

Part 5: General Board Hearing Procedures

Article 1: Application and Definitions

5001. General Application.

- Agree**
- Disagree**
- Modify**

(a) This part applies to Board hearings under any of the following tax or fee laws administered by the Board:

- (1) Administration of Franchise and Income Tax Laws
Revenue and Taxation Code Sections 18401-19802

- (2) Alcoholic Beverage Tax Law
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

- (3) California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

- (4) Childhood Lead Poisoning Prevention Fee
Health and Safety Code Sections 105275-105310;
Revenue and Taxation Code Sections 43001-43651

- (5) Cigarette and Tobacco Products Tax Law
California Constitution Article XIII B, Section 12;
Health and Safety Code Sections 104555-104558;
Revenue and Taxation Code Sections 30001-30482

- (6) Diesel Fuel Tax Law
Revenue and Taxation Code Sections 9401-9433 and 60001-60708

- (7) Emergency Telephone Users Surcharge Law
Revenue and Taxation Code Sections 41001-41176

- (8) Energy Resources Surcharge Law
Revenue and Taxation Code Sections 40001-40216

- (9) Hazardous Substances Tax Law
Revenue and Taxation Code Sections 43001-43651

- (10) Integrated Waste Management Fee Law
Public Resources Code Sections 40000-40201, 44001-44006, and 48000-48008;
Revenue and Taxation Code Sections 45001-45984

- (11) Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

- (12) Motor Vehicle Fuel Tax Law
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

- (13) Natural Gas Surcharge Law
Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

- (14) Occupational Lead Poisoning Prevention Fee
Health and Safety Code Sections 105175-105197;
Revenue and Taxation Code Sections 43001-43651

- (15) Oil Spill Response, Prevention, and Administration Fees Law
Government Code Sections 8670.1-8670.51.1
Revenue and Taxation Code Sections 46001-46751

- (16) Private Railroad Car Tax
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

- (17) Publicly Owned Property
California Constitution Article XIII, Section 11(g);
Revenue and Taxation Code Sections 1840 and 1841

- (18) Sales and Use Tax Law, Bradley-Burns Uniform Sales and Use Tax Law, and Transactions and Use Tax Law
Revenue and Taxation Code Sections 6001-7176, 7200-7226, and 7251-7279.6, respectively

(19) Senior Citizens Homeowners and Renters Property Tax Assistance Law
Revenue and Taxation Code Sections 20501-20646

(20) State-Assessed Property
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 721-868, 4876-4880, 5011-5014

(21) Tax on Insurers Law
California Constitution Article XIII, Section 28;
Revenue and Taxation Code Sections 12001-13170

(22) Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

(23) Underground Storage Tank Maintenance Fee
Health and Safety Code Sections 25280-25299.99.3
Revenue and Taxation Code Sections 50101-50162

(24) Use Fuel Tax
Revenue and Taxation Code Sections 8601-9433

(25) Welfare Exemption
California Constitution Article XIII, Section 4(b);
Revenue and Taxation Code Sections 214-214.15, 254.5-254.6, 270-272

(b) This part sets forth rules of general application for all hearings before the Board with regard to all of the tax and fee laws listed in subdivision (a) of this section. Where the procedure for a specific tax or fee law differs from the general rule, the applicable procedure will be described in a subdivision of the section containing the general rule.

(c) With regard to appeals from actions of the Franchise Tax Board, the rules and procedures set forth in part 3, to the extent applicable, shall supersede the rules and procedures in this part.

(d) To the extent that regulations in this part are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

5002. Definitions.

- Agree**
- Disagree**
- Modify**

The following definitions shall apply to this part:

- (a) "Board" means the members of the State Board of Equalization meeting or acting as a body.
- (b) "Board Chair" or "Chair" means the Chair of the State Board of Equalization, whom the Board may choose from time to time.
- (c) "Board Member" means an individual Member of the State Board of Equalization, including the Deputy State Controller.
- (d) "Board Staff" or "Board Attorney" means an employee of the Board charged with a responsibility under this part or appearing before the Board in any proceeding.
- (e) "Appeals Staff" means an employee of the Board assigned to the Appeals Division of the Legal Department.
- (f) "Board Proceedings Staff" means an employee of the Board assigned to the Board Proceedings Division of the Legal Department.
- (g) "Brief" means a written document that includes a discussion of, or citations to, laws or regulations, or  argument as to how laws or regulations apply to the facts supporting a party's position. Notwithstanding this definition, affidavits or declarations submitted by parties and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.
- (h) "Clerk of the Board" or "Chief of Board Proceedings" means and includes the Chief of the Board Proceedings Division of the Legal Department and any person to whom the Chief may delegate his or her official duties from time to time.
- (i) "Delivery Service" means a trade or business, if such trade or business delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery.

- (j) "Department" means the Property and Special Taxes Department, Sales and Use Tax Department, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board.

- (k) "Extreme hardship" means an individual exercising ordinary care would be subject to difficulties such that compliance with a requirement of this part would be widely perceived as unduly oppressive or grossly unfair.

- (l) "Hearing" means a Taxpayer's oral or written presentation before the Board during a Board meeting.

- (m) "Hearing Representative" means an employee of the Board assigned to the Headquarters Operations Division of the Sales and Use Tax Division.

- (n) "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of a petition and/or appeal for which an oral hearing has been requested.

- (o) "Party" means the taxpayer and the taxpayer's representative; and the Department as defined in this section. For purposes of local tax reallocation and district tax redistribution appeals, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.

- (p) "Petition" means:
 - (1) Any petition, including, but not limited to, a petition for redetermination, petition for reconsideration of successor liability, petition for review of local tax reallocation inquires, and petition for review of district tax redistribution inquires;

 - (2) Claim, including a claim for refund;

 - (3) Appeal from an action of the Franchise Tax Board on a claim for refund, deficiency assessment, or jeopardy assessment;

 - (4) Request for administrative hearing;

- (5) Petition for rehearing; and

- (6) Any other matter for administrative decision or adjudication by the Board in any program listed in section 5001.

- (7) Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (A) disagrees with an assessment and/or determination or (B) requests a hearing, shall be accepted as a petition for redetermination. When such a document is accepted as a petition for redetermination, staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.

- (q) "Reasonable cause" means such circumstances as would prevent an ordinary, diligent business person from complying with a requirement of this part.

- (r) "Tax" means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board.

- (s) "Tax Counsel" means an attorney of the Board of Equalization assigned to the Tax and Fee Programs Division of the Legal Department.

- (t) "Taxpayer" means a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing or who is a person directly interested in any matter before the Board under any of the programs listed in section 5001. A taxpayer is not a party to a local tax reallocation or district tax redistribution appeal except as provided in California Code of Regulations, title 18, section 1807 or 1828.

- (u) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

Article 2: Requirements of Scheduling Board Hearings

Chapter 1. Meeting Calendars

5003. Required Board Meetings.

- Agree**
- Disagree**
- Modify**

- (a) **Monthly Meeting Requirement.** The Board shall hold regularly scheduled monthly Board meetings in Sacramento. The Board is also authorized to hold meetings at other locations and exercises this authority to hold meetings in the Los Angeles and San Diego areas for the convenience of taxpayers or their representatives residing in the southern part of the State. All hearings on property tax petitions shall be conducted at Board meetings held in Sacramento.
- (b) **Special Meetings.** At the discretion of the Chair a special meeting may be called at such time and place as needed within the state.
- (c) **Teleconference Board Meetings.** When circumstance require, the Board may hold teleconference meetings.

5004. Annual Adoption of Board Meeting Calendar.

- Agree**
- Disagree**
- Modify**

- (a) In September of each year, the Chief of Board Proceedings shall submit to the Board Members, for their consideration and adoption, a Board workload plan and meeting calendar for the following calendar year.
- (b) The adopted meeting calendar shall be available for viewing by the public on the Board's website at www.boe.ca.gov within 15 day of adoption.
- (c) The Chief of Board Proceedings may cancel a Board meeting day for lack of workload, but only a majority vote of the Board Members in session may make any other meeting date or location changes.

Chapter 2. Requesting and Scheduling an Oral Hearing

5005. Right to Oral Hearing.

- Agree**
- Disagree**
- Modify**

Except as otherwise provided in any statute or regulation, every taxpayer shall have the right to an oral hearing before the Board upon written request. The taxpayer may make a written request for an oral hearing to the Board Proceeding Division. The request must be made within 30 day of receipt of the Appeals Division's decision.

5005.1. Acknowledgement of Request for Oral Hearing.

- Agree**
- Disagree**
- Modify**

Approximately 30 day after receipt of the Appeal Division's decision on a petition or an appeal, the taxpayer shall receive a letter from Board Proceedings Staff acknowledging a request for an oral hearing. The acknowledgment letter will indicate the location where the oral hearing will be scheduled. Upon receipt of the acknowledgement letter, the taxpayer shall contact the Board Proceedings Division if the hearing location should need to be changed.

5005.2. Consolidation for Hearing or Decision.

- Agree**
- Disagree**
- Modify**

- (a) Multiple petitions and/or appeals may be consolidated for hearing or decision only if the facts and issues are similar and no substantial right of any party will be prejudiced.
- (b) The Board, Appeals Staff, or any party may request consolidation of hearings.
- (c) Request for the consolidation must be submitted in writing to the Board Proceedings Division. The approval for consolidation of hearings is subject to the discretion of the Chief of Board Proceedings or the Board Chair.

5006. Notice of Hearing and Response.

- Agree**
- Disagree**
- Modify**

(a) General Procedure.

- (1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff shall mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each taxpayer, designated representative, and the Department at least 60 days in advance of the taxpayer's scheduled hearing date.
- (2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff shall send a Notice of Board Hearing along with a Response to Notice of Board Hearing to each taxpayer, designated representative, and the Department at least 45 days in advance of the taxpayer's scheduled hearing date.

(b) Notice of Hearing. The notice shall contain the following information:

- (1) The name, address, and case identification number of the petitioner and/or appellant;
- (2) The session, date, and location of the hearing;
- (3) The due date of the Response to Hearing Notice;
- (4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and
- (5) The date the Notice of Hearing was mailed.

(c) Response to Notice of Hearing. The taxpayer and the taxpayer's representatives shall return the Response to Notice of Board Hearing not later than 15 days from the date the Notice of Board Hearing was mailed. The taxpayer and the taxpayer's representatives shall respond to the Notice by indicating that:

- (1) The taxpayer and/or taxpayer's representatives will appear at the hearing;

- (2) The taxpayer waives its right to appear or to be represented at the hearing and requests the Board Members decide the case on the basis of the written record on file and without an oral hearing; or
- (3) The taxpayer withdraws their request for a hearing and accepts the determination of the Board of Equalization.

Also included in the Hearing notice response is the taxpayer request for an interpreter. Persons participating in Board meetings who speak a language other than English and require an interpreter are entitled to an interpreter. There is no charge for an interpreter.

- (d) Waiver of Notice. The 60-day or 45-day notice period may be waived upon agreement among all parties and the Chief of Board Proceedings. If the 60-day notice period is waived, the Chief of Board Proceedings shall modify any briefing schedule as appropriate.
- (e) Failure to Respond to Notice of Hearing.
 - (1) If the taxpayer fails to return the Response to Notice of Hearing by the deadline stated in the Notice, the case shall be submitted to the Board for decision on the basis of the written record on file without an oral hearing.
 - (2) Board Proceedings Staff shall notify the taxpayer in writing that the case has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.
 - (3) The Chief of Board Proceedings, in his or her discretion, may make exceptions to return the case to the oral hearing calendar upon a showing of extreme hardship.
 - (4) In a taxpayer fails to respond to a Notice of Hearing in an appeal to which part 4 applies, the 90-day period specified in subdivision (b) of section 4051, or the 120-day period specified in subdivision (b) of section 4052, whichever is applicable, shall begin on the date the deadline for responding to the Notice of Hearing.

5007. Dismissal, Deferral, and Postponement of Hearing.

- Agree**
- Disagree**
- Modify**

(a) Dismissal. The Chief of Board Proceedings shall dismiss a petition, claim, or appeal in any or all of the following circumstances:

- (1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;
- (2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or
- (3) The taxpayer, or the taxpayer's authorized representative, and the Department submit a written, signed stipulation in which both parties agree to dismissal.

(b) Deferral or Postponement. A Board Member, Appeals Staff, or any party to a petition or an appeal may request that a hearing or related proceedings, including briefing, be deferred or postponed for reasonable cause. The requesting Board Member, Appeals Staff, or party must submit the request in writing to the Chief of Board Proceedings and must document the cause for the request.

(1) The Chief of Board Proceedings may grant a deferral or postponement for up to 90 days in his or her discretion, or for more than 90 days with the consent of the Board Chair, in any of the following circumstances:

- (A) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to illness of that person or a member of that person's immediate family;
- (B) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict; or
- (C) A party has obtained a new representative who requires additional time to become familiar with the case.

(2) The Chief of Board Proceedings may, in his or her discretion, grant a deferral or postponement for up to 180 days if the parties to the petition or appeal have entered into formal settlement negotiations.

(3) The Chief of Board Proceedings may, with the consent of the Board Chair, grant a deferral or postponement if the circumstances set forth in paragraphs (1) or (2) of this subdivision are not met.

(c) Additional Deferrals or Postponements. After the initial deferral or postponement period has elapsed, the Chief of Board Proceedings may grant additional deferrals and postponements only upon a showing of extreme hardship and only with the consent of the Board Chair.

5008. Representation at Hearings.

- Agree**
- Disagree**
- Modify**

(a) Representation. Taxpayers may be represented at all levels of review by any person, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate.

(b) Recognition. The Board shall recognize all representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter.

(c) Substitution or Withdrawal. Taxpayers shall promptly notify the Board Proceedings Division in writing of any substitutions or withdrawals of representation.

Chapter 3. Prehearing Documents and Preparation

5009. Power of Attorney.

- Agree**
- Disagree**
- Modify**

(a) Requirement. The Board, or Board Staff, may require a party to complete a Board approved Power of Attorney. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters.

(b) Form. The Power of Attorney form shall include the following information:

- (1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
- (2) The name, address, and telephone and FAX number of the appointed representative(s);
- (3) The tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted;
- (4) A statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation;
- (5) The time period during which the Power of Attorney shall be in effect; and
- (6) The signature(s) and title of all affected taxpayers and the date of signature.

5010. Contribution Disclosure Forms.

- Agree**
- Disagree**
- Modify**

- (a) Filing Contribution Disclosure Forms. Every Board Member, party, participant and agent must disclose any contribution(s) on the record of the adjudicatory proceeding.
- (b) Approximately 45 days prior to the hearing, Board Proceedings Staff shall inquire from all parties, participants, and agents whether any contribution(s) have been made to one or more Board Members. Contribution disclosure forms shall be mailed to all parties, participants, and agents 45 days prior to the scheduled Board meeting.
- (c) Contribution disclosure forms should be returned the Board Proceedings Division prior to the recipient's scheduled hearing.
- (d) The rules and definitions contained in California Code of Regulations, title 18, sections 7001-7011 apply to this section.

5011. Hearing Summary.

- Agree**
- Disagree**
- Modify**

- (a) Preparation. The Appeals Division shall prepare and submit the Hearing Summary to the Chief of Board Proceedings not later than 45 days prior to the oral hearing.
- (b) Date of Mailing. Board Proceedings staff shall mail to the taxpayer a copy of the hearing summary no later than 35 days prior to the oral hearing date.

5012. Additional Briefing.

- Agree**
- Disagree**
- Modify**

- (a) Additional Briefing. If the Board or Board Staff determines that insufficient briefing or evidence has been provided after reviewing the Hearing Summary, the Board or Board Staff may request additional briefing or evidence from either party in a writing address to the Chief of Board Proceedings.
- (b) Briefing Schedule and Response to Hearing Summary. The Chief of Board Proceedings shall determine if additional briefing is required and set a briefing schedule.
 - (1) The Department shall file a responses to the Hearing Summary no later than 30 days before the Board hearing;
 - (2) The Taxpayer shall file a response to the Hearing Summary no later than 15 days before the Board hearing;
 - (3) A brief shall be considered filed on the “date of mailing,” as defined in section 5011.
- (c) General Requirements. All briefs shall follow the requirements listed below:
 - (1) Addressed and mailed to the Chief of Board Proceedings;
 - (2) Be mailed or personally delivered to the other parties;

- (3) Not exceed 30 typed or handwritten, double-spaced 8 ½” by 11”, printed on one side only; or
- (4) Not exceed 15 typed or handwritten, single-spaced 8 ½ “ by 11”, printed on one side only;
- (5) Type-font size of at least 10 points or 12 character per inch.
- (6) The Table of Contents, Table of Authorities, and exhibits are not included in the page count.
- (7) Exception. An exception to the foregoing requirements may be granted prior to the deadline for filing the brief by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief to approve the request.

5013. Preparation for Presentation of Hearing.

- Agree**
- Disagree**
- Modify**

- (a) **Scope of Hearing.** An oral hearing is a quasi-judicial proceeding. An oral hearing shall be limited to consideration of the facts, issues, values, or precise elements set forth in the petition. The Board may inquire into relevant new matters and afford the parties an opportunity to respond.
- (b) **Time Allocation.** The Chief of Board Proceedings shall allocate a total of 35 minutes per hearing: 10 minutes for the taxpayer, 10 minutes for the Department; 5 minutes for the taxpayer’s rebuttal; and 10 minutes for Members’ questions. The Chief of Board Proceedings shall inform the parties and the Board of the time allocations prior to the hearing.
- (c) **Additional Time.** A request for additional time must be submitted to the Chief of Board Proceedings in writing stating the reason(s) for the necessity of additional time 15-days prior to the hearing. The Chief of Board Proceedings shall obtain approval of addition time from the Chair. Generally, parties may be granted an additional 10 minutes present complex cases. Board Proceedings staff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.

(d) **Modification.** At the oral hearing, the Board Chair may limit the time for a party's presentation if, in his or her discretion, the Chair determines that the party's presentation has no purpose other than to delay the proceedings.

5014. Presentation of Evidence or Exhibits.

- Agree**
- Disagree**
- Modify**

(a) Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented. Each party shall be permitted to comment on or respond to any affidavits or declarations submitted.

(b) **Submission of Evidence.** The Board encourages documentary evidence to be submitted not less than 14 days prior to the hearing in order to facilitate the orderly consideration of the issues at the hearing. The hearing may not be delayed due to the submission of documentary evidence at the hearing.

(c) **Distribution.** Board Proceedings Staff will distribute copies of the evidence or citations and any analysis, discussion or arguments concerning the relevance of the evidence or decision to the Board Members and to each party.

5015. Witnesses.

- Agree**
- Disagree**
- Modify**

(a) **Witnesses.** The taxpayer and the Department may offer witnesses to testify.

(b) The Board encourages the parties to provide the Board Proceedings Division with the name and address of any witness who will testify, and a brief description of the purpose of their testimony, in advance of the hearing.

(c) The Board Chair may, at the Board Chair's discretion or upon the request of a party, direct witnesses to testify under oath or affirmation.

(d) Each party may cross-examine opposing witnesses. However, the Board will not compel witnesses to answer questions in any particular manner.

5015.1. Communications with Board Members.

- Agree**
- Disagree**
- Modify**

The Board Members shall remain accessible to their constituents, their subordinates, and other governmental agencies at all times in order to execute their respective constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members at any time, including while a case or controversy involving such persons is pending before the Board.

Article 3: Public Notification of Board Meeting

5016. Hearing Agendas.

- Agree**
- Disagree**
- Modify**

- (a) The Chair approves all Board meeting agendas. Thirty days prior to the meeting date Board Proceedings Division shall submit the agenda to the Chair for approval.
- (b) Any Member may place an item on the Board meeting agenda, subject to the Chair's approval or a majority vote of the Board in session.
- (c) If the Chair denies a Member's request to place an item on the agenda, the Member may bring up the denied item during a Board meeting administrative session and request Board approval to place the item on a future Board meeting agenda. Requests brought before the Board in this manner do not need to be on the Public Agenda Notice.

5017. Public Agenda Notice.

- Agree**
- Disagree**
- Modify**

- (a) Not less than ten calendar days prior to all Board meetings and Board committee meetings, the Public Agenda Notice shall be mailed to those interested parties who have requested the notice in writing via electronic mail and the U.S. Postal Service. The Public Agenda Notice also shall be available for public viewing on the Internet at www.boe.ca.gov.
- (b) The Public Agenda Notice shall include:

- (1) The name, address, and telephone number of any person who can provide further information prior to the meeting;
 - (2) The address of the Internet site where notices are made available; and
 - (3) A specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held.
- (c) No item shall be added to the agenda subsequent to the issuance of the Public Agenda Notice.
- (d) The Chair's approval is required for the Chief of Board Proceedings to remove hearings or agenda items from the hearing calendar after the issuance of the Public Agenda Notice. The Chief of Board Proceedings must show reasonable cause to remove hearings or agenda items.

Article 4: Day of the Oral Hearing

5018. Arrival Time.

- Agree**
- Disagree**
- Modify**

- (a) Sessions. Oral hearings may be scheduled for either the morning or afternoon session before the Board at a regularly scheduled Board meeting. More than one oral hearing may be scheduled at each session.
- (b) Arrival Time. Taxpayers and their representatives should arrive 30 minutes prior to the start of the session for which their oral hearing is scheduled as indicated on the Notice of Board Hearing.

5019. Sign-In.

- Agree**
- Disagree**
- Modify**

(a) Sign-In. 30 minutes before the start of the meeting, Board Proceedings Staff will be at a sign-in desk requesting taxpayers, representatives, and any participant in the hearing to sign or provide the following:

(1) Appearance Sheet. Board Proceedings Staff will request the taxpayers, representatives, and any participant to sign an appearance sheet.

The appearance sheet is used to establish who has arrived for their oral hearing, to indicate whether or not additional contributions were made since originally completing contribution disclosure statements, and as a tool for Appeals Staff to announce the taxpayer, representative, and any participant to the Board before the start of the hearing.

(2) Contribution Disclosure Forms. If the taxpayer, representative, or any participant has not signed his or her contribution disclosure form prior to the meeting date, Board Proceedings Staff will request that the form be completed at this time.

In general, the Board will not hear a matter unless contribution disclosure forms have been completed.

(3) Presentation of Evidence and Exhibits. If evidence or exhibits have not been provided previously to the Board Proceedings Division for distribution to the Board Members and Board Staff, they shall be provided at the sign-in desk.

(A) Nine (9) copies of evidence or exhibits should be provided.

(B) Appeals Staff shall review evidence and exhibits submitted at the sign-in desk and, if any part of the evidence or exhibits contains the elements of a brief, that part shall not be accepted and shall be returned to the taxpayer or representative.

Exception: A taxpayer who appears at a Board hearing without a representative and who has not employed a representative to prepare a

brief, may, at the discretion of the Board, submit a brief the day of the hearing.

(C) Board Proceedings Staff shall label evidence and/or exhibits with the taxpayer's name, case identification number, and date of hearing, and identify that the evidence and/or exhibit is the taxpayer's or department's.

(D) The Clerk of the Board will distribute all evidence and/or exhibits to the Board Members as the case is called during the meeting.

(4) Witnesses. The taxpayer or representative shall make Board Proceedings Staff aware of any witness present to testify at the hearing. Staff will verify that the correct contribution disclosure form has been completed by the witness. At this time, Board Proceedings staff will inform the witness that the Clerk of the Board, at the discretion of Chair, will swear witnesses by administering an oath.

(5) Taxpayers' Rights Advocate. The Taxpayers' Rights Advocate Office shall have staff available to assist with taxpayers' questions at all hearings.

If a taxpayer or a representative has questions regarding procedures relating to particular set of circumstances, or when there are alleged rights violations in the audit, compliance, or property taxes areas they may contact the Advocate's Office at:

Taxpayers' Rights Advocate
State board of Equalization
450 N Street, MIC:70
P.O. Box 942879
Sacramento, CA 95814-0070

(6) After sign-in is completed, parties, participants, and agents may enter the Board Hearing Room and be seated in the audience. When the case is called by the Clerk of the Board, the party, participant, or agent shall come forward and take a seat at the taxpayers' table.

Article 5: Board Meeting

5020. Conduct of the Board Meeting.

- Agree**
- Disagree**
- Modify**

Board meetings are conducted in accordance with the following provisions:

- (a) Bagley-Keene Open Meeting Act (Govt. Code, §§ 11120-11132);
- (b) Quentin L. Kopp Conflict of Interest Act of 1990 (Govt., Code § 15626);
- (c) Political Reform Act (Govt. Code, § 81000, et seq.); and
- (d) The State Board of Equalization's Rules of Order.

5021. Call to Order.

- Agree**
- Disagree**
- Modify**

- (a) The Chair will call the meeting to order when all Members are present or, at the Chair's discretion, when a quorum has been established.
 - (1) The State Controller may designate a Deputy Controller to act on the Board, exercise the State Controller's statutory powers, and perform the State Controller's statutory duties.
 - (2) The Deputy Controller may not participate in matters under the Insurance Tax Law, Motor Vehicle Fuel Tax, Alcoholic Beverage Tax Law, state assessee and private railroad car tax valuation or assessment appeal proceedings, or intra-county equalization appeals.
- (b) The Chair will take up the items of business in the order listed on the Public Agenda Notice. However, when the circumstances warrant, the Chair may modify the order of business. Any Member may object to the Chair's decision to modify the order of business and, upon such objection, the Board shall vote to confirm or reject the Chair's decision.

5022. Order of Business and Time Allocation for Oral Hearings.

- Agree**
- Disagree**
- Modify**

(a) Generally: An oral hearing on a quasi-judicial matter proceeds in the following manner.

(1) The Clerk of the Board shall report on the record whether contribution disclosure statements have been filed in accordance with the requirements of California Code of Regulations, title 18, section 7011, and whether any disqualifying contributions have been reported.

(2) The Clerk of the Board shall inform all parties to the quasi-judicial matter and the Board of the time allocation for the oral hearing:

(A) 10 minutes for the Taxpayer;

(B) 10 minutes for the Department;

(C) 5 minutes for the taxpayer's rebuttal; and

(D) 10 minutes for Members' questions.

The Clerk of the Board may make the announcement of time allocation at the beginning of each session of the meeting.

(3) A Board Attorney shall introduce the quasi-judicial matter for oral hearing by stating on the record:

(A) The issues raised in the matter;

(B) Whether any party is submitting new information or evidence;

(C) Whether any party is requesting a postponement or deferral;

(D) Appeals Staff's recommendation for the adoption of a formal or memorandum opinion, if applicable; and

(E) Any other information that may be of particular use or interest to the Members.

(4) Taxpayers shall state their position and present evidence as they see fit, including by means of visual aids, subject to rulings by the Board Chair.

(5) The Department shall state its position and present its evidence. Taxpayers then shall be given an opportunity to reply.

(6) The Clerk of the Board shall inform the parties and the Chair when each of the allocations of time has elapsed.

(b) At the conclusion of the oral hearing the Board may vote to decide the quasi-judicial matter, to take the quasi-judicial matter under consideration and decide it later at the same meeting or at a subsequent meeting, or to continue the hearing to a later date.

5022.1 Public Comment.

- Agree**
- Disagree**
- Modify**

(a) Members of the public may address the Board on any agenda item, including any item on the administrative agenda, provided, however, that members of the public may not address individual cases on a consent agenda.

(b) Notwithstanding subdivision (a) of this section, if an opportunity for public comment was provided on the same item at a Board committee meeting and the item has not been materially changed since the committee heard the item, the Board may decline not hear additional public comment.

(c) Board Proceedings Staff will request anyone planning to speak before the Board to sign in. Signing or completing a public comment appearance sheet is voluntary. A speaker declining to fill out the appearance sheet will not be precluded from speaking to the Members.

Article 6: Voting

5023. Quorum.

- Agree**
- Disagree**

Modify

In order for the Board to make any decision there must be a quorum present.

- (a) Any three Members of the Board present at a meeting shall constitute a quorum.
- (b) When a Member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the Political Reform Act (Government Code Section 81000, et seq.), that Member shall not be counted for purposes of a quorum.
- (c) If the Deputy the State Controller is not authorized by Section 7.9 of the Government Code to participate because the matter before the Board is a Constitutional matter, the Deputy the State Controller shall not be counted for purposes of a quorum.

5024. Voting and Decisions.

Agree
 Disagree
 Modify

- (a) General. After the hearing, the Board may decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.
- (b) Majority Vote Requirement. A majority vote of the quorum is required for all decisions or actions of the Board. If there is no objection by any Board Member, a matter may be decided by unanimous consent and without a roll call vote.
- (c) Voting.
 - (1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.
 - (2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called by the Clerk of the Board, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Chair may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

- (3) Except as provided in paragraph (2) of this subdivision, in order to cast a vote, a Board Member shall be personally present at the time the roll for the vote is called.

(d) Forms Of Motions.

- (1) Submitted for Decision: The Board Members will vote to decided the matter later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.
- (2) Additional time to submit documentation: The Board Members will vote to allow the petitioner and/or appellant additional time to provide documentation; the Department time to review the documentation provided and respond; and the Appeals Division time to review the petitioner's and/or appellant's documentation and Department's response and provide its recommendation to the Board.
- (3) With Adjustments: The Board Members will vote to make adjustment to the amount owed, including tax, penalties, and interest.
- (4) CA Victim Compensation and Government Claims Board: The Board Members will direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.
- (5) Formal or Memorandum Opinion: The Board may vote to request staff to draft a Memorandum Opinion to be published for one or more of the following reasons:
 - (A) Provide interpretation of a new and /or existing law;
 - (B) Apply an existing rule to a set of facts significantly different from those found in previously published opinions;
 - (C) Modify an existing rule or interpretation;
 - (D) Resolves or reconciles an area of confusion or apparent conflict; or

(E) Involve an issue of continued or special public interest.

Following an oral hearing on an appeal from an action of the Franchise Tax Board, the Board may vote to request staff to draft a Formal Opinion pursuant to section 4052 of part 4.

The appeal from an action of the Franchise Tax Board is not decided until the Board votes to adopt the formal opinion or subsequently decides the matter without adopting a formal opinion. The draft memorandum opinions and formal opinions shall be placed on a nonappearance adjudicatory calendar for Board consideration.

(6) **Dissenting Opinion:** One or more Members may request to have the Appeals Division draft a “Dissenting Opinion” setting forth the rationale of a Board Member or Members who oppose the adoption of a Formal or Memorandum Opinion.

(7) **Frivolous Appeal Penalty:** Following an oral hearing on an appeal from an action of the Franchise Tax Board, if the Board determines that the appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty on the taxpayer or claimant that filed the appeal pursuant to Revenue and Taxation Code Section 19714 and section 4054 of part 4.

(8) **Postponed or Deferred:** The Board at its discretion may vote to either postpone or defer a hearing for good cause.

(9) **Expunge the Record:** The Board adopts a motion to expunge the record of a previous Board action that is not yet final pursuant to the applicable statute.

(e) **Reopening a Vote:** A previously recorded vote may be reopened at the same meeting or a subsequent meeting provided:

(1) The decision is not final;

(2) A motion to reconsider is made by a Member who voted with the prevailing side;

(3) A majority of the members vote affirmatively on the motion to reconsider; and

- (4) The matter has been properly noticed under the Bagley-Keene Open Meeting Act.

Article 7: Post Hearing

5026. Notice of Board Decision.

- Agree**
- Disagree**
- Modify**

- (a) Generally. All parties to a proceeding shall be notified in writing of the Board's decision. The notice shall contain the determined value, tax, fee, penalty or interest owed.
 - (1) Business Taxes: A Notice of Redetermination (or Refund) or other appropriate notice shall be mailed to all parties not later than 45 days from the date of the Board's decision.
 - (2) Appeals from actions of the Franchise Tax Board: A copy of the decision or opinion prepared pursuant to article 5 of part 3 shall be mailed to all parties not later than 7 days from the date of the Board's decision.
 - (3) Property Tax: Notice of Decision shall be mailed not later than 30 days from the date of the Board's decision.
- (b) Finality of Decision. The Board's decision shall become final 30 days after the date of the decision unless, within that 30-day period, one of the following occurs:
 - (1) A party to the petition or appeal files a Petition for Rehearing.
 - (2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.
- (c) Decisions on Property Tax petitions, including petitions filed for State Assesseees and Private Railroad Car Companies, Taxable Property of a County, City, or Municipal Corporation, and Property Tax Welfare Exemptions, are final. The Board shall not reconsider or rehear a property tax petition, but may modify such a decision only to correct a clerical error.

- (d) With respect to the finality of decisions on appeals from actions of the Franchise Tax Board, the more specific procedures and requirements in article 6 of part 3 shall apply.

5027. Petition for Rehearing.

- Agree**
- Disagree**
- Modify**

- (a) Generally. A petitioner and/or appellant may file for a Petition for Rehearing not later than 30 days from the date of the Board's decision. The petition shall address new facts or points of law applicable to the case and indicate how they effect the outcome of the petition or appeal.

The Petition for Rehearing, along with any supporting documents shall be mailed to:

Board Proceedings Division, MIC: 81
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the Petition for Rehearing may be hand delivered to the Board's headquarters office located at 450 N Street, Sacramento, CA 95814.

- (b) 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. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.
- (2) If the Petition for Rehearing is found to be timely, the Chief of Board Proceedings shall accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance.
- (3) If the Petition for Rehearing is found to be not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and notify the petitioner of any alternative rights or remedies.
- (4) Generally, a petition is granted only in cases where:

- (A) An irregularity in the Board's proceedings prevented fair consideration of the case;
- (B) An accident or surprise occurs and it could not have been prevented by ordinary caution;
- (C) There is newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
- (D) There is insufficient evidence to justify the decision or the decision is contrary to law.

5028. Decision on Petition for Rehearing.

- Agree**
- Disagree**
- Modify**

- (a) The Appeals Division shall prepare and submit a Decision on a Petition for Rehearing to the Chief of Board Proceedings not later than 45 days from the date of the letter of acceptance to the Petition for Rehearing.
- (b) The Decision on Petition for Rehearing shall be submitted to the Board for adoption as a non-appearance matter.
- (c) The Chief of Board Proceedings shall notify all parties to a proceeding of the Board's decision.
 - (1) If the Board grants a rehearing, then the Board's prior decision shall be held in abeyance pending the resolution of the rehearing.
 - (2) If the Board denies a rehearing, then the Board's Decision on Petition for Rehearing shall become final upon the passage of 30 days.

5029. Rehearings.

- Agree**
- Disagree**
- Modify**

(a) If the Board grants a rehearing, the Chief of Board Proceedings, in consultation with the Appeals Staff, shall determine a briefing schedule appropriate for the rehearing.

(b) The Chief of Board Proceedings shall inform all parties in writing.

(c) At the conclusion of the briefing schedule, the provisions Article 2 shall apply.

5030. Superior Court.

- Agree**
- Disagree**
- Modify**

After all options of appeal to the State Board of Equalization have been exhausted, the taxpayer may choose to pursue further consideration of the case by filing an action with the superior court, subject to statutory requirements.

Article 8: Correspondence and Public Documents

5031. Mailing Address.

- Agree**
- Disagree**
- Modify**

Unless otherwise directed, taxpayers should direct all correspondences during the hearing process to the Board Proceedings Division at the following address:

Board Proceedings Division, MIC:81
State Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

As an alternative to mailing, the taxpayer may personally deliver materials to the Board's headquarters office located at 450 N Street, Sacramento, CA 95814.

5032. Timeliness of Documents.

- Agree**
- Disagree**
- Modify**

- (a) A document or other correspondence shall be timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.
- (b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 4000 of article 1 of this part, shall be considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document shall be extended to the next business day.

5033. Public Records (First Alternative).

- Agree**
- Disagree**
- Modify**

- (a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132).
- (b) Public Agenda Notices, minutes of public meetings of the Board, exhibits incorporated into the hearing record by reference, and documents distributed to Board Members for discussion or consideration at a public meeting are public records and open to public inspection, unless exempted from disclosure by state or federal law. Documents exempted from disclosure include, but are not limited to, memoranda from Board Legal Staff and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.
- (c) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted to the Internet and a complete set of approved minutes is bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.
- (d) Transcripts.
 - (1) In general, the Board records its oral hearings. However, the recordings of oral hearings are not normally transcribed. Transcripts of hearings,

administrative sessions, and Chief Counsel Matters are prepared only upon written request.

- (2) Interested persons may submit a written request asking that such matters be transcribed. Such request shall specifically identify the matters to be transcribed.
- (3) If a request to transcribe a recorded hearing is granted, the Board will charge a fee to prepare the requested transcript in accordance with section 5034.
- (4) Written request for a transcript should be directed to:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC:80
P. O. Box 942879
Sacramento, CA 94279-0080

- (5) Any transcript prepared as a result of a Board hearing is a public record and subject to disclosure.
- (6) Completed transcripts and untranscribed shorthand notes are retained up to 12 years following the hearing date.

5033. Hearing Record (Second Alternative, Sections 5033-5033.3).

- Agree**
- Disagree**
- Modify**

- (a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of adjudicatory hearings conducted at a public meeting are public records and open to public inspection.
- (b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted to the Internet and a complete set of approved minutes is bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(c) Transcripts.

- (1) The Board records, but does not transcribe, its oral hearings. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request. Written requests specifically identifying the matters to be transcribed should be addressed to:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC:80
P. O. Box 942879
Sacramento, CA 94279-0080

- (2) The Board will charge a fee to prepare a transcript or copy a previously prepared transcript in accordance with section 5034.
- (3) Completed transcripts and untranscribed shorthand notes (and recordings) are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (1) of this subdivision.

5033.1. Waiver of Confidentiality (Second Alternative).

- Agree**
 Disagree
 Modify

- (a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal pursuant to part 4 constitutes a waiver of the appellant's right to confidentiality with regard to all the information provided to the Board by the appellant or the Franchise Tax Board directly relevant to such appeal.
- (b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. If a taxpayer submits a written request for an oral hearing before the Board pursuant to part 2, the request for an oral hearing shall constitute a waiver of the taxpayer's right to confidentiality with regard to its case or controversy. Such waiver shall only apply to information provided to or obtained by the Board that is directly relevant to the issues to be discussed or decided by the Board at the oral hearing.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality with regard to its case or controversy if the taxpayer:

(A) Files a petition pursuant to article 1, 3, or 4 of part 3, and submits a written request for an oral hearing before the Board.

(B) Files an application pursuant to article 2 of part 3.

(2) Such waiver shall only apply to information provided to or obtained by the Board that is directly relevant to the issues to be discussed or decided by the Board at the oral hearing.

(d) Effective Date of Waiver.

(1) The waivers described in subdivisions (b) and (c) of this section are effective on the date the Board issues its first Public Agenda Notice containing the case or controversy to which the waiver applies.

(2) The waivers described in subdivisions (b) and (c) are ineffective if the taxpayer has waived its right to an oral hearing before the Board's issuance of the first Public Agenda Notice containing the case or controversy.

(e) Exceptions.

(1) Personal Information. The waivers described in subdivisions (a), (b), and (c) do not apply to a taxpayer's personal information. Personal information includes the taxpayer's home address, the taxpayer's home telephone number, and the taxpayer's social security number or federal identification number.

(2) Tax Returns. The waivers described in subdivisions (a), (b), and (c) only apply to the portion of a tax return that is directly relevant to the issues to be discussed or decided by the Board at the oral hearing on the taxpayer's case or controversy.

(3) Exemption by Board. The waivers described in subdivisions (b) and (c) do not apply to sensitive information that the Board agrees not to publicly discuss at the oral hearing in accordance with the procedures contained in section 5033.2.

5033.2. Requests for Preservation of Harmful Information (Second Alternative).

- Agree**
- Disagree**
- Modify**

- (a) A taxpayer may request that sensitive information not be publicly discussed at the taxpayer's oral hearing on its case or controversy where the disclosure of such information would be harmful to the taxpayer.
- (b) Such a request shall be in writing, specifically identify the nature of the sensitive information, and contain a concise statement explaining why disclosure of the sensitive information would be harmful to the taxpayer.
- (c) Requests described in subdivision (b) shall be mailed to the Chief of Board Proceedings at the address provided in section 5027 no later than the due date of the response to notice of hearing provided in section 5006.
- (d) In response to a request, the Chair may take whatever action it deems necessary to preserve the confidentiality of sensitive information the disclosure of which would be harmful to the taxpayer.
- (e) The Chief of Board Proceedings shall notify the taxpayer of the Chair's decision on its request no later than five days prior to the issuance of the Public Agenda Notice described in section 5033.1, subdivision (d).

5033.3. Privilege (Second Alternative).

- Agree**
- Disagree**
- Modify**

The waivers provided for in section 5033.1 do not abrogate the Board's privileges with regard to Memoranda from Board Legal Staff and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

5034. Fees: Filing, Subpoenas, Transcripts, and Copies.

- Agree**
- Disagree**
- Modify**

- (a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena.
- (b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code.
- (c) Copies, including certified copies, of records that the Board is permitted by law to divulge shall be furnished to litigants or other interested persons at cost as specified in Section 6253 of the Government Code and Section 1798.33 of the Civil Code.