

M e m o r a n d u m

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

Date: April 11, 2006

From: Kristine Cazadd
Chief Counsel



Subject: **Board Meeting, April 18, 2006, J1**
Request for Approval of 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, and Status Report.

Background

In July 2005 staff began working with interested parties to revise the Board's current *Rules of Practice* (Cal. Code Regs., tit. 18, §§ 5010-5095). The objective was to produce the *Rules for California Tax Administration and Appellate Review* (New Rules), which would provide more comprehensive guidance regarding the administrative and appellate review processes for all of the tax and fee programs administered by the Board. The revisions also address the issuance of decisions, publication of opinions, the nature of Board hearings, communications with Board Members, and the disclosure of information relevant to a Board hearing.

Staff released the first draft of the New Rules on September 14, 2005, which consisted of five parts:

- Part 1, Statement of Intent; Title (section 1000);
- Part 2, Review of Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees (sections 2000-2107);
- Part 3, Administrative Review of Property Taxes (sections 3100-3474);
- Part 4, Appeals from Actions of the Franchise Tax Board (sections 4010-4063); and
- Part 5, General Board Hearing Procedures (sections 5001-5034).

Staff presented the first draft of the New Rules to the Board and the interested parties for general discussion at the September 28, 2005, Board meeting, and then held interested parties meetings on October 26, 2005 (parts 1 and 2), November 16, 2005 (part 3), and December 14, 2005 (parts 4 and 5) for additional study, discussion, and comment.

Based upon comments from the interested parties, staff revised all five parts and issued the second draft of the New Rules. On January 31, 2006, staff presented the second drafts of parts 1 and 2 to the Board for approval as chapters 1 and 2 of a new division 2.1. However, the Board did not approve, but instead made several recommendations to improve the proposal and directed staff to resubmit chapters 1 and 2 to the Board after staff considered the recommendations.

Staff has now considered and incorporated the Board Members' recommendations, and made additional improvements to chapters 1 and 2 as indicated in exhibit 1 (Proposed Text of Chapters 1 & 2) and exhibit 2 (Proposed Text of Chapters 1 & 2 - Underline and Strikethrough Version), and more fully described below.

Staff also conducted additional interested parties meetings to discuss the second drafts of parts 3, 4, and 5, on February 23, 2006, March 15, 2006, and April 5, 2006, respectively. Staff received valuable comments from interested parties at each meeting, and will revise each part accordingly. Staff expects to present the revised versions of parts 3 and 4 to the Board for its approval as chapters 3 and 4, respectively, on May 17, 2006, and the revised version of part 5 to the Board for its approval as chapter 5 on June 27, 2006, or thereafter (if an additional interested parties meeting is needed).

General Revisions to Chapter 1, Title, and Chapter 2, Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

Staff made general revisions throughout chapters 1 and 2 as follows: 1) added language incorporating the general definitions from chapter 5 into chapter 2, and 2) deleted references to the Chief Counsel's designee (because chapter 5 defines "Chief Counsel" to include the designee), and 3) added new language to sections 5000.2020, 5000.2041, 5000.2046, 5000.2057, 5000.2070, 5000.2090, 5000.2102, (and both alternative versions of section 5000.2110), designed to encourage electronic filing. If the Board adopts this language, staff will post electronic filing instructions on the Board's website at www.boe.ca.gov, which will:

- Provide the appropriate fax numbers and e-mail addresses for electronic filing;
- Explain that persons who file documents electronically via fax or e-mail must mail the original petition, claim for refund, request for relief, etc., and copies of any supporting documents, to the Board at the appropriate address, during the first business day immediately following the date the documents were transmitted to the Board electronically; and
- Describe the appropriate types of electronic files the Board can accept via e-mail.

Specific Revisions to Chapter 1, Title, and Chapter 2, Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

Staff also made the following specific revisions to chapters 1 and 2:

Chapter 1, Title

1. Section 5000.1000 – Staff changed “means” to “mean” in the last sentence of this section.

Chapter 2, Article 1 – Application of this Part

2. Section 5000.2000 – Staff changed the title and incorporated the definitions from chapter 5 as discussed above.

Chapter 2, Article 2A – Petitioning Notices of Determination & Notices of Deficiency Assessment

3. Section 5000.2012(e) – Staff revised this subdivision to clarify that the filing of a timely petition for redetermination prevents the amounts contained in the notice of determination or notice of deficiency assessment being petitioned from becoming collectible until after the Board has acted on the petition and the Board’s action has become final.
4. Section 5000.2015 – Staff deleted the second sentence because requests for relief of interest are discussed in article 4C (sections 5000.2080-5000.2087).
5. Section 5000.2020 – Staff added language encouraging electronic filing.
6. Section 5000.2022(b) – Staff deleted the second sentence to give the assigned section or group reviewing a petition for redetermination greater discretion to determine when its review is complete.
7. Section 5000.2022(c) – Staff revised this subdivision to give the assigned section or group greater discretion to determine what type of review is appropriate under the circumstances.

Chapter 2, Article 2B – Filing a Late Protest

8. Section 5000.2030(a) – Staff revised this subdivision to include the names of all the division chiefs responsible for all the programs subject to the provisions of article 2B, and to require staff to advise persons filing premature petitions to file timely petitions.
9. Section 5000.2030(b) – Staff revised this subdivision to clarify that administrative protests will be reviewed in the same manner as petitions for redetermination.
10. Section 5000.2031 – Staff deleted the second sentence because requests for relief of interest are discussed in article 4C. Staff deleted the same language from section 5000.2015.

11. Section 5000.2032 – Staff revised this section to further clarify why the acceptance of an administrative protest does not generally stay the Board’s collection activities.

Chapter 2, Article 2C – Contesting a Jeopardy Determination

12. Section 5000.2040 – Staff revised title.
13. Section 5000.2041 – Staff added language encouraging electronic filing, revised the title, and added subdivisions.
14. Section 5000.2043 – Staff deleted “notice of” In both subdivisions.
15. Section 5000.2046 – Staff revised this section to expand the purposes for which an application for an administrative hearing may be filed, and broaden the scope of administrative hearings on jeopardy determinations. Staff also added language encouraging electronic filing as discussed above.
16. Section 5000.2047(a) – Staff made a minor clarifying change.
17. Section 5000.2049(b) – Staff revised this subdivision to provide the Board with the discretion to waive, credit, or refund storage expenses.

Chapter 2, Article 3 – Claims for Refund

18. Section 5000.2051(b) – Staff deleted two redundant words.
19. Section 5000.2052 – Staff replaced “decide” with “determine.”
20. Section 5000.2057(d) – Staff added language encouraging electronic filing and provided a more specific address for the Electronic Waste Recycling Section.

Chapter 2, Article 4A – Requests for Innocent Spouse Relief Under the Sales and Use Tax Law

21. Section 5000.2070(e) – Staff added language encouraging electronic filing.

Chapter 2, Article 4B – Successor’s Request for Relief of Penalty Under the Sales and Use Tax Law

22. Section 5000.2075 – Staff deleted the word “unrelated” and made other clarifying changes regarding the manner of filing.

Chapter 2, Article 4C – Other Requests for Relief of Penalties and Interest

23. Section 5000.2082(b) – Staff deleted reference to “Private Railroad.”

Chapter 2, Article 5 – Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes

24. Section 5000.2090 – Staff added language encouraging electronic filing.

Chapter 2, Article 6 – Appeals Conferences

25. Section 5000.2101(d) – Staff made a minor clarifying change.

26. Sections 5000.2102, 5000.2105, 5000.2107 – Staff deleted references to the Chief Counsel’s designee as indicated above.

27. Section 5000.2102 – Staff added language encouraging electronic filing.

28. Section 5000.2103 – Staff made minor clarifying changes.

29. Section 5000.2106(f) – Staff revised the language in subdivision (f) to clarify that the Board’s discretion to deviate from the recommendations contained in a Decision and Recommendation or Supplemental Decision and Recommendation applies to petitions, requests for relief, and claims for refund, not just claims for refund.

Chapter 2, Article 7 – Optional Briefs for Oral Hearings Before the Board

30. Section 5000-2110 – Staff deleted alternative 1 due to a lack of support, and renumbered alternatives 2 and 3 as alternatives 1 and 2, respectively. Staff added an introductory note explaining the two remaining alternatives. Staff added language encouraging electronic filing to subdivision (b)(2) of each alternative as discussed above. Staff changed the due date for non-party (amicus) briefs in subdivision (f) of each alternative, so that the due date corresponded with the due date for a taxpayer’s responses to the department’s reply brief, and reduced the time to respond to a non-party amicus brief to 10 days to accommodate the change. Staff also revised subdivision (g) of each alternative to allow taxpayers participating in a Board approved or sponsored pro bono or clinical program to file their briefs at their oral hearings, and replaced the word “taxpayer” with the word “party” in order to make the subdivision consistent with the rest of the section.

31. Sections 5000.2110 and 5000.2111 – Staff deleted references to the Chief Counsel’s designee.

Current Status

Chapter 1, *Title*, and Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*, are presented for the Board’s approval. Staff will present the three remaining chapters to be included in the New Rules at future 2006 Board meetings. Once the Board has approved the proposed language for all five chapters of the New Rules, staff will ask the Board for approval to publish the initial notice of rulemaking.

Recommendation

There are no unresolved issues in chapter 1 or chapter 2, articles 1 – 6 and article 7, section 5000.2111, and staff recommends the Board adopt these provisions as provided in exhibits 1 and 2.

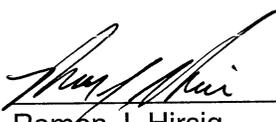
Staff requests specifically that the Board adopt one of two alternative briefing schedules provided in section 5000.2110. Staff recommends Alternative 1. Alternative 1 represents an improvement on the Board's current briefing schedule, and gives taxpayers and the department 20 days to prepare their opening and reply briefs, and also gives the Appeals Division 20 days to prepare hearing summaries. If the language for alternative 1 is approved, staff will amend its proposed language for section 5000.5006 of chapter 5 to require the issuance of notices of hearing at least 75 days prior to each scheduled hearing. This amendment will provide the additional briefing time without extending the length of the appeals process.

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 each scheduled hearing in accordance with the Board's current policy and the language currently being proposed for section 5000.5006 of chapter 5 of the New Rules. Alternative 2 is being presented so that the Board has the option to retain its current briefing schedule.

Staff recommends the Board approve proposed chapter 1 and chapter 2, articles 1 – 6 and article 7, section 5000.2111, and Alternative 1 of section 5000.2110.

Attachments: Agenda
 Proposed Text of Chapters 1 & 2
 Proposed Text of Chapters 1 & 2 (Underline and Strikethrough Version)

cc: Mr. Ramon Hirsig, MIC: 73
 Mr. David Gau, MIC: 63
 Ms. Anita Gore, MIC: 86
 Ms. Randie L. Henry, MIC: 43
 Ms. Karen Johnson, MIC: 69

Approved: 
Ramon J. Hirsig
Executive Director