

Regulation 5600, 5601, 5603

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 5600, 5601, 5603

Index

1. *Form 400 and Proposed Regulation 5600, 5601, 5603*
2. *Statement of Explanation*
3. *AB 713*
4. *AB 3069*
5. *SB 94*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 02/02/16*
- B. *Minutes, 02/23/16*
- C. *Reporters Transcript, 02/23/16*

**State of California
Office of Administrative Law**

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 5600, 5601, 5603

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

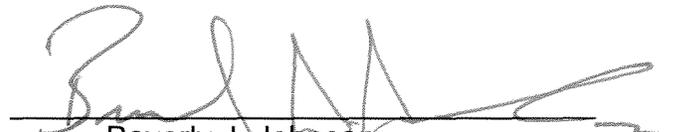
OAL Matter Number: 2016-0310-02

OAL Matter Type: Nonsubstantive (N)

This filing of changes without regulatory effect by the Board of Equalization amends sections in Title 18 of the California Code of Regulations, to make non-substantive changes to each section and one attached form. The changes include, deleting references to a repealed regulation, deleting provisions for which the statutory authority was repealed, grammatical and formatting changes.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: April 20, 2016


Beverly J. Johnson
Deputy Director

For: Debra M. Cornez
Director

Original: Cynthia Bridges

Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: April 21, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0310-02
OAL Matter Type Nonsubstantive (N)

OAL hereby returns the rulemaking record your agency submitted for review regarding “Definitions, Board Hearing Procedures.”

If this is an approved matter, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5).

Beginning January 1, 2013, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0310-02N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 20 2016
3:41 PM

2016 MAR 10 P 2:31
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Definitions, Board Hearing Procedures	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 5600, 5601, 5603
TITLE(S) 18	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE March 10, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
APR 20 2016
Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

**Regulation 5600. Definitions, Board Hearing Procedures; Taxes Affected by This
ChapterArticle.**

(a) The definitions in sections 5511 and 5512 apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

Administration of the Corporate Franchise and Income Tax Laws -
Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes - . . . (unchanged).

(c) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 5601. Eligible Claims.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases ~~and after the date of filing an appeal to the Board in corporate franchise and income tax cases~~ are eligible for reimbursement. Fees and expenses ~~Expenses~~ incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. ~~All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”~~

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 5603. Claim Procedure.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/167/98), which is hereby incorporated by reference.

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

BOE-69 (FRONT) (2-16)
**TAXPAYERS' BILL OF RIGHTS
REIMBURSEMENT CLAIM**

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Please type or print in ink.

TYPE OF TAX INVOLVED

Franchise and Income Tax

BUSINESS TAXES

- Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)
- Alcoholic Beverage Tax Integrated Waste Management Fee
- Childhood Lead Poisoning Prevention Fee Motor Vehicle Fuel Taxes
- Cigarette and Tobacco Products Tax Occupational Lead Poisoning Prevention Fee
- Diesel Fuel Tax Tire Recycling Fee
- Emergency Telephone Users Surcharge Underground Storage Tank Maintenance Fee
- Energy Resources Surcharge Use Fuel Tax Law
- Hazardous Substances Tax

TOTAL AMOUNT OF CLAIM	BREAKDOWN*	
\$	Fees \$	Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT	REGISTRATION, FILE OR ACCOUNT NUMBER
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()
NAME OF CLAIMANT'S REPRESENTATIVE	
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()

Please indicate where you would like official notices and other correspondence sent:

- To Claimant's Address Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILED WITH:

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

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final.

If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

SIGNATURE OF CLAIMANT OR ATTORNEY/REPRESENTATIVE <i>(please see notice below)</i>	Date
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NOTICE

Section 72 of the Penal Code provides:

“Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.”

CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

BOE-69 (FRONT) (7-98)
TAXPAYERS' BILL OF RIGHTS
REIMBURSEMENT CLAIM

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Please type or print in ink.

TYPE OF TAX INVOLVED

Corporate Franchise and Income Tax

BUSINESS TAXES

- Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)
- Alcoholic Beverage Tax
- Childhood Lead Poisoning Prevention Fee
- Cigarette and Tobacco Products Tax
- Diesel Fuel Tax
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Hazardous Substances Tax
- Integrated Waste Management Fee
- Motor Vehicle Fuel Taxes
- Occupational Lead Poisoning Prevention Fee
- Tire Recycling Fee
- Underground Storage Tank Maintenance Fee
- Use Fuel Tax Law

TOTAL AMOUNT OF CLAIM

BREAKDOWN*

\$

Fees \$

Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT

REGISTRATION, FILE OR ACCOUNT NUMBER

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

NAME OF CLAIMANT'S REPRESENTATIVE

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

Please indicate where you would like official notices and other correspondence sent:

- To Claimant's Address Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILE WITH:

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

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final.

If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

SIGNATURE OF CLAIMANT OR ATTORNEY/REPRESENTATIVE *(please see notice below)* _____ Date: _____

NOTICE

Section 72 of the Penal Code provides:

“Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.”

CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Corporation Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

File# 2016-0310-02
BOARD OF EQUALIZATION
Definitions, Board Hearing Procedures

This filing of changes without regulatory effect by the Board of Equalization amends sections in Title 18 of the California Code of Regulations, to make non-substantive changes to each section and one attached form. The changes include deleting references to a repealed regulation, deleting provisions for which the statutory authority was repealed, and grammatical and formatting changes.

Title 18
AMEND: 5600, 5601, 5603
Filed 04/20/2016
Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0310-04
BOARD OF PHARMACY
Pharmacy, Related Self-Assessments

This rulemaking action amends sections of Title 16 of the California Code of Regulations to specify new editions for three pharmacy and drug wholesaler self-assessment forms and to amend those three incorporated self-assessment forms. The forms were last amended in 2011. The amended forms conform to post-2011 amendments to the Code of Federal Regulations, California Business and Professions Code, California Health and Safety Code, and California Code of Regulations (Title 16) regarding compliance with legal requirements for pharmacies and drug wholesalers. The self-assessment forms must be completed by community and hospital pharmacies and by drug wholesalers biennially or within 30 days of any change in: a pharmacy's or drug wholesaler's permit; the pharmacist-in-charge or drug wholesaler's designated representative; or the licensed location of a pharmacy or drug wholesaler.

Title 16
AMEND: 1715, 1784
Filed 04/20/2016
Effective 04/20/2016
Agency Contact: Lori Martinez (916) 574-7917

File# 2016-0301-02
CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING
AUTHORITY
Residential Energy Efficiency Loan Assistance
Program

The California Alternate Energy and Advanced Transportation Finance Authority submitted this timely certificate of compliance to make permanent the regulations adopted in OAL File No. 2015-0227-01E, read-

opted in OAL File No. 2015-0827-02EE, and readopted again in OAL File No. 2015-1125-01EE. The emergency rulemaking adopted sections in Title 4 of the California Code of Regulations for the purpose of implementing the Residential Energy Efficiency Loan Assistance Program, approved by the California Public Utilities Commission under the 2013-2014 Energy Efficiency Pilot Program. This action establishes affordable financing to homeowners and small business owners undertaking emergency efficiency retrofit projects to meet the energy efficiency goals of California.

Title 4
ADOPT: 10091.1, 10091.2, 10091.3, 10091.4,
10091.5, 10091.6, 10091.7, 10091.8, 10091.9,
10091.10, 10091.11, 10091.12, 10091.13,
10091.14, 10091.15
Filed 04/13/2016
Effective 04/13/2016
Agency Contact: Jennifer Gill (916) 653-3033

File# 2016-0308-04
DENTAL HYGIENE COMMITTEE OF
CALIFORNIA
Resubmittal of Educational Programs Regulation

In this resubmitted regulatory action, the Committee proposes to adopt various sections in Title 16 of the California Code of Regulations to establish educational program requirements for dental hygienists. It also describes the appeals process to contest the Committee's denial or withdrawal of its approval of a program and the process for changes to an existing approved program.

Title 16
ADOPT: 1103, 1105, 1105.1, 1105.2, 1105.3,
1105.4, 1106
Filed 04/20/2016
Effective 04/20/2016
Agency Contact: Anthony Lum (916) 576-5004

File# 2016-0328-03
DEPARTMENT OF CHILD SUPPORT SERVICES
Conflict-of-Interest Code

This is a Conflict-of-Interest Code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 22
AMEND: 123000
Filed 04/19/2016
Effective 05/19/2016
Agency Contact:
Alejandra Serratos (916) 464-5344

Regulation 5600, 5601, 5603
Section 100

Index

1. *Form 400 and Proposed Regulation 5600, 5601, 5603*
2. *Statement of Explanation*
3. *AB 713*
4. *AB 3069*
5. *SB 94*

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0310-02N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2016 MAR 10 P 2:27
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Definitions, Board Hearing Procedures	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 5600, 5601, 5603
TITLE(S) 18	REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Other (Specify) _____
	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> Print Only
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect
	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130
FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE March 10, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

Text of Proposed Changes to

Title 18. Public Revenue

**Regulation 5600. Definitions, Board Hearing Procedures; Taxes Affected by This
Chapter~~Article~~.**

(a) The definitions in sections 5511 ~~and 5512~~ apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

Administration of the Corporate Franchise and Income Tax Laws -
~~Personal Income and Bank and Corporation Income Tax~~
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes - . . . (unchanged).

(c) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 5601. Eligible Claims.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases ~~and after the date of filing an appeal to the Board in corporate franchise and income tax cases~~ are eligible for reimbursement. Fees and expenses ~~Expenses~~ incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. ~~All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”~~

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 5603. Claim Procedure.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/167/98), which is hereby incorporated by reference.

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

BOE-69 (FRONT) (2-16)
TAXPAYERS' BILL OF RIGHTS
REIMBURSEMENT CLAIM

STATE OF CALIFORNIA
 BOARD OF EQUALIZATION

Please type or print in ink.

TYPE OF TAX INVOLVED

Franchise and Income Tax

BUSINESS TAXES

- Sales and Use Tax *(including State-Administered local sales, transactions, and use taxes)*
- Alcoholic Beverage Tax Integrated Waste Management Fee
- Childhood Lead Poisoning Prevention Fee Motor Vehicle Fuel Taxes
- Cigarette and Tobacco Products Tax Occupational Lead Poisoning Prevention Fee
- Diesel Fuel Tax Tire Recycling Fee
- Emergency Telephone Users Surcharge Underground Storage Tank Maintenance Fee
- Energy Resources Surcharge Use Fuel Tax Law
- Hazardous Substances Tax

TOTAL AMOUNT OF CLAIM	BREAKDOWN*	
\$	Fees \$	Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT	REGISTRATION, FILE OR ACCOUNT NUMBER
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()
NAME OF CLAIMANT'S REPRESENTATIVE	
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()

Please indicate where you would like official notices and other correspondence sent:

- To Claimant's Address Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILED WITH:

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

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final.

If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

SIGNATURE OF CLAIMANT OR ATTORNEY/REPRESENTATIVE (please see notice below)	Date
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NOTICE

Section 72 of the Penal Code provides:

“Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.”

CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Article*,
Regulation 5601, *Eligible Claims*, and
Regulation 5603, *Claim Procedure*

A. Factual Basis

California Code of Regulations (CCR), title 18, sections (Regulations) 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Article*, 5601, *Eligible Claims*, and 5603, *Claim Procedure*, apply to statutorily authorized claims for reimbursement. Regulations 5600, 5601, and 5603 were originally adopted as Regulations 5090, 5091, and 5093, respectively, and included in article 9 of chapter 10 of division 2 of title 18 of the CCR, but they were renumbered and included in chapter 6 of division 2.1 of title 18 of the CCR, which contains the State Board of Equalization's (Board's) Rules for Tax Appeals (RTA), operative February 6, 2008. Regulation 5600 currently incorporates specified definitions into chapter 6 of the RTA and lists the tax and fee programs to which chapter 6 applies. Regulation 5601 currently specifies the expenses that may be reimbursed if a claim for reimbursement is granted. Regulation 5603 currently prescribes the procedures for filing and responding to a claim for reimbursement and incorporates a claim form by reference.

The Franchise Tax Board (FTB) administers the Personal Income Tax Law codified in part 10 of division 2 (commencing with section 17001) of the Revenue and Taxation Code (RTC), which imposes California's personal income tax, and the Corporation Tax Law codified in part 11 of division 2 (commencing with section 23001) of the RTC, which alternatively imposes California's corporation franchise tax (that includes a tax on banks) or corporation income tax. (RTC § 19501.) Taxpayers subject to part 10 or part 11 of division 2 of the RTC may file appeals to the Board from the actions of the FTB under the provisions of part 10.2, Administration of Franchise and Income Tax Laws, of division 2 of the RTC, which includes RTC sections 18401 through 19802. Also, the Katz-Harris Taxpayers' Bill of Rights Act codified in part 10.7 of division 2 (commencing with section 21001) of the RTC applies to taxpayers subject to the Personal Income Tax Law and the Corporation Tax Law (RTC § 21003) and RTC section 21013, which is included in the Katz-Harris Taxpayers' Bill of Rights Act, currently provides that such taxpayers are "entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the" Board if specified requirements are met.

1. Changes to Regulation 5600

The Board proposes to replace "Article" with "Chapter" in the title of Regulation 5600 because Regulation 5600 has specified the application of chapter 6 of the RTA and has not specified the application of article 9 of chapter 10 of division 2 of title 18 of the CCR since 2008. The Board

proposes to delete the reference to Regulation 5512 from Regulation 5600, subdivision (a), because Regulation 5512 was repealed operative April 1, 2014.

In addition, Regulation 5600, subdivision (b), currently and correctly provides that chapter 6 of the RTA “applies to reimbursement claims [filed] under” the Board’s “program” for hearing appeals from the actions of the FTB pursuant to RTC “Sections 18401-19802.” However, the cross reference to RTC sections 18401 through 19802 in Regulation 5600, subdivision (b), is not preceded by a reference to the “Administration of Franchise and Income Tax Laws,” the title of part 10.2 of division 2 of the RTC, which is codified in RTC sections 18401 through 19802. Instead, the cross reference is preceded by references to “Corporate Franchise Income Tax” and “Personal Income and Bank and Corporation Income Tax.” Therefore, the Board proposes to replace the references to “Corporate Franchise Income Tax” and “Personal Income and Bank and Corporation Income Tax” with a reference to the “Administration of the Franchise and Income Tax Laws” to make the cross reference to RTC sections 18401 through 19802 in Regulation 5600, subdivision (b), fully consistent with the RTC.

The Board has determined that the proposed changes to Regulation 5600 are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because they update the name of the regulation, delete a reference to a repealed regulation from subdivision (a) of the regulation, properly complete an existing cross reference to RTC sections 18401 through 19802 in subdivision (b) of the regulation, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

2. Changes to Regulation 5601

RTC section 21013, as amended by Statutes 1994, chapter 726 (Assem. Bill No. (AB) 3069) (hereafter RTC section 21013 (1994)) provided as follows:

(a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a *hearing* before the State Board of Equalization if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(2) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(b) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the taxpayer has established that the position of the Franchise Tax Board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) *Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.*

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination. (Italics added.)

The Board initially authorized staff to begin the regular rulemaking process to adopt Regulation 5091 on February 5, 1997, and the Board subsequently adopted Regulation 5091 without making changes to its proposed text. As relevant here, the first and last sentences in Regulation 5091, as originally proposed and adopted, included the following provisions that respectively implement the limitation on reimbursable fees and expenses in RTC section 21013 (1994), subdivision (c)(1), and the phrase “fees and expenses related to a hearing before the” Board in RTC section 21013 (1994), subdivision (a) (quoted above):

Only those expenses which were incurred . . . after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. . . . all expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board”.

In 2004, the Board replaced “which” with “that” in the first sentence of Regulation 5091, the Board replaced “all” with “All” and deleted the text prior to the word “all” in the last sentence in Regulation 5091, and the Board moved the period at the end of the last sentence in Regulation 5091 within the closing quotation marks at the end of the sentence. So, the first and last sentences in renumbered Regulation 5601 currently included the following provisions that are based solely upon the provisions of RTC section 21013 (1994):

Only those expenses that were incurred . . . after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. . . . All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”

RTC section 21013 was subsequently amended by Statutes 1997, chapter 600 (AB 713), and by Statutes 1999, chapter 931 (Sen. Bill No. 94), effective January 1, 2000, but has not been amended since 1999. As relevant here, the 1997 amendments reformatted RTC section 21013, subdivision (a)(1) and (2), as subdivision (a)(1)(A) and (B), and replaced “a hearing” with “an appeal” in reformatted subdivision (a)(1), so that the subdivision now provides that “Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to *an appeal* before the State Board of Equalization if all of the following conditions are met.” (Italics added.) The 1997 amendments also added a new subdivision (a)(2) to RTC section 21013 to provide that “[f]or purposes of this section, fees and expenses related to an appeal before the [Board] do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the [FTB’s] written statement of its position has been submitted to the [Board].”

As relevant here, the 1999 amendments reformatted RTC section 21013, subdivision (a)(2), as subdivision (a)(2)(A), and replaced the provisions in RTC section 21013 (1994), subdivision (c)(1), with new provisions providing that the amount of reimbursed fees and expenses shall be determined by Board and shall be limited to “[f]ees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund,” as opposed to fees and expenses incurred after the date of filing “an appeal.”

After the 1997 and 1999 amendments, RTC section 21013 now provides that:

(a)(1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to *an appeal* before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) *For purposes of this section:*

(A) *Fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.*

(B) Fees may be awarded in excess of the fees paid or incurred if the fees are less than the reasonable fees because an individual representing the taxpayer is entitled to be reimbursed for no fee or for a fee which, taking into account all the facts and circumstances, is no more than a nominal fee. This subparagraph shall apply only if the award is paid to the individual or the individual's employer.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) *Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.*

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) The amendments made by the act amending this subdivision are effective for fees and expenses incurred more than 180 days after the effective date of the act amending this subdivision. (Italics added to note relevant differences between the current statute and RTC section 21013 (1994).)

As a result, the first sentence in Regulation 5601 is inconsistent with the current provisions of RTC section 21013 because the sentence only provides that "expenses" are eligible for reimbursement, but the statute provides that "fees and expenses" are eligible for reimbursement. The portion of the first sentence in Regulation 5601, which provides that only expenses incurred

“after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement,” lacks a statutory basis because that limitation was deleted from RTC section 21013, subdivision (c)(1) in 1999. Also, the last sentence in Regulation 5601 lacks a statutory basis because it interprets the phrase “fees and expenses related to a hearing before the” Board from RTC section 21013 (1994), subdivision (a), and “a hearing” was replaced with “an appeal” in 1997.

Therefore, the Board proposes to delete the provisions in the first and last sentences of Regulation 5601 regarding “corporate franchise and income tax” cases for which there is no longer any statutory basis. The Board proposes to number the remaining provisions of Regulation 5601 regarding business and property tax cases, as subdivision (a). The Board also proposes to add a new subdivision (b) to Regulation 5601 to incorporate the current provisions of RTC section 21013, subdivisions (a)(1) and (2)(A), and (c)(1), regarding eligible claims in “franchise and income tax” cases and provide that:

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

In addition, the provisions regarding business and property tax cases in Regulation 5601 implement, interpret, and make specific the provisions of RTC sections 7091, 8269, 9269, 11657, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630, which provide for the reimbursement of “reasonable *fees and expenses* related to a hearing before the” Board. (Italics added.) Therefore, the Board proposes to add “fees and” before “expenses” in the first sentence in newly numbered subdivision (a), and replace “Expenses” with “Fees and expenses” at the beginning of the second sentence in newly numbered subdivision (a).

The Board has determined that the proposed changes to Regulation 5601 are appropriate for processing under Rule 100 because they delete provisions for which the statutory authority was repealed, make the regulation consistent with the 1997 and 1999 amendments to RTC section 21013 discussed above, make the regulation consistent with the references to “fees and expenses” in RTC sections 7091, 8269, 9269, 11657, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

3. Change to Regulation 5603

Currently, claims for reimbursement under RTC section 21013 must be filed on the July 1998 claim form incorporated into Regulation 5603 by reference, including claims related to corporation franchise tax, corporation income tax, and personal income tax cases. As relevant here, the front of the July 1998 claim form incorporated into Regulation 5603 currently requires each claimant to check a box for the “[t]ype of tax involved,” it only provides one box that can be checked when the type of tax involved is corporation franchise tax, corporation income tax, or personal income tax, and that box is labelled “Corporate Franchise and Income Tax.” However,

the placement of the word “Corporate” in the box’s label can confuse some claimants filing claims for reimbursement related to personal income tax cases and it can take them longer to realize that they are required to check the box. Also, the last sentence on the back of the July 1998 claim form states that it applies to claims for reimbursement related to “Corporation Franchise and Income Tax” cases, however, the placement of the word “Corporation” in the sentence can make it difficult for some claimants to realize that the sentence currently applies to personal “income” tax cases.

In addition, the back of the July 1998 claim form includes a sentence, under the heading “Claim Information,” that alternatively requires claimants to provide either the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the parenthetical language following that sentence provides that “*Only expenses incurred after this date are subject to reimbursement.*” However, the parenthetical language is inconsistent with the current provisions of RTC section 23013, subdivision (c), which now allow for the reimbursement of fees and expenses “incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund,” but before a franchise or income tax appeal is filed, when the statutory requirements for reimbursement are satisfied.

Therefore, the Board has prepared a February 2016 version of the claim form. The Board has revised the front of the February 2016 claim form so that the box that must currently be checked when the type of tax involved is corporation franchise tax, corporation income tax, or personal income tax is more generally labelled “Franchise and Income Tax.” The Board has revised the back of the February 2016 claim form so that the last sentence more generally refers to “Franchise and Income Tax” cases, instead of “Corporation Franchise and Income Tax” cases. The Board has also revised and reformatted the back of the February 2016 claim form so that separate sentences require claimants to provide the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter)” or “Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the limiting parenthetical language only follows the first sentence regarding business taxes matters. And, the Board proposes to replace the reference to the July 1998 claim form with a reference to the revised February 2016 claim form in Regulation 5603, subdivision (a).

The Board has determined that the proposed change to Regulation 5603 is appropriate for processing under Rule 100 because the change incorporates an updated claim form into the regulation, which only includes one grammatical change to the label of a box on the front of the form, one grammatical change to the last sentence on the back of the form, and one formatting change to make the back of the form consistent with RTC section 21013, and the change incorporating the new form does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

The following Rule 100 changes are proposed to Regulations 5600, 5601, and 5603:

TEXT OF PROPOSED CHANGES

Regulation 5600. Definitions, Board Hearing Procedures; Taxes Affected by This Chapter
Article.

(a) The definitions in sections 5511 ~~and 5512~~ apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

Administration of the Corporate Franchise and Income Tax Laws -
Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes - . . . (unchanged).

(c) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Regulation 5601. Eligible Claims.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. ~~Fees and expenses~~ Expenses incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. ~~All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”~~

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091,

8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Regulation 5603. Claim Procedure.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/167/98), which is hereby incorporated by reference.

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Assembly Bill No. 713

CHAPTER 600

An act to amend Sections 18640, 18648, 19008, 19049, 19064, 19104, 19111, 19132, 19280, 19290, 19503, 19717, 21013, 21016, and 21019 of, to add Sections 21022, 21023, 21024, 21025, 21026, and 21027 to, and to repeal Section 18525 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1997. Filed
with Secretary of State October 3, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 713, Caldera. Taxpayers' rights: conformity.

Existing federal tax law includes a Taxpayers' Bill of Rights with respect to those taxes collected and administered pursuant to the Internal Revenue Code. Existing state law also includes the Katz-Harris Taxpayer Bill of Rights Act, that applies with respect to those taxes collected and administered by the Franchise Tax Board under the Personal Income Tax Law and the Bank and Corporation Tax Law.

This bill would partially conform state tax law to the most recent amendments to federal taxpayers' rights provisions by modifying and adding to the provisions of the Katz-Harris Taxpayer Bill of Rights, and by amending or repealing certain provisions of the Personal Income Tax Law, the Bank and Corporation Tax Law, and state statutes governing the administration of those laws, in specific regard to the following subjects: the filing of a joint tax return after the filing of separate tax returns; the telephone numbers of persons filing certain information returns; installment payment agreements; the extension of interest-free periods after a notice and demand for the payment of deficiencies; service of subpoenas on 3rd-party recordkeepers; the abatement of interest for errors and delays resulting from ministerial or managerial acts of the Franchise Tax Board; relief from the retroactive application of regulations; reimbursements of the litigation or appeal costs and expenses, including attorney's fees, of taxpayers; releases of levies and liens; unauthorized actions taken by tax officials to secure the disclosure of information about taxpayers; the burden of proof in protest hearings and refund appeals as to the accuracy of tax information; notices to taxpayers for unassociated payments; notices of outstanding delinquent accounts; and the authorized use of private delivery services in filing items with tax agencies.

The people of the State of California do enact as follows:

SECTION 1. Section 18525 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 18640 of the Revenue and Taxation Code is amended to read:

18640. (a) Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of the dividend, refund, or rebate) shall render a correct return that shall contain or be verified by a written declaration that it is made under the penalty of perjury, stating both of the following:

(1) The name and address of each patron to whom it has made those allocations amounting to one hundred dollars (\$100) or more during the calendar year.

(2) The amount of those allocations to each patron.

If required by the Franchise Tax Board, any corporation described in this subdivision shall render a correct return, which shall contain or be verified by a written declaration that it is under penalty of perjury, of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This section shall not apply in the case of any corporation exempt from tax under Article 1 (commencing with Section 23701) of Chapter 4 of Part 11.

(b) Every cooperative required to make a return under subdivision (a) shall furnish to each person whose name is required to be set forth in that return a written statement showing both of the following:

(1) The name, address, and telephone number of the cooperative required to make that return.

(2) The aggregate amount of the allocations required to be made to the person as shown on that return.

(c) The written statement required under subdivision (b) shall be furnished (either in person or in a separate mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subdivision (a) was required to be made, and shall be in the form which the Franchise Tax Board may prescribe.

(d) The amendments made by this act adding this subdivision are operative for information returns required to be filed on or after January 1, 1999.

SEC. 3. Section 18648 of the Revenue and Taxation Code is amended to read:

18648. (a) Any person who is a promoter of tax shelters, as defined in subdivision (c), shall, within 60 days of a request, make a



shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

(g) The amendments made by the act adding this subdivision are operative for costs and expenses incurred in proceedings beginning on or after January 1, 1998.

SEC. 14. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section, fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.



(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) The amendments made by the act adding this subdivision are operative for fees and expenses related to appeals filed on or after January 1, 1998.

SEC. 15. Section 21016 of the Revenue and Taxation Code is amended to read:

21016. (a) The board shall release any levy issued pursuant to Part 10.2 (commencing with Section 18401) on any property in the event of any circumstances deemed appropriate by the board, including, but not limited to, the following:

(1) The expense of the sale process to the state exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy upon his or her finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(3) The proceeds from the sale would not result in a reasonable reduction of the debt.

(4) The levy was issued not in accordance with administrative procedures.

(5) The taxpayer has entered into an installment payment agreement under Section 19008 to satisfy the tax liability for which the levy was made, unless that or another agreement allows for the levy.

(6) The release of the levy will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment authorized by Article 5 (commencing with Section 19081) of Chapter 4 of Part 10.2.

(d) The amendments made by the act adding this subdivision are operative on or after January 1, 1998.

SEC. 16. Section 21019 of the Revenue and Taxation Code is amended to read:

21019. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the



and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

SEC. 2. Section 44036.3 is added to the Health and Safety Code, to read:

44036.3. (a) The department shall direct licensed smog check stations and technicians to private diagnostic assistance service information vendors or intermediaries who possess the electronically formatted information acquired under Section 44036.2, or with any other emissions-related information needed to improve the effectiveness of smog checks.

(b) The provisions of this section that apply with respect to 1994 and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

CHAPTER 726

An act to amend Sections 905.3, 930, 935.6, 11030.1, 11031, 13909, 13910, 13920, 13943.2, 16304.1, 16400, 16401, and 21152 of, to add Sections 965.1 and 17051.5 to, and to repeal Sections 13921, 13922, 13925, and 13927 of, the Government Code, to amend Section 5101 of, and to add Article 1.5 (commencing with Section 20104) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, and to amend Sections 6901, 6981, 7091, 8126, 8191, 9151, 9196, 11551, 11596, 12951, 12977, 19302, 19306, 19314, 19441, 21013, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, and 45801 of the Revenue and Taxation Code, relating to state boards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with
Secretary of State September 22, 1994.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that the State Board of Control use its reduced General Fund budgetary resources to perform the following duties:

(a) Administer Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code in a manner that allows the state to conduct timely claim investigations of unjust claims, correct the conditions and practices that give rise to those claims, and settle just claims in order to avoid the costs of litigation.

(b) Adjudicate those protests of proposed state procurement contract awards that are filed under Section 10306 and subdivision

or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 38.5. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the State Board of Equalization if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(2) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(b) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the taxpayer has established that the position of the Franchise Tax Board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 39. Section 30361 of the Revenue and Taxation Code is amended to read:

30361. If the board determines that any amount not required to be paid under this part has been paid by any person, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 40. Section 30421 of the Revenue and Taxation Code is amended to read:

30421. If any amount has been illegally determined, the board

Senate Bill No. 94

CHAPTER 931

An act to amend Sections 17053.5, 18533, 18534, 18624, 19008, 19034, 19041, 19045, 19064, 19067, 19084, 19109, 19323, 19504, 19705, 19717, 21013, and 21016 of, to add Sections 17085.7, 18673, 19116, 19117, 19187, 19226, 19236, 19443, 19504.5, 19504.7, 19542.3, and 19546.5 to, and to repeal Section 19052 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 94, Chesbro. Income and bank and corporation taxes: IRS restructuring and reform.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on income and, among other things, provide for specified conformity to federal income tax laws. In this connection, the federal Internal Revenue Service Restructuring and Reform Act of 1998 provides for, among other things, changes to the way the Internal Revenue Service (IRS) is organized, additional taxpayer rights, including a shifting of the burden of proof, and changes to the rules as to how taxes are computed.

This bill would provide for specified conformity to that federal act with respect to awarding costs and fees, liens, suspension of interest, penalties, notices, abatement of interest, collections, financial status audits, trade secrets (including a criminal penalty for divulging or making known software), motion to quash, levies, assessments, waivers, seizure of property, installment agreements, explanation of disallowance, whistle-blower disclosure, identification of return preparer, innocent spouse rules, and correction to rules relating to the proration of the exclusion in the case where a taxpayer does not meet the ownership and use requirements pertaining to a sale of his or her principal residence. This bill would also provide the Franchise Tax Board with the authority to compromise a tax debt, modify rules pertaining to taxpayer tax credit and employer deficiency assessments for the issuance of an earnings withholding order for taxes, and modify or clarify specified operative date language. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate certain changes to laws proposed by both this bill and SB 299 if this bill and SB 299 are enacted and become effective, as provided.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the "Taxpayer's Bill of Rights Act of 1999."

SEC. 3. Section 17053.5 of the Revenue and Taxation Code is amended to read:

17053.5. (a) (1) For a qualified renter, there shall be allowed a credit against his or her "net tax" (as defined in Section 17039). The amount of the credit shall be as follows:

(A) For married couples filing joint returns, heads of household and surviving spouses (as defined in Section 17046) the credit shall be equal to one hundred twenty dollars (\$120) if adjusted gross income is fifty thousand dollars (\$50,000) or less.

(B) For other individuals, the credit shall be equal to sixty dollars (\$60) if adjusted gross income is twenty-five thousand dollars (\$25,000) or less.

(2) Except as provided in subdivision (b), a husband and wife shall receive but one credit under this section. If the husband and wife file separate returns, the credit may be taken by either or equally divided between them, except as follows:

(A) If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for part or all of the taxable year, the resident spouse shall be allowed one-half the credit allowed to married persons and the nonresident spouse shall be permitted one-half the credit allowed to married persons, prorated as provided in subdivision (e).

(B) If both spouses were nonresidents for part of the taxable year, the credit allowed to married persons shall be divided equally between them subject to the proration provided in subdivision (e).

(b) For a husband and wife, if each spouse maintained a separate place of residence and resided in this state during the entire taxable year, each spouse will be allowed one-half the full credit allowed to married persons provided in subdivision (a).

(c) For purposes of this section, a "qualified renter" means an individual who:

(1) Was a resident of this state, as defined in Section 17014, and

(2) Rented and occupied premises in this state which constituted his or her principal place of residence during at least 50 percent of the taxable year.



(II) Any chief counsel ruling or determination letter issued to the taxpayer.

(iv) For purposes of clause (i), in determining whether the position of the Franchise Tax Board was substantially justified, the court shall take into account whether the Franchise Tax Board has lost in any California Court of Appeal in another district on substantially similar issues, as reflected in a decision certified for publication.

(C) Any determination under this paragraph as to whether a party is a prevailing party shall be made by either of the following:

(i) The court.

(ii) An agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of multiple actions which could have been joined or consolidated, or a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

(g) The amendments made by the act amending this subdivision are effective for costs incurred and services performed more than 180 days after the effective date of the act amending this subdivision.

SEC. 34. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.



(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section:

(A) Fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(B) Fees may be awarded in excess of the fees paid or incurred if the fees are less than the reasonable fees because an individual representing the taxpayer is entitled to be reimbursed for no fee or for a fee which, taking into account all the facts and circumstances, is no more than a nominal fee. This subparagraph shall apply only if the award is paid to the individual or the individual's employer.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) The amendments made by the act amending this subdivision are effective for fees and expenses incurred more than 180 days after the effective date of the act amending this subdivision.



SEC. 34.5. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section:

(A) Fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(B) Fees may be awarded in excess of the fees paid or incurred if the fees are less than the reasonable fees because an individual representing the taxpayer is entitled to be reimbursed for no fee or for a fee which, taking into account all the facts and circumstances, is no more than a nominal fee. This subparagraph shall apply only if the award is paid to the individual or the individual's employer.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund, including fees and expenses incurred at the hearing specified in subdivision (e).

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed



Memorandum

To: Mr. David Gau
Chief Deputy Director (MIC:101)

Date: February 2, 2016

From: 
Randy Ferris
Chief Counsel

Subject: **Board Meeting, February 23-25, 2016**
Item J - Chief Counsel's Rulemaking Calendar
Rules for Tax Appeals Regulations 5600, Definitions, Board Hearing Procedures; Taxes Affected by This Article, 5601, Eligible Claims, and 5603, Claim Procedure

We request your approval to place proposed changes to Rules for Tax Appeals (RTA) Regulations 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Article, 5601, Eligible Claims, and 5603, Claim Procedure*, on the Chief Counsel's Rulemaking Calendar for the February 23-25, 2016, Board meeting. The regulations are in chapter 6 of the RTA, which applies to statutorily authorized claims for reimbursement. Regulation 5600 incorporates specified definitions into chapter 6 and lists the tax and fee programs to which chapter 6 applies. Regulation 5601 currently specifies the expenses that may be reimbursed if a claim for reimbursement is granted. Regulation 5603 prescribes the procedures for filing and responding to a claim for reimbursement and incorporates a claim form by reference.

The proposed changes replace "Article" with "Chapter" in the title of Regulation 5600 because Regulation 5600 has specified the application of chapter 6 of the RTA since 2008. The proposed changes to Regulation 5600 delete a reference to repealed RTA Regulation 5512. The proposed changes to Regulation 5600 also clarify that chapter 6 of the RTA applies to claims for reimbursement related to franchise and income tax appeals to the Board filed under the provisions of part 10.2, *Administration of Franchise and Income Tax Laws*, of division 2 of the Revenue and Taxation Code (RTC) (RTC, §§ 18401-19802). (Attachment A illustrates the changes to Regulation 5600.)

The proposed changes to Regulation 5601 make it consistent with the current provisions of RTC section 21013 regarding reimbursable fees and expenses related to franchise and income tax appeals by:

- Deleting the provisions in the first and last sentences of Regulation 5601 regarding corporate franchise and income tax cases;
- Renumbering the remaining provisions of Regulation 5601 regarding business and property tax cases, as subdivision (a); and

- Adding a new subdivision (b) to Regulation 5601 to incorporate the current provisions of RTC section 21013, subdivisions (a)(2)(A) and (c)(1), respectively, providing that reimbursable fees and expenses do not include fees and expenses “incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted” to the Board, and are limited to “[f]ees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.”

The proposed changes to Regulation 5601 also make Regulation 5601 consistent with the current provisions of RTC sections 7091, 8269, 9269, 11657, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630 regarding reimbursable fees and expenses related to business and property tax cases by adding references to reimbursable “fees” before the references to reimbursable “expenses” in the first and second sentences in renumbered subdivision (a). (Attachment B illustrates the changes to Regulation 5601.)

The proposed change to Regulation 5603 replaces the reference to the current reimbursement claim form dated July 1998 with a reference to an updated claim form dated February 2016. (Attachment C illustrates the change to Regulation 5603). The front of the current claim form (shown in Attachment D) refers to “Corporate Franchise and Income Tax” and the front of the updated claim form (shown in Attachment E) refers to “Franchise and Income Tax” to further clarify that chapter 6, including Regulation 5603 and the claim form, currently applies to claims for reimbursement related to franchise and income tax appeals, not just “corporate” franchise and income tax appeals. Also, the back of the current claim form (shown in Attachment F) includes a sentence that alternatively requires claimants to provide either the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the parenthetical language following that sentence provides that “*Only expenses incurred after this date are subject to reimbursement.*” However, the parenthetical language is inconsistent with RTC section 23013, subdivision (c), which allows for the reimbursement of fees and expenses “incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund,” but before a franchise or income tax appeal is filed, when the statutory requirements for reimbursement are satisfied. Therefore, the back of the updated claim form (shown in Attachment G) has been reformatted so that separate sentences require claimants to provide the “Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter)” or “Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter)” and the parenthetical language only follows the first sentence regarding business taxes matters.

Staff will request the Board’s authorization to make the changes to Regulations 5600, 5601, and 5603 under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes to Regulation 5600 are appropriate for processing under Rule 100 because the proposed changes update the regulation’s name, delete a reference to a repealed regulation, and clarify an existing reference to RTC sections 18401 through 19802 (pt. 10.2 of div. 2 of the RTC). The changes to Regulation 5601 are appropriate for processing under Rule 100 because the proposed changes make Regulation 5601 consistent with the current provisions in RTC sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630 regarding reimbursable fees and expenses. The change to Regulation 5603 is appropriate for processing under Rule 100 because the proposed change updates the front of the reimbursement claim form to clarify that the form

can currently be used to claim reimbursement related to all franchise and income tax appeals and makes the back of the form consistent with RTC section 21013. Also, the proposed changes to Regulations 5600, 5601, and 5603 do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at (916) 323-3091.

Recommendation by:


Randy Ferris, Chief Counsel

Approved:


David Gau, Chief Deputy Director

Approved:


Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Attachment: Proposed Changes to Regulations 5600 and 5601

- cc: Mr. David Gau (MIC:101)
- Ms. Lynn Bartolo (MIC:57)
- Ms. Joann Richmond (MIC:80)
- Mr. Robert Tucker (MIC:82)
- Mr. Jeff Vest (MIC:85)
- Mr. Grant Thompson (MIC:85)
- Mr. Jeff Angeja (MIC:85)
- Ms. Susanne Buehler (MIC:92)
- Mr. Kevin Hanks (MIC:49)
- Mr. Bradley M. Heller (MIC:82)

Attachment A

Proposed Changes to Regulation 5600

5600. Definitions, Board Hearing Procedures; Taxes Affected by This ~~Chapter~~Article.

(a) The definitions in sections 5511 ~~and 5512~~ apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

~~Administration of the Corporate Franchise and Income Tax Laws -
Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802~~

Business and Property Taxes -

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

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

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law

Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

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

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees
Revenue and Taxation Code Sections 46001-46751

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

Sales and Use Tax (including State-administered local sales,
transactions, and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

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

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law
Revenue and Taxation Code Sections 8601-9355

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

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Attachment B

Proposed Changes to Regulation 5601

5601. Eligible Claims.

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Fees and expenses Expenses incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. ~~All expenses incurred in corporate franchise or income tax appeals to the Board are “related to a hearing before the board.”~~

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in corporate franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board’s written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Attachment C

Proposed Changes to Regulation 5603

5603. Claim Procedure.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/167/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and when applicable, Franchise Tax Board staff, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board Staff may be given an additional 30 days to respond to the new material.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

Please type or print in ink.

TYPE OF TAX INVOLVED

Corporate Franchise and Income Tax

BUSINESS TAXES

Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)

Alcoholic Beverage Tax

Integrated Waste Management Fee

Childhood Lead Poisoning Prevention Fee

Motor Vehicle Fuel Taxes

Cigarette and Tobacco Products Tax

Occupational Lead Poisoning Prevention Fee

Diesel Fuel Tax

Tire Recycling Fee

Emergency Telephone Users Surcharge

Underground Storage Tank Maintenance Fee

Energy Resources Surcharge

Use Fuel Tax Law

Hazardous Substances Tax

TOTAL AMOUNT OF CLAIM	BREAKDOWN*	
\$	Fees \$	Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT	REGISTRATION, FILE OR ACCOUNT NUMBER
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()
NAME OF CLAIMANT'S REPRESENTATIVE	
MAILING ADDRESS	DAYTIME TELEPHONE NUMBER ()

Please indicate where you would like official notices and other correspondence sent:

To Claimant's Address Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILE WITH:

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

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final.

If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Please type or print in ink.

TYPE OF TAX INVOLVED

Franchise and Income Tax

BUSINESS TAXES

- Sales and Use Tax (*including State-Administered local sales, transactions, and use taxes*)
- Alcoholic Beverage Tax
- Childhood Lead Poisoning Prevention Fee
- Cigarette and Tobacco Products Tax
- Diesel Fuel Tax
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Hazardous Substances Tax
- Integrated Waste Management Fee
- Motor Vehicle Fuel Taxes
- Occupational Lead Poisoning Prevention Fee
- Tire Recycling Fee
- Underground Storage Tank Maintenance Fee
- Use Fuel Tax Law

TOTAL AMOUNT OF CLAIM

BREAKDOWN*

\$

Fees \$

Expenses \$

* Attach two copies of all itemized billings and receipts and any other supporting documentation and a detailed explanation of the claimed fees and expenses, including the hourly rate and time expended for particular items billed.

NAME OF CLAIMANT

REGISTRATION, FILE OR ACCOUNT NUMBER

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

NAME OF CLAIMANT'S REPRESENTATIVE

MAILING ADDRESS

DAYTIME TELEPHONE NUMBER

()

Please indicate where you would like official notices and other correspondence sent:

- To Claimant's Address Representative's Address

COMPLETED CLAIMS AND RELATED DOCUMENTATION MUST BE FILED WITH:

Board Proceedings Division MIC:81
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PO Box 942879
Sacramento, CA 94279-0081

Claims must be filed within **one year** of the date the decision of the Board in your underlying case becomes final. If you have questions or need additional information regarding the filing of your claim, please contact the Board Proceedings Division at (916) 322-2270.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

SIGNATURE OF CLAIMANT OR ATTORNEY/REPRESENTATIVE (please see notice below)	Date
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NOTICE

Section 72 of the Penal Code provides:

“Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.”

CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter) or date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Corporation Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

Date of Hearing, if any, before Board of Equalization: _____

Disposition of Case by Board of Equalization: _____ Date: _____

Attach a brief description of the staff conduct which you claim was unreasonable and how that conducted caused you to incur the fees and expenses for which you are claiming reimbursement.

PLEASE NOTE THAT FAILURE TO SUBMIT A COMPLETE CLAIM FORM WITH SUFFICIENT SUPPORTING DOCUMENTATION MAY RESULT IN DENIAL OR DELAY OF THE CLAIM.

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CLAIM INFORMATION

Date of filing Petition for Redetermination or Claim for Refund (if Business Taxes matter): _____
(Only expenses incurred after this date are subject to reimbursement.)

Date of filing an appeal to the Board of Equalization (if Franchise/Income Tax matter): _____

If Business Taxes matter, date of Appeals Conference _____
and date Decision and Recommendation issued _____

Business Taxes cases must have progressed beyond appeals conference to be eligible for reimbursement.

Corporation Franchise and Income Tax cases must have progressed beyond the filing of an appeal to the Board to be eligible for reimbursement.

Tuesday, February 23, 2016

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Alma J. Abouraya; Syed Khizer Ahmed; Dan Eugene Craig; Darren Tyler Daily, Crystal E. Daily and Daily Enterprises, Inc.; Dino-Co, Inc. and Bashar Jamil Alhajjar; Charlene Marie Duarte and Manolo Duarte; Hyduke's Valley Motors, Inc.; Brian O'Connor; Puro Nundi, Inc.; Jesus Saldana; Dick Wolfgang Saller; Ransford Maurice Samuda; San Diego Sports Flyers; Krishna P. Vemuri and K & N, Inc.; and, Phuong Bich Vu*, as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Section 100 Changes****Rules for Tax Appeals Regulations 5600, Definitions, Board Hearing Procedures; Taxes Affected by This Article, 5601, Eligible Claims, and 5603, Claim Procedure**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to update and clarify cross references in Regulation 5600, and make Regulations 5601 and 5603 consistent with Revenue and Taxation Code section 21013 ([Exhibit 2.8](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulations 5600, 5601 and 5603 as recommended by staff.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

Members made complimentary remarks about William Connell, and expressed appreciation for his work with the Board of Equalization and the Veterans. He will be missed by all.

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
5901 GREEN VALLEY CIRCLE
CULVER CITY, CALIFORNIA

REPORTER'S TRANSCRIPT
FEBRUARY 23, 2016

CHIEF COUNSEL MATTERS
J RULEMAKING
SECTION 100 CHANGES
J1 RULES OF TAX APPEALS REGULATIONS 5600,
DEFINITIONS, BOARD HEARING PROCEDURES; TAXES
AFFECTED BY THIS ARTICLE, 5601, ELIGIBLE CLAIMS, AND
5603, CLAIM PROCEDURE

REPORTED BY: Kathleen Skidgel
CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Boar of
Equalization Staff:

Bradley Heller
Legal Department

---oOo---

1 5901 GREEN VALLEY CIRCLE
2 CULVER CITY, CALIFORNIA
3 FEBRUARY 23, 2016

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next matter is Chief
7 Counsel matters. Item J, Rulemaking Section 100
8 Changes; Item J1, Rules for Tax Appeals Regulations
9 5600, Definitions, Board Hearing Procedures; Taxes
10 Affected by This Article, 5601, Eligible Claims, and
11 5603, Claim Procedure.

12 MR. HORTON: Mr. Heller, please introduce
13 yourself for the record, and welcome to the Board of
14 Equalization.

15 MR. HELLER: Thank you.

16 Good evening, Chairman Horton, Members of
17 the Board. I'm Bradley Heller from the Board's
18 Legal Department. And I'm here to request that the
19 Board vote to authorize staff to complete Rule 100
20 changes to Rules for Tax Appeals Regulations 5600,
21 5601 and 5603.

22 The changes update and clarify cross
23 references in Regulation 5600 and make regulations
24 5601 and 5603 consistent with Revenue and Taxation
25 Code Section 21013.

26 MR. HORTON: Thank you.

27 Discussion, Members?

28 Hearing none, Member Runner moves to adopt

1 staff recommendation, second by Member Ma.

2 Without objection, Members, such will be
3 the order.

4 ---oOo---

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, Kathleen Skidgel, Hearing Reporter for the California State Board of Equalization certify that on February 23, 2016 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: March 1, 2016

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter

