response to Reply Brief, and subdivision (f)(2), Non-Party (Amicus) briefs for differences between alternatives):	**Article 7: Optional Briefs for Oral Hearings Before the Board** 5000.2110 Briefing Schedule (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional. (b) Briefs. (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel in accordance with section 5000.2111. (2) Filing. (A) Electronic Filing. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of briefs and related documents. Briefs and related documents may be filed electronically pursuant to this section if they are transmitted to the Board in	**Article 7: Optional Briefs for Oral Hearings Before the Board** 5000.2110 Briefing Schedule (a) Optional Briefing. If a party to an Appeals Conference is granted a hearing before the Board the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed pursuant to this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional. (b) Briefs. (1) Timeliness. Any brief filed with the Board shall be filed within the time periods provided below unless an extension is granted by the Chief Counsel in accordance with section 5000.2111. (2) Filing. (A) Electronic Filing. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of briefs and related documents. Briefs and related documents may be filed electronically pursuant to this section if they are transmitted to the Board in

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	accordance with instructions provided on the Board's website at www.boe.ca.gov. (B) Other Methods. Briefs and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the Chief of Board Proceedings, at the following address: Chief of Board Proceedings, MIC: 80 State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0080 (C) The Chief of Board Proceedings may reject any brief or related document filed in any manner that is not authorized by this section. (D) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department. (3) Format. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the	accordance with instructions provided on the Board's website at www.boe.ca.gov. (B) Other Methods. Briefs and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the Chief of Board Proceedings, at the following address: Chief of Board Proceedings, MIC: 80 State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0080 (C) The Chief of Board Proceedings may reject any brief or related document filed in any manner that is not authorized by this section. (D) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Board's audit department. (3) Format. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent, excluding exhibits. The Chief Counse

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	equivalent, excluding exhibits. The Chief Counsel may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief. (c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing. (d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that is filed by a party to a Board hearing in response to any opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant	may extend the page limit prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party shall be given 10 days to comply with the form and page limit, and failure to do so within the 10-day period shall constitute a waiver of the opportunity to submit the brief. (c) Opening Briefs. Any party that requested a Board hearing pursuant to section 5000.2106 may file an opening brief. An opening brief shall contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 45 days before the Board hearing. (d) Reply Briefs. Any party to a Board hearing may file a reply brief. A reply brief is a brief that is filed by a party to a Board hearing in response to any opening brief. A reply brief shall contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party

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	statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 35 days before the Board hearing. (e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief that raises new issues or arguments that were not previously raised by the party filing the reply brief. A response to a reply brief shall identify and only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing. (f) Additional Briefing. (1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board. (2) Non-Party (Amicus) Briefs. A person that is	submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 30 days before the Board hearing. (e) Response to Reply Brief. A response to a reply brief is a brief filed by a party to a Board hearing in response to a reply brief. Any party to a Board hearing may file a response to a reply brief that raises new issues or arguments that were not previously raised by the party filing the reply brief. A response to a reply brief shall identify and only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief shall be filed with the Chief of Board Proceedings no later than 15 days before the Board hearing. (f) Additional Briefing. (1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board. (2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or

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	not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 10 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding. (3) Additional briefing. In extraordinary situations, the Board or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division. (g) Briefs Filed by Unrepresented Parties. Notwithstanding subdivisions (c), (d), and (e) of this section, a party who appears at a Board hearing without a representative, and who has not employed	letter with the Chief of Board Proceedings no later than 15 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 5 days before the hearing. The response by any party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in subdivision (b) of this section. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding. (3) Additional briefing. In extraordinary situations, the Board or the Appeals Division may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing shall be filed within the time specified by the Board or Appeals Division. (g) Briefs Filed by Unrepresented Parties. Notwithstanding subdivisions (c), (d), and (e) of this section, a party who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of

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	a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing. A party who receives representation from a Board-approved pro bono or clinical program shall be considered to be unrepresented for purposes of this subdivision.	the hearing. A party who receives representation from a Board-approved pro bono or clinical program shall be considered to be unrepresented for purposes of this subdivision.