RELEASED JANUARY 19, 2006

- **STAFF HAS REVISED PART 4 (AS RELEASED ON SEPTEMBER 14, 2005). THE REVISIONS INCORPORATE VALUABLE COMMENTS REGARDING PART 4, INCLUDING COMMENTS REGARDING THE VERSION RELEASED ON DECEMBER 9, 2005.**

Part 4: Appeals from Actions of the Franchise Tax Board

Article 1: Application, Definitions, and Jurisdiction

4010. Application of Part.

(a) This part shall apply to appeals~~, hearings,~~ and petitions for rehearing filed with the Board pursuant to the:

(1) Administration of Franchise and Income Tax Laws. Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) Senior Citizens Homeowners and Renters Property Tax Assistance Law. Chapter 1 and Chapter 4 of Part 10.5 of Division 2 of the Revenue and Taxation Code.

(b) To the extent this part does not set forth a specific rule or procedure, the rules and procedures set forth in part 5 shall apply to this part. Where a conflict arises between part 5 and this part, the provisions of this part shall control.

Reference: Section 15606 of the Government Code. Sections 18533, 19043.5, 19045, 19047, 19048, 19085, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 20645 of the Revenue and Taxation Code.

4011. Definitions.

The definitions set forth in section 5002 of part 5~~, along with the following specific definitions,~~ shall apply to this part.~~:~~ In addition, the following definitions shall apply to this part:

(a) The term "appellant" means an individual or business entity who files an appeal from an action of the Franchise Tax Board. The term "appellant" also includes multiple individuals or business entities filing an appeal jointly and, where appropriate, an authorized representative or representatives.

(b) The term "respondent" means the Franchise Tax Board and, where appropriate, an authorized representative or representatives thereof.

~~(a)"Claimant" means an individual, or individuals, who file an appeal from the Franchise Tax Board's denial of a claim for assistance under the Senior Citizens Homeowners~~

~~and Renters Property Tax Assistance Law. The term "claimant" is also deemed to include, where appropriate, the claimant's authorized representative.~~

~~(b)"Taxpayer" means an individual, or individuals, who file an appeal from an action of the Franchise Tax Board under the Administration of Franchise and Income Tax Laws. The term "taxpayer" is also deemed to include, where appropriate, the taxpayer's authorized representative.~~

Reference: Section 15606 of the Government Code.

4012. Jurisdiction.

(a) Generally. Generally. The Board has express jurisdiction to hear administrative appeals from actions of the Franchise Tax Board and shall only hear such appeals under the circumstances set forth in subdivision (b) of this section. ~~The Board is an administrative agency that has jurisdiction to hear administrative appeals from actions of the Franchise Tax Board. The Board derives its jurisdiction from specific statutes in the Revenue and Taxation Code and acts within the scope of those statutes. Except for the circumstances set forth in subdivision (b) of this section, the Board shall not hear any grievance against the Franchise Tax Board.~~

(b) Appeals from the Franchise Tax Board. The Board has jurisdiction to hear and decide a timely filed appeal under any of the following circumstances:

(1) The Franchise Tax Board mails ~~taxpayer receives~~ a *Notice of Action* affirming a proposed deficiency assessment of additional tax, which may also include penalties, fees and interest.

(2) The Franchise Tax Board mails a *Notice of Action* affirming a proposed carryover adjustment.

~~(2)~~(3) The Franchise Tax Board mails ~~taxpayer receives~~ a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, which denies a claim for a refund of tax, penalties, fees, or interest.

~~(3)~~(4) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months after the claim is filed with the Franchise Tax Board. ~~and is deemed to have denied the claim under Section 19331 of the Revenue and Taxation Code.~~

~~(4)~~(5) The Franchise Tax Board mails ~~taxpayer receives~~ a *Notice of Determination Not to Abate Interest*, or any other notice, that denies an abatement, in whole or in part, of paid or unpaid interest, under Section 19104 of the Revenue and Taxation Code.

(6) The Franchise Tax Board fails to act on a request for abatement of interest within six months after the request is filed with the Franchise Tax Board under Section 19104 of the Revenue and Taxation Code.

(7) The Franchise Tax Board mails a notice that disallows interest on a refund.

~~(5)~~(8) The Franchise Tax Board mails ~~taxpayer receives~~ any notice that grants or denies, in whole or in part, innocent spouse relief under Sections 18533 or 19006 of the Revenue and Taxation Code.

(9) The Franchise Tax Board mails a notice of determination, or fails to act, on a petition for review of the Franchise Tax Board's finding of jeopardy.

~~(6)~~(10) The Franchise Tax Board mails ~~claimant receives~~ any notice that denies, in whole or in part, a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.

(c) Issues that shall not be considered. The Board's jurisdiction is limited to determining the correct amount owed by, or due to, the ~~taxpayer or claimant~~appellant for the year or years at issue in the appeal. Notwithstanding the timely filing of an appeal over which the Board has jurisdiction, the Board shall not consider or decide the following issues:

(1) Whether a California statute or regulation is invalid or unenforceable under the Federal or California Constitutions, unless ~~an~~ federal or California appellate court ~~of competent jurisdiction~~ has already made such a determination.

(2) Whether a provision of the California Constitution is invalid or unenforceable under the Federal Constitution, unless a federal or California appellate court has already made such a determination.

(3) Whether a liability has been or should have been discharged in bankruptcy.

~~(2)~~(4) Whether the Franchise Tax Board violated the Information Practices Act (Civil Code sections 1798 et seq.), the Public Records Act (Government Code sections 6250 et seq.), or any similar provision of the law.

~~(3)~~(5) Whether the Franchise Tax Board failed to respect any rights enumerated in the Federal or California Constitutions.

(6) Whether the Franchise Tax Board failed to comply with any policies, practices, or procedures, unless such failure directly affects the adequacy of a notice or the amount at issue in the appeal.

Reference: Section 15606 of the Government Code. Sections 18533, 19006, 19043.5 19045, 19085, 19104, 19323, 19324, 19331, 19333, 19334, 19335, 19343, 19570, and 20645 of the Revenue and Taxation Code. Section 3.5 of Article III of the California Constitution.

Article 2: How to file an appeal from the Franchise Tax Board

4020. ~~Basic~~ Appeal Filing Requirements.

(a) Franchise and Income Tax Appeals. Every appeal from an action of the Franchise Tax Board made under the circumstances enumerated in paragraphs (1) through (~~5~~9) of subdivision (b) of section 4012 shall be in writing, shall meet the formatting requirements of subdivision (e) of section 4030, and shall contain the following:

(1) The name of the ~~taxpayer~~appellant, or ~~taxpayers~~appellants, who are filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each ~~taxpayer~~ appellant filing the appeal;

(3) The address and telephone number of each ~~taxpayer~~ appellant and, if applicable, each ~~taxpayer's~~ appellant's authorized representative;

(4) The amount involved, including tax, penalties, fees, and interest (whichever is applicable);

(5) The years involved;

(6) ~~The date of the Franchise Tax Board's action being appealed~~A copy of the Franchise Tax Board's notice from which the appeal is made, unless the Franchise Tax Board has failed to act on a claim for refund or a request for interest abatement;

(7) The facts involved and the legal authorities upon which the ~~taxpayer~~ appellant relies, including any relevant statutes, regulations, and judicial and administrative decisions;

(8) Any portion of the amount at issue ~~that the taxpayer~~ conceded by the appellant ~~concedes it owes~~; and

(9) The signature of each ~~taxpayer~~ appellant who is listed in the Franchise Tax Board's notice and who is appealing the action~~who wishes to be a party to the appeal~~, including a husband and wife, or the signature of an authorized representative made on behalf of each ~~taxpayer that wishes to be a party to the appeal~~appellant who is appealing the action.

(b) Senior Citizens Homeowners and Renters Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board made under the circumstance in paragraph

(~~6~~10) of subdivision (b) of section 4012 shall be in writing, shall meet the formatting requirements of subdivision (e) of section 4030, and shall contain the following:

(1) The name of the ~~claimant~~appellant, or ~~claimants~~appellants, who are filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each ~~claimant~~ appellant filing the appeal;

(3) The address and telephone number of the ~~claimant~~ appellant and, if applicable, the ~~claimant's~~ appellant's authorized representative;

(4) The amount of property tax assistance claimed;

(5) The claim year involved;

(6) ~~The date that the Franchise Tax Board denied the claim~~A copy of the Franchise Tax Board's notice from which the appeal is made; and

(7) The signature of each ~~claimant~~ appellant who is listed in the Franchise Tax Board's notice and who is appealing the action~~who wishes to be a party to the appeal~~, including a husband and wife, or the signature of an authorized representative made on behalf of each ~~claimant~~ appellant who is appealing the action~~who wishes to be a party to the appeal~~.

~~(c)What to Mail; Where to Mail. The taxpayer, claimant, or authorized representative shall mail two copies of the appeal along with two copies of any supporting documents to the following address:~~

~~Board Proceedings Division, MIC 81~~
~~State Board of Equalization~~
~~450 N Street~~
~~PO Box 942879~~
~~Sacramento, CA 94279-0081~~

~~As an alternative to mailing, the taxpayer or claimant may personally deliver the materials to the Board's headquarters office located at 450 N Street, Sacramento. Personally delivered materials should be addressed to the Chief of Board Proceedings.~~

Reference: Section 15606 of the Government Code. Sections 18533, 19006, 19043.5, 19045, 19046, 19085, 19104, 19324, 19332, 19343, 19344, and 20645 of the Revenue and Taxation Code.

4020.5 Methods for Delivery of Written Documents and Correspondence

(a) Unless otherwise instructed by Board staff, one or more of the following methods shall be used when submitting any written documents to the Board during the course of an appeal under this part:

(1) Mail or personal delivery to:

Board Proceedings Division, MIC 81
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0081

(2) Transmission by facsimile, electronic mail, or other secure electronic means, provided that documents submitted pursuant to this paragraph are transmitted to, and received by, the Board Proceedings Division in accordance with instructions provided by the Board.

"Written documents" include appeals, petitions for rehearing, briefs, evidence, and any other correspondence.

(b) Where Board Staff is required to provide written notification or written acknowledgement to one or more parties during the course of an appeal under this part, Board Staff shall use mail or personal delivery, unless the party to whom the document is provided consents to delivery by facsimile, electronic mail, or other secure electronic means.

4021. Time for Filing an Appeal. (**First Alternative:** includes extensions to filing deadlines; shows revisions to the version released on 9/1/05.)

An appeal ~~is considered~~shall be timely if it is mailed to or received by the Board Proceedings Division within the time period specified by the Revenue and Taxation Code, or as provided by this section.

(a) Statutory Deadlines. The Revenue and Taxation Code provides that an appeal ~~is timely if it is mailed to or received by the Board Proceedings Division~~shall be made:

(1) Not later than the later of: (A) 30 days from the date ~~of~~ the Franchise Tax Board mails a *Notice of Action* upon the protest of an unpaid assessment, or (B) the date indicated on the notice as the deadline for filing an appeal.

(2) Not later than the later of (A): 30 days from the date the Franchise Tax Board mails a *Notice of Action* affirming a proposed carryover adjustment, or (B) the date indicated on the notice as the deadline for filing an appeal.

~~(2)~~(3) Not later than 90 days from the date ~~of~~ the Franchise Tax Board mails a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.

~~(3)~~(4) ~~Not later than 90 days from the date~~At any time after the Franchise Tax Board is deemed to have denied a claim for a refund of tax, penalties, fees, or interest under Revenue and Taxation Code section 19331, provided that if the Franchise Tax Board denies the claim for refund in writing, the appeal must be filed not later than 90 days from the date the Franchise Tax Board mails the denial.

~~(4)~~(5) Not later than 30 days from the date ~~of~~ the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **unpaid interest**.

~~(5)~~(6) Not later than 90 days from the date ~~of~~ the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **paid interest**.

(7) At any time after the Franchise Tax Board is deemed to have denied a request to abate interest under Revenue and Taxation Code section 19104, subdivision (b)(3).

(8) Not later than 90 days from the date the Franchise Tax Board mails a notice that disallows interest on a refund.

~~(6)~~(9) Not later than 30 days from the date ~~of~~ the Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief.

(10) Not later than 60 days from the earlier of: (A) the date the Franchise Tax Board mails a notice of its determination on a petition for review of a finding of jeopardy, or (B) the 91st day after a petition for review of a finding of jeopardy was filed with the Franchise Tax Board.

~~(7)~~(11) Not later than 90 days from the date ~~of~~ the Franchise Tax Board mails any notice that denies, in whole or in part, a claim for homeowners' or renters' property tax assistance.

(b) Extensions. Unless a statute or regulation provides otherwise, the statutory deadlines for filing an appeal shall be extended, pursuant to section 1013 of the Code of Civil Procedure, as follows:

(1) Five days if the ~~appeal is mailed from~~Franchise Tax Board's notice being appealed was mailed to an address within California;

(2) Ten days if the ~~appeal is mailed from~~Franchise Tax Board's notice being appealed was mailed to an address outside California, but within the United States; or

(3) Twenty days if the ~~appeal is mailed from~~Franchise Tax Board's notice being appealed was mailed to an address outside the United States.

(c) Date of Mailing. In the absence of other evidence, the post-mark date or the date of delivery to a "delivery service," as defined in section 5002, shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline shall be extended to the next business day.

~~(d)Examples.~~

~~(1)On March 1, the Franchise Tax Board issues its Notice of Action on a protest of an assessment of additional income tax. The taxpayer at issue resides in California. Revenue and Taxation Code Section 19045 provides 30 days to appeal to the Board from a Notice of Action. Subdivision (b)(1) of this section extends the statutory deadline for the taxpayer to mail an appeal to the Board by five days because the appeal is mailed from within California. Therefore, the appeal must be postmarked by April 5, which is 35 days after the date of the Notice of Action. If April 5 is a weekend or holiday, the deadline would be extended to the next business day.~~

~~(2)On June 1, the Franchise Tax Board denies a claim for a refund of income tax. The taxpayer at issue resides in Oregon. Revenue and Taxation Code Section 19324 provides the taxpayer with 90 days to appeal to the Board from the denial of a refund claim. Subdivision (b)(2) of this section extends the statutory deadline by ten days because the appeal is mailed from outside California, but within the United States. Therefore, the appeal must be postmarked by September 9, which is 100 days after the date of the denial of the refund claim. If September 9 is a weekend or holiday, the deadline would be extended to the next business day.~~

~~(3)On October 15, the Franchise Tax Board denies a claim for property tax assistance. The claimant at issue resides in California. Revenue and Taxation Code Section 20645 provides the claimant with 90 days to appeal to the Board from the denial of a claim for property tax assistance. Subdivision (b)(1) of this section extends the statutory deadline by five days because the appeal is mailed from within California. Therefore, the appeal must be postmarked by January 18, which is 95 days after the date of the denial. If January 18 is a weekend or holiday, the deadline would be extended to the next business day.~~

Reference: Section 15606 of the Government Code. Sections 18533, 19043.5, 19045, 19085, 19104, 19324, 19331, 19343, and 20645 of the Revenue and Taxation Code. Section 1013 of the Code of Civil Procedure.

4021. Time for Filing an Appeal. (**Second Alternative:** deletes extensions to filing deadlines; otherwise this is identical to the first alternative, including the revisions therein.)

An appeal shall be timely if it is mailed to or received by the Board Proceedings Division within the time period specified by the Revenue and Taxation Code, or as provided by this section.

(a) Statutory Deadlines. The Revenue and Taxation Code provides that an appeal shall be made:

(1) Not later than the later of: (A) 30 days from the date the Franchise Tax Board mails a *Notice of Action* upon the protest of an unpaid assessment, or (B) the date indicated on the notice as the deadline for filing an appeal.

(2) Not later than 30 days from the date the Franchise Tax Board mails a *Notice of Action* affirming a proposed carryover adjustment, or by the date indicated on the notice as the deadline for filing an appeal, whichever is later.

(3) Not later than 90 days from the date the Franchise Tax Board mails a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.

(4) At any time after the Franchise Tax Board is deemed to have denied a claim for a refund of tax, penalties, fees, or interest under Revenue and Taxation Code section 19331.

(5) Not later than 30 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **unpaid interest**.

(6) Not later than 90 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **paid interest**.

(7) At any time after the Franchise Tax Board is deemed to have denied a request to abate interest under Revenue and Taxation Code section 19104, subdivision (b)(3).

(8) Not later than 90 days from the date the Franchise Tax Board mails a notice that disallows interest on a refund.

(9) Not later than 30 days from the date the Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief.

(10) Not later than 60 days from the earlier of: (A) the date the Franchise Tax Board mails a notice of its determination on a petition for review of a finding of

jeopardy, or (B) the 91st day after a petition for review of a finding of jeopardy was filed with the Franchise Tax Board.

(11) Not later than 90 days from the date the Franchise Tax Board mails any notice that denies, in whole or in part, a claim for homeowners' or renters' property tax assistance.

(b) Date of Mailing. In the absence of other evidence, the post-mark date or the date of delivery to a "delivery service," as defined in section 5002, shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline shall be extended to the next business day.

Reference: Section 15606 of the Government Code. Sections 18533, 19043.5, 19045, 19085, 19104, 19324, 19331, 19343, and 20645 of the Revenue and Taxation Code.

4022. Accepting or Rejecting an Appeal. (**First Alternative:** no bifurcation procedure; shows revisions to the version released 9/14/05.)

(a) Determinations of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings shall determine whether the Board has jurisdiction to hear the appeal, including whether the appeal is timely under the provisions of section 4021. If any question arises as to the timeliness of an appeal or the Board's jurisdiction to hear an appeal, ~~The~~ the Chief of Board Proceedings ~~may~~ shall ~~consult with Appeals Staff in making the determination under this Regulation.~~refer the appeal to the Chief Counsel or his or her designee.

(b) Accepting the Appeal. If the Chief of Board Proceedings, or the Chief Counsel or his or her designee, determines that the Board has jurisdiction to hear the appeal and that the appeal is timely, or that there is a genuine, material issue relating to jurisdiction or timeliness, ~~he or she shall~~the Chief of Board Proceedings shall accept the appeal. ~~and mail an~~The Chief of Board Proceedings then shall provide written acknowledgement of the acceptance to the ~~letter to the taxpayer or claimant~~appellant and the Franchise Tax Board. The ~~letter~~ written acknowledgement shall notify the ~~taxpayer or claimant~~appellant and the Franchise Tax Board of ~~his or her~~their rights and obligations under this part. The Chief of Board Proceedings shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board.

(c) Issues Relating to Jurisdiction and Timeliness. If the ~~Chief of Board Proceedings~~Chief Counsel or his or her designee determines that there is a genuine, material issue relating to jurisdiction or timeliness, such matters will be considered to be at issue in the appeal and will be decided by the Board.

(d) Rejecting the Appeal. If the Chief of Board Proceedings and the Chief Counsel or his or her designee determines that the Board does not have jurisdiction to hear the appeal or that the appeal is not timely, and that there is no genuine, material issue relating to jurisdiction or timeliness, ~~he or she~~the Chief of Board Proceedings shall reject the appeal. The Chief of Board Proceedings then shall ~~mail a letter~~

~~notifying~~provide written notification to the ~~taxpayer or claimant~~appellant and the Franchise Tax Board of the rejection and the reasons therefore. ~~The letter shall notify the taxpayer or claimant of any alternative rights or remedies.~~

Reference: Section 15606 of the Government Code. Sections ~~18533, 19045, 19104, 19324, 1933~~19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4022. Accepting or Rejecting an Appeal. **(Second Alternative:** adds a bifurcation procedure; otherwise this is identical to the First Alternative, including the revisions therein.)

(a) Determination of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings shall determine whether the Board has jurisdiction to hear the appeal, including whether the appeal is timely under the provisions of section 4021. If any question arises as to the timelines of an appeal or the Board's jurisdiction to hear an appeal, the Chief of Board Proceedings shall refer the appeal to the Chief Counsel or his or her designee.

(b) Accepting the Appeal. If the Chief of Board Proceedings, or the Chief Counsel or his or her designee, determines that the Board has jurisdiction to hear the appeal and that the appeal is timely, or that there is a genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings shall accept the appeal. The Chief of Board Proceedings then shall provide written acknowledgement of the acceptance to the appellant and the Franchise Tax Board. The written acknowledgement shall notify the appellant and the Franchise Tax Board of their rights and obligations under this part. The Chief of Board Proceedings shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board.

(c) ~~Issues Relating to Jurisdiction and Timeliness~~Bifurcation. If the Chief of Board Proceedings, or the Chief Counsel or his or her designee, determines that there is a genuine, material issue relating to jurisdiction or timeliness, ~~such matters will be considered to be at issue in the appeal and will be decided by the Board.~~then notwithstanding any other provision of this part:

(1) The Chief of Board Proceedings shall provide each party 30 days within which to file a brief addressing the issues of jurisdiction and/or timeliness. After the receipt of such briefing, the Chief of Board Proceedings shall schedule and notice a hearing pursuant to section 5006. The initial briefing and hearing shall be limited to the issues of jurisdiction and/or timeliness.

(2) If the Board determines that it has jurisdiction to consider the merits of the appeal, then articles 3 through 6 of this part shall apply.

(3) If the Board determines that it does not have jurisdiction to consider the merits of the appeal, then the appeal shall be rejected.

(d) Rejecting the Appeal. If the Chief of Board Proceedings and or the Chief Counsel or his or her designee determine that the Board does not have jurisdiction to hear the

appeal or that the appeal is not timely, and that there is no genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings shall reject the appeal. The Chief of Board Proceedings then shall provide written notification to the appellant and the Franchise Tax Board of the rejection and the reasons therefore.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4023. Perfecting an Appeal.

(a) Generally. The briefing and resolution of an appeal cannot begin until the appeal is perfected. For purposes of this part, an appeal is "perfected" if it contains substantially all of the information required by section 4020. In addition, ~~An~~ an appeal is not "perfected" until it contains sufficient information to identify and contact each ~~taxpayer or claimant~~appellant or authorized representative, ~~and~~ along with the signature of each ~~taxpayer, claimant,~~appellant or authorized representative.

(b) Time to Perfect the Appeal. If the Chief of Board Proceedings accepts an appeal, and such appeal is not perfected, the Chief of Board Proceedings shall notify the ~~taxpayer or claimant~~appellant in writing of the need to perfect the appeal. The notification shall be included in the acknowledgement letter issued pursuant to subdivision (b) of section 4022. The notification shall explain what information is necessary to perfect the appeal.

(1) The ~~taxpayer or claimant~~appellant shall perfect the appeal not later than 90 days from the date of the acknowledgment letter. The Chief of Board Proceedings may extend the deadline for perfecting an appeal ~~only~~ upon a showing of extreme hardship or upon written agreement by the parties. All parties shall be notified in writing of any extension.

(2) Perfecting the appeal is accomplished by ~~mailing~~ submitting ~~one copy of~~ the information necessary to perfect the appeal to with the Chief of Board Proceedings~~, and one copy of such information to the Franchise Tax Board at the address provided by the Board Proceedings Division~~.

(3) If the taxpayer fails to perfect the appeal within the 90-day period, or within any extension period granted by the Chief of Board Proceedings, the appeal shall be dismissed. All parties will be notified in writing of the dismissal.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

Article 3: Briefing Schedules and Procedures

4030. General Requirements.

(a) ~~Briefing is~~Submissions in the forms of briefs are required in all appeals from actions of the Franchise Tax Board. The parties to an appeal shall adhere to the briefing schedules and other requirements set forth in this article.

(b) Upon receipt of a perfected appeal, the Chief of Board Proceedings shall ~~notify~~ provide written notification to each party that a perfected appeal has been filed and that briefing will begin under the applicable briefing schedule, as determined by the Chief of Board Proceedings. The notification may be included, if appropriate, in the acknowledgment letter issued pursuant to section 4022. Throughout the briefing schedule, the Chief of Board Proceedings shall keep the parties apprised of applicable deadlines, extensions, and other requirements by written notification, and shall ensure that all parties receive copies of any correspondence.

(c) Any request to extend the period for filing a brief must be in writing. ~~A brief shall be considered filed on the "date of mailing," as defined in subdivision (c) of section 4021.~~ The Chief ~~of Board Proceedings~~Counsel or his or her designee, in his or her discretion, may ~~extend the period for filing a brief~~grant such a request upon a showing of ~~extreme hardship~~reasonable cause or ~~by~~ based upon the written ~~stipulation~~ agreement of the parties.

(d) The party filing a brief is responsible for ~~mailing~~ submitting one copy of the brief and any supporting exhibits to the ~~Chief of~~ Board Proceedings Division ~~and one copy to each opposing party at the address provided by the Board Proceedings Division~~. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings shall ~~notify each party that the brief has been received~~ provide written acknowledgement of receipt to all parties and provide each opposing party with a copy of the brief and any supporting exhibits.

(e) All briefs shall be no longer than 30 double-spaced 8½" by 11" pages, or 15 single-spaced 8 ½" by 11" pages, excluding any table of contents, table of authorities, and exhibits. All briefs shall be handwritten or typed, and printed only on one side in a type-font size of at least 10 points or 12 characters per inch. The Chief of Board Proceedings may grant an exemption to the requirements of this subdivision upon written request that establishes the necessity thereof. If a brief is filed that does not comply with the requirements of this subdivision, the Chief of Board Proceedings may, in his or her discretion, return the brief to the filing party and grant 10 days in which to file a corrected brief. Failure to file a corrected brief within the 10-day period shall constitute a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, such waiver shall have the effect of concluding the briefing schedule.

(f) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, shall constitute a waiver of the right to file that brief. Except as otherwise provided in the

applicable briefing schedule, such failure shall have the effect of concluding the briefing schedule.

(g) Non-Party (Amicus) Briefs may be filed, subject to any generally applicable conditions of this section and the specific conditions of this subdivision.

(1) No individual or entity shall be permitted to file more than one Non-Party Brief.

(2) All Non-Party Briefs shall be filed prior to the conclusion of the applicable briefing schedule. For purposes of this paragraph, the conclusion of the applicable briefing schedule shall be determined without regard to the filing of any Non-Party Brief or reply thereto. There shall not be any extensions of time for the filing of Non-Party Briefs.

(3) If a Non-Party Brief is filed, the Chief of Board Proceedings shall acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the Non-Party Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Non-Party Brief.

(4) For purposes of articles 4 and 5 of this part, the applicable briefing schedule shall not be considered concluded until the deadline for replying to all Non-Party Briefs has passed.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4031. General Briefing Schedule.

(a) Application. The briefing schedule in this section shall apply to all appeals from actions of the Franchise Tax Board, unless ~~the~~ a more specific briefing schedules set forth in this article applies~~contained in sections 4032, 4033, or 4034 apply~~.

(b) Opening Briefs.

(1) Appellant's Opening Brief. The perfected appeal shall be considered the ~~taxpayer's~~ Appellant's Opening Brief.

(2) Respondent's Opening Brief. The Franchise Tax Board ~~shall~~ may file ~~its~~ an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the ~~taxpayer's perfected appeal~~Appellant's Opening Brief.

(c) Reply Briefs.

(1) Appellant's Reply Brief. The ~~taxpayer~~ appellant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the ~~Franchise Tax Board's~~Respondent's Opening Brief. The

~~taxpayer's~~ Appellant's Reply Brief, if filed, shall address only points of disagreement with the ~~Franchise Tax Board's~~Respondent's Opening Brief. Except as provided in paragraph (2) of this subdivision, the filing of the ~~taxpayer's~~ Appellant's Reply Brief shall conclude the briefing schedule.

(2) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief ~~of Board Proceedings~~Counsel or his or her designee. The ~~Franchise Tax Board's~~Respondent's Reply Brief, if filed, shall address only points of disagreement with the ~~taxpayer's~~ Appellant's Reply Brief.

(A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the ~~taxpayer's~~ Appellant's Reply Brief in which to file a written request for permission to file its ~~own~~ Reply Brief.

(B) Upon receipt of the Franchise Tax Board's written request, the Chief ~~of Board Proceedings~~Counsel or his or her designee ~~in consultation with Appeals Staff,~~ shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the ~~taxpayer's~~ Appellant's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

(iii) Whether the facts and issues in the appeal ~~is~~ are so complex as to require additional discussion or clarification.

(C) If the Chief ~~of Board Proceedings~~Counsel or his or her desingee determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board's ~~permission~~ request to file a Reply Brief. The Franchise Tax Board ~~shall~~ may file its Reply Brief not later than 30 days from the date ~~that permission~~on which its request is granted.

(D) If the Chief ~~of Board Proceedings~~Counsel or his or her designee determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board's request to file a Reply Brief and the briefing process shall be concluded.

(3) Appellant's Supplemental Brief. If the Franchise Tax Board files a Reply Brief, the ~~taxpayer~~ appellant may file a ~~Second Reply~~Supplemental Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges

receipt of the ~~Franchise Tax Board's~~Respondent's Reply Brief. The ~~taxpayer's Second Reply~~Appellant's Supplemental Brief, if filed, shall address only points of disagreement with the ~~Franchise Tax Board's~~Respondent's Reply Brief. The filing of the ~~taxpayer's Second Reply~~Appellant's Supplemental Brief shall conclude the briefing schedule.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4032. Briefing Schedule for Innocent Spouse Appeals.

(a) Application. The briefing schedule in this section shall apply to all appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.

(b) Definitions. For purposes of this section:

(1) The "Appealing Spouse" is the individual who files an appeal from the Franchise Tax Board's grant or denial, in whole or in part, of innocent spouse relief.

(2) The "Non-Appealing Spouse" is the individual with whom the Appealing Spouse filed a joint return for the year at issue.

(3) The "requesting spouse" is the individual who requested relief from the joint and several liability imposed by Revenue and Taxation Code section 19006. The requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(4) The "non-requesting spouse" is the individual with whom the requesting spouse filed a joint return for the year at issue. The non-requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(c) ~~Rights of the Non-Appealing Spouse~~Special Rules and Procedures.

~~(1)The Non-Appealing Spouse shall have the right to meaningful participation in the appeal, subject to the provisions of this section.~~

(1) If both spouses file timely appeals from the Franchise Tax Board's partial grant or partial denial of innocent spouse relief, then the appeals shall be consolidated for briefing, hearing, and decision. Each spouse shall be treated as an "Appealing Spouse" under this section and shall have an equal opportunity to file briefs.

(2) If only one spouse files a timely appeal, then ~~Upon~~ upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings shall provide one copy of the perfected appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her rights and obligations under this section.

(3) The Chief of Board Proceedings shall use the best available information to contact the Non-Appealing Spouse.

(d) Protection of confidential information. The Board Proceedings Division shall take reasonable steps, including redaction where appropriate, to ensure that the personal identifying information of one spouse is not provided to the other spouse. "Personal identifying information" includes, but is not limited to, a mailing address, electronic mail address, telephone number, and social security number.

~~(d)~~(e) Opening Briefs.

(1) Appealing Spouse's Opening Brief. The Appealing Spouse's perfected appeal shall constitute the Appealing Spouse's Opening Brief.

(2) Respondent's Opening Brief. The Franchise Tax Board ~~shall~~ may file ~~its~~ an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the ~~perfected appeal~~Appealing Spouse's Opening Brief.

(3) Non-Appealing Spouse's Opening Brief. The Non-Appealing Spouse may file an Opening Brief not later than 90 days from the date of the notification of his or her right to participate in the appeal. The filing of ~~an~~ the Non-Appealing Spouse's Opening Brief shall have the effect of joining the Non-Appealing Spouse as a party to the appeal. The failure to file ~~an~~ the Non-Appealing Spouse's Opening Brief within the time provided shall constitute a waiver of the right to participate in the appeal~~.~~, unless such failure is due to reasonable cause.

~~(e)~~(f) Reply Briefs.

(1) Appealing Spouse's Reply Brief. The Appealing Spouse may file a Reply Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the ~~Franchise Tax Board's~~Respondent's Opening Brief; or

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Opening Brief.

The Appealing Spouse's Reply Brief, if filed, shall address only points of disagreement with the ~~Franchise Tax Board's~~Respondent's Opening Brief and the Non-Appealing Spouse's Opening Brief.

(2) Non-Appealing Spouse's Reply Brief. If the Appealing Spouse files a Reply Brief, the Non-Appealing Spouse may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief. The Non-Appealing Spouse's Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse's Reply Brief.

(3) Respondent's Reply Brief. The Franchise Tax Board may ~~not~~ file a Reply Brief ~~in response to the Appealing Spouse's Reply Brief without~~only upon written permission from the Chief ~~of Board Proceedings~~Counsel or his or her designee. The ~~Franchise Tax Board's~~Respondent's Reply Brief, if filed, shall address only points of disagreement with the Appealing Spouse's Reply Brief.

(A) The Franchise Tax Board shall have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief in which to file a written request for permission to file its ~~own~~ Reply Brief.

(B) Upon receipt of the Franchise Tax Board's request, the Chief ~~of Board Proceedings~~Counsel or his or her designee~~, in consultation with Appeals Staff,~~ shall determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the Appealing Spouse's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

(iii) Whether the facts and issues in the appeal ~~is~~ are so complex as to require additional discussion or clarification.

(C) If the Chief ~~of Board Proceedings~~Counsel or his or her designee determines that additional briefing is necessary, he or she shall grant the Franchise Tax Board's ~~permission~~ request to file a Reply Brief. The Franchise Tax Board shall file its Reply Brief not later than 30 days from the date ~~that permission~~on which it's request is granted.

(D) If the Chief ~~of Board Proceedings~~Counsel or his or her designee determines that additional briefing is not necessary, he or she shall deny the Franchise Tax Board's request to file a Reply Brief.

(4) If neither the Non-Appealing Spouse nor the Franchise Tax Board file a Reply Brief, the briefing schedule shall be concluded.

(5) Appealing Spouse's Supplemental Brief. The Appealing Spouse may file a ~~Second Reply~~Supplemental Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the ~~Franchise Tax Board's~~Respondent's Reply Brief; or

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief.

The Appealing Spouse's ~~Second Reply~~Supplemental Brief, if filed, shall address only points of disagreement with the ~~Franchise Tax Board's~~Respondent's Reply Brief and the Non-Appealing Spouse's Reply Brief. The filing of the Appealing Spouse's ~~Second Reply~~Supplemental Brief shall conclude the briefing schedule.

~~(f)~~(g) Conformity with Federal Action. If, prior to the Board's decision on the appeal, any party to the appeal receives notification that the requesting spouse has been granted relief under Internal Revenue Code section 6015, the following procedures shall apply in addition to the other procedures set forth in this ~~Regulation~~section:

(1) The party who receives notification that relief has been granted under Internal Revenue Code section 6015 shall submit proof of such notification to the Chief of Board Proceedings as soon as is practicable.

(2) Regardless of whether the non-requesting spouse has joined the appeal, the Chief of Board Proceedings shall notify the Franchise Tax Board and the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, the Franchise Tax Board and the non-requesting spouse may provide "information that indicates that relief should not be granted," as that phrase is defined in Revenue and Taxation Code section 18533, subdivision (i)(2). ~~Such information should be sent to the Board Proceedings Division at the address provided in Chief of Board Proceedings' notice to the non-requesting spouse~~

(3) If the Franchise Tax Board and/or the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse ~~and the Franchise Tax Board each~~ may file an additional brief. If the Franchise Tax Board did not provide information as permitted by paragraph (2), it may also file an additional brief. ~~An a~~Additional briefs shall be filed

not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief filed pursuant to this paragraph shall address only points of disagreement with the information described in paragraph (2) of this subdivision.

(4) If this subdivision becomes applicable after the briefing schedule has concluded, then briefing shall be reopened for the purpose of complying with this subdivision and any hearing or decision shall be postponed as appropriate.

(5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule shall not be considered concluded until the requirements of this subdivision have been satisfied.

Reference: Section 15606 of the Government Code. Sections 18533, 19006, ~~and 19045~~19047, 19333 and 19345 of the Revenue and Taxation Code.

~~4033. Simplified Briefing Schedule for Small Tax Appeals.~~ **(First Alternative: delete proposed sections 4033 and 4034.)**

~~(a)Application. Any taxpayer may elect to have the briefing schedule in this section apply if:~~

~~(1)The amount at issue is not more than $5,000;~~

~~(2)The specific briefing schedules in sections 4032 and 4034 do not apply; and~~

~~(3)If the taxpayer is a trust, partnership, limited partnership, limited liability company, limited liability partnership, or corporation, the amount at issue does not include any item other than one or more of the following:~~

~~(A)One or more of the taxes or fees imposed by Revenue and Taxation Code sections 17935, 17941, 17942, 17948, and 23153;~~

~~(B)One or more of the penalties imposed by Revenue and Taxation Code sections 19131, 19132, 19133, 19134, 19141, 19172, and 19184;~~

~~(C)One or more of the fees imposed by Revenue and Taxation Code sections 19221, 19254; and~~

~~(D)Interest imposed by Revenue and Taxation Code section 19101.~~

~~(b)Special Definitions and Procedures.~~

~~(1)For purposes of this section, the "amount at issue" includes any tax, penalties, fees, and paid interest upon which the taxpayer and the Franchise Tax Board disagree and over which the Board has jurisdiction. Unpaid interest shall be~~

~~included in the "amount at issue" only if the taxpayer is seeking interest abatement under Revenue and Taxation Code section 19104, and only to the extent of the unpaid interest accrued through the date of the Franchise Tax Board's notice from which the appeal is made.~~

~~(2)When an appeal is perfected, the Chief of Board Proceedings shall determine whether the taxpayer filing the appeal is eligible to elect to apply this section. If it is determined that the taxpayer is eligible to elect to apply this section, the Chief of Board Proceedings shall notify the taxpayer of the right to make the election. In making such determination, the Chief of Board Proceedings may consult with Appeals Staff to determine the taxpayer's eligibility. The notification described in this paragraph may be included in the acknowledgment letter issued pursuant to section 4022, if appropriate.~~

~~(3)The taxpayer must affirmatively elect the application of this section and inform the Chief of Board Proceedings in writing not later than 30 days from the date of the notification described in paragraph (2) of this subdivision. The Chief of Board Proceedings shall notify the Franchise Tax Board if and when the taxpayer makes the election.~~

~~(4)An election to apply this section shall constitute a waiver of the taxpayer's right to request an oral hearing before the Board under section 3040.~~

~~(5)An election to apply this section is only revocable until the Franchise Tax Board files its Opening Brief. Thereafter, the election is irrevocable.~~

~~(c)Briefing Schedule. Where this section applies:~~

~~(1)The perfected appeal shall constitute the taxpayer's Opening Brief.~~

~~(2)The Franchise Tax Board shall file its Opening Brief not later than 60 days from the date the Chief of Board Proceedings notifies it that the taxpayer has made an election to apply this section.~~

~~(3)The taxpayer may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Opening Brief. The taxpayer's Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Opening Brief. The filing of the taxpayer's Reply Brief shall conclude the briefing schedule.~~

~~(d)Intent. This Regulation is intended to provide a simplified briefing schedule and an expedited resolution of the appeal. The Board Proceedings Division and the Appeals Division shall consider this intent and shall expedite the processing of appeals to which this section applies, consistent with workload constraints.~~

~~(e)Pro Bono Representation. Taxpayers who are eligible to elect to apply this section shall be notified of, and may take advantage of, any pro bono representation provided pursuant to an agreement between a law school and the Board of Equalization.~~

~~4034. Briefing Schedule for Homeowners' and Renters' Property Tax Assistance Appeals.~~
(**First Alternative:** deletes proposed sections 4033 and 4034.)

~~(a)Application. The briefing schedule in this section shall apply to all appeals from notices that deny, in whole or in part, a claim under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.~~

~~(b)Briefing Schedule.~~

~~(1)The perfected appeal shall constitute the claimant's Opening Brief.~~

~~(2)The Franchise Tax Board shall file its Opening Brief not later than 60 days from the date the Chief of Board Proceedings acknowledges receipt of the perfected appeal.~~

~~(3)The claimant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Franchise Tax Board's Opening Brief. The claimant's Reply Brief, if filed, shall address only points of disagreement with the Franchise Tax Board's Opening Brief. The filing of the claimant's Reply Brief shall conclude the briefing schedule.~~

~~Reference: Section 15606 of the Government Code. Sections 19333 and 20645 of the Revenue and Taxation Code.~~

4033. Elective Simplified Briefing Schedule for Small Tax Cases and Homeowner and Renter Assistance Appeals. **(Second Alternative: replace proposed sections 4033 and 4034 with a single new section 4033.)**

(a) Intent. This section is intended to provide a simplified briefing schedule and an expedited resolution of the appeal. The Board Proceedings Division and the Appeals Division shall consider this intent and shall expedite the processing of appeals to which this section applies, consistent with workload constraints.

(b) Pro Bono Representation. Appellants who elect to apply this section shall be notified of, and may take advantage of, any pro bono representation provided pursuant to an agreement between a law school and the Board of Equalization.

(c) Application and Definitions.

(1) Any appellant filing an appeal pursuant to the Homeowners and Renters Property Tax Assistance Law may elect to apply this section.

(2) Any appellant filing an appeal pursuant to the Administration of Franchise and Income Tax Law may elect to apply this section if:

(A) The amount at issue is not more than $15,000;

(B) The specific briefing schedule in section 4032 does not apply; and

(C) The appellant is not contesting any tax imposed under Part 11 of Division 2 of the Revenue and Taxation Code, except for the minimum franchise tax described in Revenue and Taxation Code section 23153.

(3) For purposes of this section, the "amount at issue" includes all of the following:

(A) All taxes, penalties, and fees upon which the appellant and the Franchise Tax Board disagree and over which the Board has jurisdiction;

(B) All interest imposed by Revenue and Taxation Code section 19101 that was paid as of the date of the Franchise Tax Board's notice from which the appeal is made;

(C) All interest imposed by Revenue and Taxation Code section 19101 that had accrued and was unpaid as of the date of the Franchise Tax Board's notice from which the appeal is made, provided that that the appellant is seeking interest abatement pursuant to Revenue and Taxation Code section 19104.

(D) All interest disallowed by the Franchise Tax Board pursuant to Revenue and Taxation Code section 19342.

(4) The "amount at issue" shall be inclusive of all years on appeal. However, the "amount at issue" shall be determined separately for each appellant. Spouses who filed a joint return for the year(s) on appeal will be considered as one appellant.

(d) Waiver of right to request oral hearing. Notwithstanding section 4040, an election to apply this section shall constitute a waiver of the right to request an oral hearing before the Board.

(e) Special Procedures. Upon receipt of a perfected appeal, the Chief of Board Proceedings shall consult with the Chief Counsel or his or her designee and determine whether the appellant filing the appeal is eligible to elect to apply this section. If additional information is necessary in order to determine the appellant's eligibility, the Chief of Board Proceedings may request such information from the appellant and the Franchise Tax Board. If the Chief of Board Proceedings determines that the appellant is eligible to elect to apply this section, the following procedures shall apply:

(1) The Chief of Board Proceedings shall provide written notification to the appellant of the right to make the election. Such notification may be included in the acknowledgment letter issued pursuant to section 4022, if appropriate, and shall clearly explain the following:

(A) An election to apply this section constitutes a waiver of the right to request an oral hearing pursuant to section 4040;

(B) An election to apply this section does not constitute a waiver of the right to address the Board regarding any nonappearance matter considered at an open meeting; and

(C) Appeals for which an election to apply this section is made will be considered and decided with the same diligence and objectivity as any other appeal.

(2) Not later than 30 days from the date of the notification described in paragraph (1), the appellant may affirmatively elect to apply this section. The election must be made in writing. If the appellant fails to make the election within that 30-day period, then unless such failure is due to reasonable cause, the briefing schedule in section 4031 shall apply.

(3) The Chief of Board Proceedings shall provide written notification to the Franchise Tax Board of the appellant's election, or failure to make an election, to apply this section.

(4) The appellant may revoke the election until the Franchise Tax Board files its Opening Brief. Thereafter, the appellant may not revoke the election.

(5) The Chief of Board Proceedings, with the consent of the Appeals Division, may revoke an election to apply this section if:

(A) It is determined that one or more of the requirements of subdivision (c) have not been met; or

(B) The election to apply this section was made by mistake or in bad faith.

(f) Briefing Schedule. Where an appellant elects to apply this section:

(1) Appellant's Opening Brief. The perfected appeal shall constitute the Appellant's Opening Brief.

(2) Respondent's Opening Brief. The Franchise Tax Board may file an Opening Brief not later than 60 days from the date of the Chief of Board Proceedings' notice that an appellant has elected to apply this section.

(3) Appellant's Reply Brief. The appellant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Appellant's Reply Brief, if filed, shall address only points of disagreement with the Respondent's Opening Brief. The filing of the Appellant's Reply Brief shall conclude the briefing schedule.

(g) An election to apply this section does not preclude a request for supplemental briefing pursuant to section 4035.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345 and 20645 of the Revenue and Taxation Code.

4035. Discretionary Supplemental Briefing.

(a) Board Requests for Supplemental Briefing. If the Board, in its discretion, determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board may set forth any order, deadlines, and conditions for briefing that it deems appropriate. The Board Proceedings Division shall administer any request made under this subdivision. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

(b) Staff Requests for Supplemental Briefing If the ~~Supervising Tax Counsel in charge of Franchise and Income Tax Appeals Staff, in his or her discretion,~~Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals ~~Staff~~ Division may request additional briefing or evidence from any party. The Appeals ~~Staff~~ Division may set forth any order, deadlines, and conditions for briefing that ~~they~~ it deems appropriate. The Appeals Division shall administer any request made under this subdivision. ~~Appeals Staff~~ and may extend deadlines under this subdivision upon a showing of reasonable cause.

(c) Individual Board Member's Request for Supplemental Briefing. An individual Board Member may request additional briefing or evidence from any party only with the consent of the Board Chair. If the Board Chair consents to such a request, the Appeals Division shall determine the order, deadlines, and conditions under which any briefing or evidence must be submitted and shall administer any request made under this subdivision. The Appeals ~~Staff~~ Division may extend deadlines under this subdivision upon a showing of reasonable cause.

(d) Timing of Request. A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

Article 4: Requesting and Scheduling Oral Hearings

4040. Right to Oral Hearing.

(a) Written Request Required. Except as otherwise provided in any statute or regulation, every ~~taxpayer and claimant~~appellant shall have the right to an oral hearing before the Board upon written request. The ~~taxpayer or claimant~~appellant may ~~make a written~~ request ~~for~~ an oral hearing ~~at any time prior to the Board's decision on the appeal~~not later than 30 days following the conclusion of the applicable briefing schedule under article 3 of this part. Upon receipt of a timely request, the Chief of Board Proceedings shall send written acknowledgment of the request to all parties. An untimely request may be accepted and acknowledged upon a showing that the failure to make a timely request was due to reasonable cause.

If the second alternative to section 4033 is adopted, the following language will be added to the end of subdivision (a): Notwithstanding the foregoing provisions, an appellant who elects to apply the simplified briefing schedule in section 4033 may not request an oral hearing.

(b) Innocent Spouse Appeals. Both the Appealing Spouse and the Non-Appealing Spouse, as those terms are defined in subdivision (b) of section 4032, may request an oral hearing pursuant to subdivision (a) of this section. The Non-Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, the Board typically shall conduct one oral hearing on the appeal and invite both spouses to appear.~~, unless a court order would prohibit one or both spouses from appearing. The Non-Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal.~~ However, the Board shall conduct separate oral hearings if:

(1) A court order would prohibit the spouses from appearing at the same hearing; or

(2) The Chief of Board Proceedings, after consulting with the Board Chair, determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.

If the Board conducts separate oral hearings, the appeal shall not be decided until both hearings have concluded.

~~(c)Small Tax Appeals. A taxpayer electing to apply section 4033 may not request an oral hearing.~~

~~(d)~~(c) ~~Res Judicata~~Discretion to Deny Oral Hearing. The ~~Board has discretion~~ Chief of Board Proceedings, with the consent of the Chief Counsel and the Board Chair, may

~~to~~ deny an oral hearing on an appeal from the Franchise Tax Board's denial of a claim for refund or denial of interest abatement if:

(1) The ~~taxpayer~~ appellant received an oral hearing on ~~an~~ a prior appeal from a Notice of Action affirming a proposed assessment or on a prior appeal from a notice that denied interest abatement; and

(2) The ~~taxpayer's~~ appellant's ~~claim for refund~~current appeal concerns the same facts, laws, and year(s) that were at issue in the appeal described in paragraph (1) of this subdivision.

If an oral hearing is denied pursuant to this subdivision, all parties shall be notified in writing of the denial and the reasons therefor.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, 19802, and 20645 of the Revenue and Taxation Code.

4041. Submission for Decision Without Oral Hearing.

~~If the taxpayer or claimant does not make a written request for an oral hearing as provided in section 4040, the~~The appeal shall be submitted for decision based upon the written record on file and without an oral hearing under any of the following circumstances:~~.~~

(a) The appellant does not request an oral hearing pursuant to section 4040.

(b) The appellant's request for an oral hearing is denied.

(c) The appellant fails to respond to a Hearing Notice as provided in section 5006.

If the second alternative to section 4033 is adopted, the following subdivision (d) will be added:

(d) The appellant elected to apply the simplified briefing schedule in section 4033.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

~~4042. Appeals Review; Scheduling an Oral Hearing.~~

~~(a)Application. The provisions of this section shall apply if the taxpayer or claimant makes a written request for an oral hearing as provided in section 4040.~~

~~(b)Appeal Review. At the conclusion of the applicable briefing schedule under article 3 of this part, Appeals Staff shall review the record and ascertain whether the briefing on file adequately addresses all relevant factual and legal issues.~~

(1)If Appeals Staff determines that the briefing on file does not adequately address all relevant factual and legal issues, Appeals Staff shall request additional briefing from each party.

(A)The request for additional briefing shall specify the factual and legal issues to be addressed and shall supersede any request for supplemental briefing under subdivision (b) of section 4035. Not later than 30 days from the date of the request for additional briefing, each party may submit a brief to the Appeals Division that addresses only those factual and legal issues specified in the request. The Appeals Division may extend the deadline for filing such a brief upon a showing of extreme hardship or by written stipulation of the parties. The procedure set forth in this subparagraph may be repeated as many times as Appeals Staff deems necessary in order to adequately address all relevant factual and legal issues, provided that each party is given an equal opportunity to file briefing.

(B)Any brief filed pursuant to this paragraph shall meet the requirements of subdivision (e) of section 4030.

(C)The Appeals Division may reject and return to the filing party any brief that does not comply with the requirements of this paragraph.

(2)If Appeals Staff determines that the briefing on file adequately addresses all relevant factual and legal issues, or upon the receipt of all briefs filed pursuant to paragraph (1) of this subdivision, Appeals Staff shall notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.

(c)Scheduling the Oral Hearing. Upon notification by Appeals Staff that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings shall schedule and notice an oral hearing pursuant to article 2 of part 5.

4043. Hearing Summaries.

(a)Definitions. For purposes of this part, a "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of an appeal for which an oral hearing has been requested. The Hearing Summary shall contain sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing. The Hearing Summary also shall contain the Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 4052. At the discretion of Appeals Staff, the Hearing Summary may contain Appeals Staff's analysis and comments, including any questions posed to the parties.

(b)Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to article 2 of part 5, the Appeals Division s shall prepare a Hearing Summary. The Appeals Division shall submit the Hearing Summary to the Chief of

~~Board Proceedings within the deadline set by the Chief of Board Proceedings, but in no case shall the Appeals Division have less than 30 days in which to prepare and submit the Hearing Summary. The Chief of Board Proceedings may extend the time period for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings shall mail one copy to each party.~~

4042. Appeals Review; Scheduling the Oral Hearing

(a) If an oral hearing is granted pursuant to section 4040, the Appeals Division shall review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request supplemental briefing pursuant to section 4035, or may order a pre-hearing conference pursuant to section 4042.5, or both. When the Appeals Division determines that all relevant factual and legal issues have been addressed, then the Appeals Division shall notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.

(b) Upon notification from the Appeals Division that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings shall schedule and notice an oral hearing pursuant to section 5006.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4042.5. Pre-hearing Conference.

(a) Purpose. The purpose of a pre-hearing conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing.

(b) When to Hold a Pre-hearing Conference. A pre-hearing conference may be held only when an oral hearing has been granted pursuant to section 4040, and after conclusion of the applicable briefing schedule under article 3 of this part.

(1) The Appeals Division may order a pre-hearing conference in its discretion.

(2) Any party may make a written request for a pre-hearing conference. Such request must be made within 15 days of the date on which the Chief of Board Proceedings acknowledges the request for an oral hearing. The Appeals Division may deny such a request, with the approval of the Chief Counsel or his or her designee, if the Appeals Division determines that a pre-hearing conference is likely to be unproductive and a misuse of administrative resources.

(3) The Board, at the oral hearing on the appeal, may order that a pre-hearing conference be held. In such circumstance, the hearing shall be continued to the next regularly scheduled Board meeting no less than 30 days thereafter.

(c) Determining the Time and Location of the Pre-Hearing Conference. The Appeals Division shall determine the time and location of the pre-hearing conference. Consistent with workload constraints, the Appeals Division shall attempt to ensure that the pre-hearing conference is held at a time convenient to the appellant. The pre-hearing conference shall ordinarily be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. However, in extraordinary circumstances and with the approval of the Chief Counsel or his or her designee, an in-person pre-hearing conference may be held outside of Sacramento.

(d) Notice and Scheduling. The Board Proceedings Division shall schedule the pre-hearing conference in accordance with information provided to it by the Appeals Division and shall issue appropriate written notification to all parties.

(e) Conduct and Nature of the Pre-hearing Conference. An employee of the Appeals Division will conduct the pre-hearing conference. To the extent practicable, the conference holder will ensure that the pre-hearing conference is informal and non-adversarial in nature.

(f) Recording. The conference holder will not record, videotape, or report the pre-hearing conference. Any party may arrange for the pre-hearing conference to be recorded or reported, at that party's expense. If the pre-hearing conference is recorded or reported, a transcript shall be made available to all participants and such transcript shall become public record.

(g) Additional Briefing and Evidence. The holding of a pre-hearing conference does not preclude the Appeals Division from requesting additional briefing or evidence pursuant to section 4035.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4043. Hearing Summary.

(a) Definition. For purposes of this part, a "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of an appeal at an oral hearing. The Hearing Summary shall contain:

(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;

(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 4052, if the Appeals Division determines that such a recommendation is appropriate;

(3) A discussion of the pre-hearing conference, if one was held, including any findings, stipulations, and concessions resulting therefrom; and

(4) The Appeals Division's analysis, recommendations and comments, including any questions posed to the parties.

(b) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to section 5006, the Appeals Division shall prepare a Hearing Summary. The Appeals Division shall submit the Hearing Summary to the Chief of Board Proceedings within the deadline set by the Chief of Board Proceedings, but in no case shall the Appeals Division have less than 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel or his or her designee may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings shall provide one copy to each party.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

4050. Letter Decisions.

(a) Definitions. A "Letter Decision" is a written decision setting forth the Board's ~~conclusions~~ decision and a short explanation of the reasons therefore.

(b) Preparing the Letter Decision. Whenever the Board decides an appeal without adopting, or directing the preparation of, a Summary Decision or Formal Opinion, the Appeals Division shall prepare a Letter Decision. The Appeals Division shall ~~mail~~ provide one copy of a Letter Decision to each party not later than ~~7~~ three business days from the date of the Board's decision.

(c) Date of Decision. The date on which the Board votes to decide the appeal shall be the date of the decision for purposes of this part.

(d) No Precedent Set. No Letter Decision shall be cited as precedent in any appeal or other proceeding before the Board.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4051. Summary Decisions.

(a) Definition. A "Summary Decision" is a written decision setting forth the findings of fact and conclusions of law ~~for the purpose of deciding an~~that form the basis of the Board's decision on an appeal under this part. The Summary Decision does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Summary Decision. The Appeals Division shall prepare a Summary Decision under the following circumstances:

(1) Where an appeal is submitted for decision ~~based upon the written record on file and without an oral hearing~~pursuant to section 4041: the Appeals Division shall ~~submit~~ prepare a Summary Decision and, upon completion, submit the Summary Decision to the Chief of Board Proceedings. ~~not later than 90 days from the date the briefing schedule is concluded. The Chief of Board Proceedings may extend the time period for submitting the Summary Decision upon a showing of reasonable cause. A request for supplemental briefing under section 4035 is deemed to be reasonable cause. In the case of an appeal to which section 4033 applies, the Appeals Division shall make a reasonable effort to submit the Summary Decision to the Chief of Board Proceedings not later than 45 days from the date the briefing schedule is concluded.~~

(2) Where, at the conclusion of an oral hearing, the Board orders the preparation of a Summary Decision or staff recommendation: the Appeals Division shall prepare and submit a Summary Decision to the Chief of Board Proceedings ~~not later than 30 days from the date of the Board's order, or~~ within any ~~other~~ deadline set by the Board. The Chief ~~of Board Proceedings~~Counsel or his or her designee may extend the time period for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. The Summary Decision shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board votes to adopt~~s~~ the Summary Decision, or votes to decide the appeal without adopting the Summary Decision, shall be the date of the Board's decision for purposes of this part.

(d) No Precedent Set. No Summary Decision shall be cited as precedent in any appeal or other proceeding before the Board.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4052. Formal Opinions.

(a) Definition. A "Formal Opinion" is a written decision setting forth the findings of fact and conclusions of law ~~for the purposes of deciding an~~that form the basis of the Board's decision on an appeal under this part and ~~setting~~ which is intended to set

~~useful~~ precedent. The Formal Opinion does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Formal Opinion. The Appeals Division shall prepare a Formal Opinion under the following circumstances:

(1) Where an appeal is submitted for decision ~~based upon the written record on file and without an oral hearing~~pursuant to section 4041 and the Appeals Division determines, in its discretion, that a Formal Opinion is appropriate: the Appeals Division shall ~~submit~~ prepare ~~the~~ a Formal Opinion and, upon completion, submit the Formal Opinion to the Chief of Board Proceedings. ~~not later than 120 days from the date the briefing schedule is concluded. The Chief may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause. A request for supplemental briefing under section 4035 is deemed to be reasonable cause.~~

(2) Where, at the conclusion of an oral hearing, the Board determines that a Formal Opinion is appropriate and orders the preparation of a Formal Opinion: the Appeals Division shall prepare and submit the Formal Opinion to the Chief of Board Proceedings ~~not later than 30 days from the date of the Board's order, or~~ within any ~~other~~ deadline set by the Board. The Chief ~~of Board Proceedings~~Counsel or his or her designee may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. The Formal Opinion shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. The date on which the Board votes to adopts the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, shall be the date of the Board's decision for purposes of this part. ~~The Board may, in its discretion, decline to adopt the Formal Opinion and order that the decision be adopted as a Summary Decision.~~

(d) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion is appropriate, the following factors shall be considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(e) Precedent Set. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board, unless the Opinion has been depublished, overruled, or superceded.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code. California Rule of Court 976.

4053. Dissenting and Concurring Opinions.

(a) Definitions.

(1) A "Dissenting Opinion" sets forth the rationale of a Board Member or Members who disagree with the result reached in a Formal Opinion.

(2) A "Concurring Opinion" sets forth the rationale of a Board Member or Members who agree with the result reached in a Formal Opinion but disagree with the rationale expressed by another Member or Members therein.

(b) Preparing the Dissenting or Concurring Opinion. A Dissenting or Concurring Opinion shall be prepared and submitted to the Chief of Board Proceedings not later than 30 days from the date on which the Board votes to adopt the Formal Opinion. ~~The Appeals Division shall prepare a Dissenting Opinion at the direction of one or more dissenting Board Members. The dissenting Board Member or Members shall give such direction during the Board meeting at which the Formal Opinion is adopted or during the Board meeting at which the Formal Opinion is ordered to be prepared. The Appeals Division shall prepare the Dissenting Opinion as soon as is practicable, consistent with workload constraints, and shall consult with the dissenting Board Member or Members to confirm the content of the Dissenting Opinion~~.

(c) Date of Adoption. The Dissenting or Concurring Opinion shall be deemed to be adopted on the same date on which the Formal Opinion is adopted and shall be published as a supplement to the Formal Opinion.

(d) No Precedent Set. ~~No Dissenting Opinion shall be cited as precedent in any appeal or other proceeding before the Board.~~ A Dissenting or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence in a published opinion of the California Supreme Court or California Court of Appeal.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, and 20645 of the Revenue and Taxation Code.

4054. Frivolous Appeal Penalty.

If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, pursuant to Revenue and Taxation Code Section 19714, on the ~~taxpayer or claimant~~appellant or appellants that filed the appeal. The following factors shall be considered in determining whether, and in what amount, to impose a frivolous appeal penalty:

(a) Whether the ~~taxpayer~~ appellant is making arguments that the Board, in a Formal Opinion, or courts have ~~repeatedly~~ rejected;

(b) Whether the ~~taxpayer~~ appellant is making the same arguments that the same ~~taxpayer~~ appellant made in prior appeals;

(c) Whether the ~~taxpayer~~ appellant filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;

(d) Whether the ~~taxpayer~~ appellant has a history of filing frivolous appeals or failing to comply with California's tax laws.

Reference: Section 15606 of the Government Code. Sections 19047, 19333, 19345, 19714 and 20645 of the Revenue and Taxation Code.
~~Reference: Section 19714 of the Revenue and Taxation Code.~~

Article 6: Petitions for Rehearing and Rehearings

4060. Finality of Decision.

The Board's decision pursuant to article 5 of this part shall become final 30 days ~~after~~ from the date of the decision unless, within that 30-day period, ~~one of the following occurs:~~a party to the appeal files a Petition for Rehearing. The filing of a Petition for Rehearing by one party shall not preclude the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed within the aforementioned 30-day period, and each party files no more than one Petition for Rehearing.

~~(a)A party to the appeal files a Petition for Rehearing. The filing of a Petition for Rehearing by one party shall not preclude the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed within the aforementioned 30-day period and meets the requirements of subdivision (e) of section 4030.~~

~~(b)The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance.~~

~~(1)The Board Chair may make an order pursuant to this subdivision only for one or more of the following reasons:~~

~~(A)The decision contains a clerical error;~~

~~(B)The decision contains a mistake of fact or law affecting the outcome of the appeal;~~

~~(C)A party or a party's representative deliberately misrepresented facts; or~~

~~(D)The Board or any employee of the Board denied a substantial right of a party under this part.~~

~~(2)If the Board Chair makes an order pursuant to this subdivision, the Chief of Board Proceedings shall notify all parties of the order and the reason or reasons therefor.~~

~~(3)An order made pursuant to this subdivision shall preclude the finality of the decision if, and only if, the appeal is scheduled for an expunging vote at the first regular Board meeting that succeeds the date of the Board Chair's order.~~

~~(4)If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board does not vote to expunge the decision, then the decision shall become final immediately.~~

~~(5)If, at the Board meeting described in paragraph (3) of this subdivision, a majority of the Board votes to expunge the decision, then the Board shall reconsider and decide the appeal in a manner it deems appropriate. The Board's subsequent decision shall become final after the passage of 30 days.~~

~~(6)This subdivision shall not become effective unless and until the Board passes a resolution in an open meeting that expressly delegates to the Board Chair the authority to order decisions held in abeyance pursuant to this subdivision.~~

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code.~~Reference: Section 19048 of the Revenue and Taxation Code.~~

4061. Petitions for Rehearing.

(a) Definitions.

(1) The "Filing Party" is the party who files a Petition for Rehearing.

(2) The "Non-Filing Party" is the party who does not file a Petition for Rehearing.

The following version of subdivision (b) is tied to of the first alternative to section 4021:

(b) Time and Method of Filing. A Petition for Rehearing shall be considered timely if it is mailed within the 30-day period specified in section 4060, as extended by the

provisions of subdivision (b) of section 4021. The date of mailing shall be determined under subdivision (c) of section 4021.

The following version of subdivision (b) is tied to of the second alternative to section 4021:

(b) Time and Method of Filing. A Petition for Rehearing shall be considered timely if it is mailed within the 30-day period specified in section 4060. The date of mailing shall be determined under subdivision (b) of section 4021.

~~(b)Time and Place for Filing.~~

~~(1)A Petition for Rehearing shall be considered timely if it is mailed within the 30-day period specified in section 4060, as extended by the provisions of subdivision (b) of section 4021. The date of mailing shall be determined under Subdivision (c) of section 4021.~~

~~(2)The Filing Party shall mail the Petition for Rehearing, along with any supporting documents, to:~~

~~Board Proceedings Division, MIC 81~~
~~State Board of Equalization~~
~~450 N Street~~
~~PO Box 942879~~
~~Sacramento, CA 94279-0081~~

~~As an alternative to mailing, the Filing Party may personally deliver the materials to the Board's headquarters office located at 450 N Street, Sacramento. Personally delivered materials should be addressed to the Chief of Board Proceedings.~~

(c) Format and Contents of the Petition for Rehearing. Every Petition for Rehearing shall be in writing, shall meet the formatting requirements of subdivision (e) of section 4030, and shall contain the following:

(1) The name or names of the party or parties filing the Petition for Rehearing;

(2) The address and telephone number of each party and, if applicable, each party's authorized representative;

(3) The facts involved and the legal authorities upon which the party relies, including any relevant statutes, regulations, and judicial decisions;

(4) Any portion of the amount at issue conceded by the party; and

(5) The signature of each party, or the signature of an authorized representative made on behalf of each party, who is filing the Petition for Rehearing.

(d) ~~(c)~~ Acceptance or Rejection of the Petition for Rehearing.

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings shall determine whether the Petition for Rehearing is timely and whether it contains substantially all of the information required by subdivision (c) of this section. ~~The Chief of Board Proceedings may consult with Appeals in making this determination.~~ If any question arises as to the timelines of a Petition for Rehearing, the Chief of Board Proceedings shall refer the Petition to the Chief Counsel or his or her designee.

(2) If the Petition for Rehearing is timely and contains substantially all of the information required by subdivision (c) of this section, the Chief of Board Proceedings shall accept the Petition for Rehearing and ~~mail a letter to~~ notify all parties in writing of ~~acknowledging~~ the acceptance. The Chief of Board Proceedings also shall ~~mail~~ provide one copy of the Petition for Rehearing to each Non-Filing Party.

(3) If the Petition for Rehearing is timely, but does not contain substantially all of the information required by subdivision (c) of this section, the Chief of Board Proceeding shall provide written notification to the Filing Party that the Petition for Rehearing is incomplete, along with an explanation of what is missing. The Filing Party shall have 15 days from the date of the notification to perfect the Petition for Rehearing. A Petition for Rehearing is not perfected until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant or authorized representative.

(A) If the Filing Party perfects the Petition for Rehearing within the 15-day period, the Chief of Board Proceedings shall accept the Petition for Rehearing and provide written notification to all parties of the acceptance. The Chief of Board Proceedings also shall provide one copy of the Petition for Rehearing to each Non-Filing Party.

(B) If the Filing Party fails to perfect the Petition for Rehearing within the 15-day period, the Chief of Board Proceedings shall reject the Petition for Rehearing and provide written notification to all parties of the rejection and the reasons therefor.

~~(3)~~(4) If the Petition for Rehearing is not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and provide written notification to all parties of the rejection and the reasons therefor. ~~notify the Filing Party of any alternative rights or remedies.~~

~~(d) Briefing Schedule.~~

~~(1)Not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of a timely Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing. The Reply to the Petition for Rehearing shall address only the Non-Filing Party's areas of disagreement with the Filing Party and shall meet the requirements of subdivision (e) of section 4030. The filing of the Reply to the Petition for Rehearing shall conclude the briefing schedule.~~

~~(2)If there is more than one Filing Party, then each party may file a Reply to each Petition for Rehearing under the requirements of paragraph (1) of this subdivision.~~

~~(3) This subdivision shall not preclude a request for supplemental briefing under section 4035.~~

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code.~~Reference: Section 19048 of the Revenue and Taxation Code.~~

4062. Briefing on Petition for Rehearing.

(a) Subdivisions (b), (c), (d), (e), and (f) of section 4030 shall apply to the administration of this section and to any documents filed pursuant thereto. When applied to this section, provisions of section 4030 shall be interpreted within the context of this section.

(b) Briefing Schedule.

(1) Unless otherwise directed by Board Staff, the Filing Party will not be permitted to submit any additional briefing after the submission of a perfected Petition for Rehearing.

(2) Not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of a perfected Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing.

(3) If there is more than one Filing Party, then each party may file a Reply to each Petition for Rehearing under the requirements of paragraph (1).

(c) Supplemental Briefing. This section does not preclude a request for supplemental briefing pursuant to the provisions of section 4035.

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code.

~~4062~~4063. Decisions on Petitions for Rehearing.

(a) Definition. A "Decision on Petition for Rehearing" is a written decision setting forth the findings of fact and conclusions of law that form the basis of the Board's decision to grant or deny ~~for the purpose of deciding whether to grant~~ a rehearing. The Decision on Petition For Rehearing does not represent or reflect the Board's decision to grant or deny the rehearing unless and until it is adopted by the Board

(b) Preparing the Decision on Petition for Rehearing. Upon the conclusion of briefing pursuant to section 4062, ~~The~~ the Appeals Division shall prepare a Decision on Petition for Rehearing and, upon completion, ~~and~~ submit the Decision on Petition for Rehearing to the Chief of Board Proceedings. ~~not later than 45 days from the date of the conclusion of the briefing schedule described in subdivision (d) of section 4061.~~

(c) Adoption; Date of Decision. The Decision on Petition for Rehearing shall be submitted to the Board for adoption as a non-appearance matter and shall remain confidential until adopted by the Board. ~~The date on which the Board adopts the Decision on Petition for Rehearing, or otherwise votes to grant or deny a rehearing without adopting the Decision on Petition for Rehearing, shall be the date of the decision for purposes of this part.~~

(1) If the Board grants a rehearing, then the Board's decision under article 5 of this part shall be held in abeyance pending resolution of the rehearing.

(2) If the Board denies a rehearing, then the Board's ~~Decision on Petition for Rehearing~~decision to deny the rehearing shall become final ~~upon the passage of~~ 30 days from the date on which the Board voted to deny the rehearing.

(d) Reasons for Granting a Rehearing. A rehearing shall be granted only for one or more of the following reasons:

(1) The Petition for Rehearing demonstrates the existence of irregularity in the proceedings before the Board by which the Filing Party was prevented from having a fair consideration of its case;

(2) The Petition for Rehearing demonstrates the existence of accident or surprise, against which ordinary prudence could not have guarded, and by which the Filing Party was prevented from having a fair consideration of its case;

(3) The Petition for Rehearing presents newly discovered evidence that is material to the resolution of the appeal. Evidence shall be considered "newly discovered" only if the Filing Party, using reasonable diligence, could not have discovered, prepared, or submitted the evidence prior to the Board's decision;

(4) The Petition for Rehearing demonstrates a reasonable likelihood that there was insufficient evidence to justify a factual finding in the Board's decision; or

(5) The Petition for Rehearing demonstrates a reasonable likelihood that the Board's decision contains an error in law.

(e) No Precedent Set. No Decision on Petition for Rehearing shall be cited as precedent in any appeal or other proceeding before the Board, unless the Board adopts the Decision on Petition for Rehearing as a Formal Opinion.

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code.~~Reference: Section 19048 of the Revenue and Taxation Code.~~ Section 657 of the Code of Civil Procedure.

~~4063. Rehearings.~~4064. Briefing on Rehearing

(a) Subdivisions (b), (c), (d), (e), and (f) of section 4030 shall apply to the administration of this section and to any documents filed pursuant thereto. When applied to this section, provisions of section 4030 shall be interpreted within the context of this section.

~~(a)~~(b) Briefing Schedule. If the Board grants a rehearing, the Chief of Board Proceedings~~, in consultation~~ shall consult with the Appeals ~~Staff, shall~~Division and determine a briefing schedule appropriate for the rehearing, considering the following factors:

(1) The specific facts and legal issues still in dispute upon rehearing;

(2) The sufficiency of briefing provided to date, including any materials submitted in support of, or in opposition to, the Petition for Rehearing;

(3) The party upon whom the burden of proof rests;

(4) The complexity of the appeal; and

(5) The age of the appeal.

(c) Notification. ~~Once~~ When the briefing schedule is established under subdivision (b), the Chief of Board Proceedings shall ~~inform all the parties in writing~~provide written notification to all parties of the order and deadlines for briefing. ~~Notwithstanding the provisions of article 3 of this part, a~~All briefs shall be submitted in the order, and within any deadlines, specified by the Chief of Board Proceedings. ~~Each brief shall meet the requirements of subdivision (e) of section 4030.~~

(d) Supplemental Briefing. This section does not preclude a request for supplemental briefing pursuant to the provisions of section 4035.

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code

4065. Decision upon Rehearing.

~~(b)~~(a) Hearing and Decision. At the conclusion of the briefing schedule determined under section 4064, the provisions of articles 4 and 5 of this part shall apply, except that any reference to a "decision" shall be deemed a reference to a decision upon rehearing.

~~(c)~~(b) Finality of Decision. The Board's decision upon rehearing shall be the Board's decision on the appeal and shall become final ~~after the passage of~~ 30 days from the date of the decision.~~, unless within that 30-day period the Board Chair orders the decision held in abeyance pursuant to the provisions, and subject to the requirements, of subdivision (b) of section 4060.~~

Reference: Section 15606 of the Government Code. Sections 19048, 19334, and 19346 of the Revenue and Taxation Code.~~Reference: Section 19048 of the Revenue and Taxation Code.~~