Chapter 5: General Board Hearing Procedures

Article 1: Application of Chapter and Definitions (§§ 5000.5001, 5000.5002)
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Article 1: Application of Chapter and Definitions

5000.5001 General Application.
5000.5002 Definitions.

5000.5001 General Application of Chapter 5.

(a) This chapter applies to Board hearings under any of the following laws:

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

(2) Alcoholic Beverage Tax Law
California Constitution, article XX, section 22;
Revenue and Taxation Code sections 32001-32557

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

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

(5) Cigarette and Tobacco Products Tax Law
California Constitution, article XIIIB, section 12;
Health and Safety Code sections 104555-104558;
Revenue and Taxation Code sections 30001-30482

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

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

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

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

(10) Integrated Waste Management Fee Law

Public Resources Code sections 40000-40201, 44001-44006, and 48000-48008;
Revenue and Taxation Code sections 45001-45984

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

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

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

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

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

(16) Private Railroad Car Tax
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 11201-11702

(17) Publicly Owned Property
California Constitution, article XIII, section 11(g);
Revenue and Taxation Code sections 1840 and 1841

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

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

(20) State-Assessed Property
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 721-868, 4876-4880, 5011-5014

(21) Tax on Insurers Law
California Constitution, article XIII, section 28;
Revenue and Taxation Code sections 12001-13170

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

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

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

(25) Welfare Exemption
California Constitution, article XIII, section 4(b);
Revenue and Taxation Code sections 214-214.15, 254.5-254.6, 270-272

(b) This chapter sets forth rules of general application for all Board hearings conducted under the laws listed in subdivision (a) of this section. Where the procedure for a specific law differs from the general rule, the more specific procedure will be provided or cross-referenced.

(c) The rules and procedures set forth in chapter 4 apply to appeals from the actions of the Franchise Tax Board. To the extent that provisions in this chapter conflict with chapter 4, the provisions of chapter 4 control.

(d) To the extent that provisions in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, section 5071.

5000.5002 Definitions.

The following definitions apply to this chapter, and also apply to chapters 2, 3, and 4 of this division as provided therein:

(a) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.

(b) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.

(c) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.

(d) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.

(e) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization's Legal Department. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.

(f) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.

(g) "Brief" means a written document that contains an argument supporting a party's position, including arguments on how laws or regulations apply to the facts presented in a party's matter. Notwithstanding this definition, affidavits and declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.

(h) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.

(i) "Claimant" means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5000.5001. The term "claimant" includes a taxpayer's authorized representative, where appropriate.

(j) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

(k) "Delivery Service" means a trade or business, if such trade or business delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery.

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

(m) "Deputy Director" means the Deputy Director of the State Board of Equalization's Sales and Use Tax Department or Property and Special Taxes Department and any

person to whom the Deputy Director delegates his or her official duties from time to time.

(n) "Executive Director" means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.

(o) "Extreme hardship" means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person's control.

(p) "Hearing" means a taxpayer's opportunity to appear before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's matter.

(q) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on a matter for which an oral hearing has been requested.

(r) "Matter" means:

(1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, or petition for review of district tax redistribution inquiries;

(2) Claim, including a claim for refund;

(3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4;

(4) Application for administrative hearing;

(5) Petition for rehearing; and

(6) Any other item scheduled for a Board hearing in any program listed in section 5000.5001, including, but not limited to, requests for relief of taxes, interest, or penalties.

(s) "Party" means the taxpayer and the Department as defined in this section.

(1) In any matter where an agency has requested an oral hearing in accordance with chapter 2 and the taxpayer has not requested an oral hearing, the agency requesting the oral hearing shall be the Department for purposes of this chapter, and neither the Property and Special Taxes Department nor the Appeals Division shall be the Department.

(2) For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.

(t) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.

(u) "Reasonable cause" means such circumstances as would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.

(v) "Tax" means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of a matter before the Board.

(w) "Taxpayer" means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board, or who is a person directly interested in any matter before the Board under any of the programs listed in section 5000.5001. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes except as provided in California Code of Regulations, title 18, section 1807 or 1828. The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

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

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. References: California Constitution, article XIII, section 17; Revenue and Taxation Code sections 20, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5070.

Article 2: Requirements for Scheduling Board Meetings and Hearings

Subchapter 1. Meeting Calendars

5000.5003 Monthly Board Meetings.
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Subchapter 2. Requesting and Scheduling an Oral Hearing

5000.5005 Right to Request an Oral Hearing.
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5000.5006 Notice of Board Hearing and Response.
5000.5007 Dismissal, Deferral, and Postponement.

Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing

5000.5008 Representation at Hearings.
5000.5009 Power of Attorney.
5000.5010 Contribution Disclosure Forms.
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5000.5013 Preparation for Board Hearing and Subpoenas.
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Subchapter 1. Meeting Calendars

5000.5003 Monthly Board Meetings.
5000.5004 Adoption of Board Meeting Calendar.

5000.5003 Monthly Board Meetings.

(a) Monthly Meetings. The Board holds monthly Board meetings. Board meetings are conducted in Sacramento and at other locations within the state for the convenience of taxpayers and their representatives residing outside the Sacramento area.

(b) Additional Meetings. At the discretion of the Board Chair, additional meetings may be conducted at such times and places as needed within the state.

(c) Teleconference Board Meetings. When circumstances require, the Board may hold meetings via teleconference as provided in Government Code section 11123.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 15609.

5000.5004 Adoption of Board Meeting Calendar.

(a) The Board generally adopts a meeting calendar for the following calendar year, but may adopt a meeting calendar for any appropriate period.

(b) Within 15 days of adoption, the meeting calendar shall be available for viewing by the public on the Board's website at www.boe.ca.gov.

(c) The Chief of Board Proceedings may cancel a portion of a Board meeting listed on a previously adopted meeting calendar after giving notice to the Board Chair. A majority vote of the Board may cancel or change a meeting date or location identified on a previously adopted meeting calendar. Board Proceedings Staff shall promptly amend the publicly available meeting calendar to reflect any changes made pursuant to this subdivision.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 15609.

Subchapter 2. Requesting and Scheduling an Oral Hearing

5000.5005	Right to Request an Oral Hearing.
5000.5005.1	Acknowledgement of Request for Oral Hearing.
5000.5005.2	Consolidation for Hearing or Decision.
5000.5006	Notice of Board Hearing and Response.
5000.5007	Dismissal, Deferral, and Postponement.

5000.5005 Right to Request an Oral Hearing.

(a) Every taxpayer may file a written request for an oral hearing before the Board regarding any matter subject to the provisions of this chapter.

(b) Written requests for an oral hearing shall be granted where the Board is required to grant an oral hearing on the taxpayer's matter by a statute or regulation, and shall be liberally granted with regard to discretionary matters, unless an oral hearing is being requested for the primary purpose of delay or the taxpayer's position is frivolous or groundless.

(c) Business and Special Taxes: A written request for an oral hearing must be filed no later than 30 days after the date the Appeals Division issues its Decision and Recommendation pursuant to chapter 2 of this division.

(d) Property Taxes: A written request for an oral hearing must be included in the taxpayer's petition or application pursuant to chapter 3 of this division.

(e) Appeals from Actions of the Franchise Tax Board: A written request for an oral hearing before the Board shall be filed in accordance with section 4040 of chapter 4 of this division.

(f) The Board may hold an oral hearing to discuss any matter whether or not an oral hearing has been timely requested in accordance with subdivisions (c), (d), and (e).

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5,

7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5005.1 Acknowledgement of Request for Oral Hearing.

(a) If Board Staff receives a written request for an oral hearing or confirmation that a previously requested hearing is still desired, the Board Proceedings Division shall issue a letter acknowledging the request. The acknowledgment letter will indicate whether an oral hearing before the Board has been granted, and, if granted, shall also provide the location where the oral hearing will be scheduled.

(b) Taxpayers shall submit requests to change the location where an oral hearing is scheduled to the Board Proceedings Division upon receipt of the acknowledgement letter. Upon receipt of a request to change location, the Chief of Board Proceedings shall review the request, prepare a recommendation, and submit the request and recommendation to the Board Chair for decision.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5005.2 Consolidation for Hearing or Decision.

(a) Multiple matters may be consolidated for hearing or decision if the facts and issues are similar and no substantial right of any party will be prejudiced.

(b) The Board Members, Appeals Staff, or any party may request a consolidation, or object to a consolidation of, matters for hearing or decision.

(c) Requests for and objections to the consolidation of matters for hearing or decision must be submitted in writing to the Board Proceedings Division and to all parties to the matters at issue.

(1) A request for consolidation should establish that the relevant facts and issues in each matter to be heard or decided are similar, and that no substantial right of any party would be prejudiced by consolidation.

(2) An objection to the consolidation of matters to be heard or decided should establish that consolidation would have an adverse affect on a substantial right of the objecting party.

(d) If the Chief Counsel determines that consolidation would not prejudice a substantial right of any party, or all of the parties to such matters agree to consolidation, the Chief of Board Proceedings shall consolidate such matters and notify all of the parties. If the Chief Counsel determines that consolidation would have an adverse affect on a substantial right of any party, the matters shall not be consolidated regardless of the parties' consent.

(e) Any party may file an objection to consolidation not later than 15 days from the date the Chief of Board Proceedings issues the notice described in subdivision (d). Upon receipt of an objection, the matters shall be deconsolidated unless the Chief Counsel determines that the objection is frivolous or deconsolidation would result in the misuse of administrative resources.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083,

55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5074.

5000.5006 Notice of Board Hearing and Response.

(a) General Procedure.

(1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff shall mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 75 days in advance of the parties' scheduled hearing date.

(2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff shall mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 45 days in advance of the parties' scheduled hearing date.

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

(1) The name, address, and case identification number of the taxpayer;

(2) The session, date, and location of the hearing;

(3) The due date of the Response to Notice of Board Hearing;

(4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and

(5) The date the Notice of Board Hearing was mailed.

(c) Response to Notice of Board Hearing. Each party or each party's authorized representative shall return the Response to Notice of Board Hearing no later than 15 days from the date the Notice of Board Hearing was mailed. Each party or party's authorized representative shall respond to the Notice of Board Hearing by indicating that:

(1) The party or party's authorized representatives will appear at the hearing at the time and place noted;

(2) The party waives the opportunity to appear and be represented at the hearing and requests the Board to decide the matter on the basis of the written record on file and without an oral hearing; or

(3) The party withdraws the party's request for a hearing.

A party or party's representative may also include a request for an interpreter in the Response to Notice of Board Hearing. Persons participating in Board meetings who

speak a language other than English and require an interpreter are entitled to an interpreter at no charge.

(d) Waiver of Notice. The 60-day and 45-day notice periods may be waived upon agreement among all parties and the Chief Counsel. If the 60-day or 45-day notice period is waived, the Chief of Board Proceedings shall modify any briefing schedule as appropriate.

(e) Failure to Respond to Notice of Board Hearing.

(1) If the party or parties who requested an oral hearing all fail to return the Response to Notice of Board Hearing by the deadline stated in the Notice of Board Hearing, the matter shall be submitted to the Board for decision on the basis of the written record on file without an oral hearing.

(2) Board Proceedings Staff shall notify the taxpayer, and any state agency that is a party to a matter in writing that the matter has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.

(3) Prior to a Board decision, the Chief Counsel, in his or her discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of reasonable cause.

(4) If the Chief Counsel makes an exception, the Board Proceedings Division shall promptly provide notice to all the parties to such matter.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5076.

5000.5007 <u>Dismissal, Deferral, and Postponement.</u>

(a) Dismissal. The Chief of Board Proceedings shall dismiss a matter under any of the following circumstances:

(1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;

(2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or

(3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.

(b) Deferral or Postponement of Hearing or Briefing. A Board Member, Appeals Staff, or any party to a matter may request that a hearing or the due date of any brief be deferred or postponed for reasonable cause. Requests for deferral or postponement must be submitted to the Chief of Board Proceedings.

(1) Deferral or Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a deferral or postponement for a period of 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel in any of the following circumstances:

(A) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;

(B) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;

(C) A party has obtained a new representative who requires additional time to become familiar with the case;

(D) The Chief of Board Proceedings has been informed that all parties desire a deferral or postponement;

(E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the matter is being reviewed for possible settlement consideration; or

(F) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.

(2) Deferral or Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a deferral or postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, if the parties to the matter have entered into formal settlement negotiations.

(3) Deferral or Postponement for Other Actions. The Chief Counsel may, in his or her discretion, grant a deferral or postponement for a determined period of time due to the following circumstances:

(A) The Chief Counsel determines that related civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a bearing on the matter being deferred or postponed.

(B) The Chief Counsel determines that unrelated civil or criminal litigation pending in federal or state court contains similar issues to those claimed by parties to a matter and that the outcome of the unrelated litigation is likely to have a bearing on the matter being deferred or postponed.

(4) Deferral or Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone a matter that is subject to the provisions of chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify the Board and the parties that the matter is postponed until the taxpayer's bankruptcy is concluded.

(5) The Chief Counsel may, with the consent of the Board Chair, grant a deferral or postponement for any reason.

(c) Additional Deferrals or Postponements. After the initial deferral or postponement period, the Chief Counsel may grant additional deferrals and postponements that are not described in subdivisions (a) and (b) of this section upon a showing of extreme hardship and only with the consent of the Board Chair.

(d) The Chief of Board Proceedings shall provide written notification to the parties if a deferral or postponement has been granted.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5076.

Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing

5000.5008	Representation at Hearings.
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5000.5008 Representation at Hearings.

(a) Representation. During the hearing, taxpayers may be represented by any authorized person or persons, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate. For purposes of this section, a person whose only function is to interpret for the taxpayer is not a representative.

(b) Recognition. The Board shall recognize all authorized representatives who are identified in writing or orally by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform in preparation for and during the hearing.

(c) Substitution or Withdrawal. Taxpayers shall promptly notify the Chief of Board Proceedings in writing of any substitutions or withdrawals of representation and shall also notify the Franchise Tax Board in all matters that are subject to the provisions of chapter 4 of this division.

(d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 shall not be permitted to represent any taxpayer in a matter that is subject to the provisions of chapter 4 of this division after the Franchise Tax Board gives the Chief of Board Proceedings notice of the suspension or disbarment.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5,

46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5073.

5000.5009 Power of Attorney.

(a) Requirement. The Board or Board Staff may require a taxpayer to complete a Board approved Power of Attorney in order to authorize another person or persons to act on the taxpayer's behalf. The Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either State Board of Equalization or Franchise Tax Board matters.

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

(1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;

(2) The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);

(3) The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative's authority; and the tax period(s) for which the authorization is granted;

(4) A statement that the Power of Attorney revokes all prior Powers of Attorney, with any exceptions to the revocation;

(5) The time period during which the Power of Attorney shall be in effect; and

(6) The signature(s) and title of all affected taxpayers and the date of signature.

(c) In lieu of the standard form described in subdivision (a), Board Staff shall accept any written document containing substantially all of the provisions required by subdivision (b), including but not limited to a statutory form power of attorney complying with the provisions of Probate Code section 4401.

(d) If an issue arises as to a representative's authorization under any power of attorney, Board Staff shall forward the document to the Chief Counsel, who shall determine its legal effect.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176,

30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5073.

5000.5010 Contribution Disclosure Forms.

(a) The Board is subject to the Quentin L. Kopp Conflict of Interest Act of 1990 (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings (as defined in Gov. Code, § 15626, subd. (h)(5)). In order to comply with the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990:

(1) Every Board Member shall make the disclosures required by California Code of Regulations, title 18, section 7009; and

(2) Every party, participant and agent as defined in California Code of Regulations, title 18, sections 7004 through 7006 must complete a contribution disclosure form as required by California Code of Regulations, title 18, section 7011.

(b) Approximately 45 days prior to a hearing, Board Proceedings Staff shall mail contribution disclosure forms to all parties, participants, and agents as defined in California Code of Regulations, title 18, sections 7004 through 7006, inquiring as to whether contributions have been made to one or more Board Members.

(c) Contribution disclosure forms should be returned to the Board Proceedings Division prior to the recipient's scheduled hearing.

(d) The rules and definitions contained in Government Code section 15626 and California Code of Regulations, title 18, sections 7001 through 7011 apply to this section.

Note: Authority: Government Code section 15606. Reference: Government Code section 15626. Reference: Government Code section 15606. Reference: Government Code section 15626. History: California Code of Regulations, title 18, section 7011.

5000.5011 Hearing Summary.

(a) Preparation. The Appeals Division should prepare and submit an objective Hearing Summary to the Chief of Board Proceedings:

(1) Generally within 40 days of the oral hearing date, with respect to matters arising under chapter 2 of this division;

(2) As provided in chapter 3 of this division, with respect to matters arising under chapter 3; or

(3) As provided in section 5000.4043, with respect to matters arising under chapter 4 of this division.

If the Appeals Division determines that a Hearing Summary requires modification after initial distribution, the Appeals Division shall promptly provide the modifications to the Chief of Board Proceedings.

(b) Date of Mailing. The Board Proceedings Division shall mail, transmit via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provide the taxpayer and the Department with a copy of the Hearing Summary, generally within 30 days of the oral hearing date. Modifications to a Hearing Summary after initial distribution shall be mailed, transmitted via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provided to the taxpayer and the Department promptly after the modified Hearing Summary is provided to the Chief of Board Proceedings in a manner intended to provide prompt notice.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

5000.5012 Additional Briefing.

(a) Additional Briefing. If the Board, a Board Member, or the Assistant Chief Counsel for the Appeals Division or his or her designee determines that insufficient briefing has been provided under chapters 2 of this division after issuance of the Hearing Summary, but prior to an oral hearing before the Board, a Board Member or the

Assistant Chief Counsel for the Appeals Division or his or her designee may request additional briefing from either party in a writing addressed to the Chief of Board Proceedings.

(b) Briefing Schedule. Upon receipt of a request for additional briefing described in subdivision (a), the Chief of Board Proceedings shall set a briefing schedule and notify the parties that additional briefing is required.

(c) General Requirements. All briefs permitted to be filed pursuant to this section shall follow the requirements listed below:

(1) Be addressed and mailed to the Chief of Board Proceedings;

(2) Be mailed or personally delivered to the other parties;

(3) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or

(B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;

(C) Type-font size of at least 10 points or 12 characters per inch;

(D) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

(4) Exception. An exception to the requirements of paragraph (3) may be granted prior to the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

(e) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters that are subject to the provisions of chapter 4 of this division. Section 5000.4035 of chapter 4 of this division applies to such additional briefing.

(f) Property Tax Matters. This section does not apply to additional briefing in matters that are subject to the provisions of chapter 3 of this division.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176,

30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5075.

5000.5013 Preparation for Board Hearing and Subpoenas.

(a) Scope of Hearing. An oral hearing shall be limited to consideration of the facts, issues, values, or precise elements in dispute in a taxpayer's matter. The Board may ask the parties questions during an oral hearing, and shall afford the parties an opportunity to respond.

(b) Subpoenas. The Board may issues subpoenas for the attendance of witnesses or the production of books, records, accounts and papers before the Board, the Board's Executive Director, individual Board Members, or any other representative of the Board in accordance with Government Code section 15613. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit showing good cause and containing the information prescribed by Code of Civil Procedure section 1985. Any affidavit filed in support of an application for a subpoena shall be served with the subpoena. A subpoena shall be signed by a Board Member, the Board's Executive Director, or other person designated by the Executive Director. Taxpayers are required to serve subpoenas issued pursuant to their request upon the witnesses identified in the subpoenas and will bear any expenses incurred.

(c) Time Allocation. The Chief of Board Proceedings shall generally allocate a total of 35 minutes per hearing. The Chief of Board Proceedings shall inform the parties and the Board of the time allocations prior to the hearing.

(d) Additional Time. A party may request additional time to present a complex matter. A request for additional time must be submitted to the Board Proceedings Division in writing no less than 15 days prior to the hearing, and state the reason(s) why additional time is needed. The Chief of Board Proceedings shall submit requests for additional time to the Board Chair for approval. The Board Chair may grant a party whatever additional time the Board Chair determines the party needs to present a complex matter. Board Proceedings Staff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.

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

may, in his or her discretion, grant a party additional time to complete its presentation during the hearing.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5077, 5078.

5000.5014 Presentation of Evidence or Exhibits.

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

(b) Submission of Evidence. The Board encourages documentary evidence to be submitted to the Board Proceedings Division and to the opposing party at least 14 days prior to the hearing in order to facilitate the orderly consideration of the issues at the hearing. Although the Board may permit a party to submit documentary evidence at the hearing, the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. Any objections to the presentation of evidence at the oral hearing and comments on the evidence submitted shall be considered by the Board in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

(c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the matter for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.

(d) Official Notice. The Board may on its own or at the request of a party take official notice of any fact that may be judicially noticed by the courts of this State. Any party may, at the hearing or in its petition for rehearing, refute any matter thus noticed.

(e) Distribution. Board Proceedings Staff shall provide copies of any documentary evidence that has been submitted or officially noticed, any written arguments concerning the relevance of the evidence, and any stipulations to the Board Members, each party, and the Appeals Division.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5079.

5000.5015 Witnesses.

(a) Witnesses. The taxpayer and the Department may offer the testimony of any person who can provide relevant information concerning the matter, including representatives of the taxpayer and the Department who have knowledge concerning the facts at issue in the matter.

(b) If a witness refuses to testify or produce books, records, accounts, or papers pursuant to a Board issued subpoena, the Board may initiate contempt proceedings as provided in Government Code section 15614 to compel compliance. A person found guilty of contempt may be punished by a fine and imprisonment in the county jail.

(c) As part of the Response to Notice of Board Hearing, the Board encourages the parties to provide the Board Proceedings Division and the opposing party with the name and address of any witness who will testify, and a brief description of the purpose of their testimony, in advance of the hearing.

(d) The Board Chair may, at the Board Chair's discretion, direct any witness to testify under oath or affirmation, and any Board Member or party to a matter may request that any witness testify under oath or affirmation.

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

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6981, 6901, 6902, 6906, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5079.

Note: There are three alternative versions of section 5000.5015.1. The first alternative is staff's recommendation. The second alternative was suggested by John Davies, Franchise Tax Board Chief Counsel. The third alternative was suggested by Lenny Goldberg, California Tax Reform Association.

Alternative 1: Staff Recommendation

5000.5015.1 Communications with Board Members.

The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and a Board Member's Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15609.5, 15610, 15623; Revenue and Taxation Code section 7081.

Alternative 2: Recommendation from John Davies, Franchise Tax Board Chief Counsel

5000.5015.1 Communications with Board Members.

(a) Communications Generally. The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers, at all

times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and a Board Member's Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.

(b) Appeals from the Franchise Tax Board. Persons described in subdivision (a) of this section, including Franchise Tax Board employees, may only communicate with Board Members and their staffs during the pendency of an appeal from an action of the Franchise Tax Board if:

(1) Advance Notice and Opportunity to Participate.

(A) Prior to any oral communication between a party to an appeal or a party's representative and a Board Member or a Board Member's staff regarding any matter at issue in the party's appeal, the Board Member or Board Member's staff shall contact all parties to the appeal and invite them to participate in such communication.

(B) Prior to transmitting, filing, or mailing any written communication to a Board Member or Board Member's staff regarding any matter at issue in the party's appeal, the party or party's representative making the written communication shall provide a copy of the written communication to all of the Board Members and the other parties to such appeal. If a Board Member or Board Member's staff receives a written communication and cannot determine whether copies were provided to all of the Board Members and the other parties to the appeal, the Board Member or Board Member's staff shall promptly provide copies of the written communication to all of the Board Members and all parties to the appeal. The written communication shall also be placed in the public record of the appeal.

(2) Record of Oral Communications. When all the parties to an appeal do not participate in an oral communication regarding a matter at issue in their appeal, the Board Member or Board Member's staff participating in the communication shall promptly prepare a public record of the communication containing:

(A) The date, time, and location of the communication;

(B) The caption of the subject appeal from the action of the Franchise Tax Board;

(C) A description of the communication;

(D) A copy of any written materials provided in conjunction with the communication; and

(E) The names of all persons participating in or present during the oral communication.

(3) Disclosure to Board Members and Parties. The public record of each oral communication prepared pursuant to paragraph (2) of this subdivision shall be provided to all of the Board Members and all of the parties to the appeal prior to any oral hearing before the Board or decision on the merits of the appeal (including a decision on a petition for rehearing), and placed in the public record of the appeal.

(4) Prehearing Inquiry. Prior to the commencement of an oral hearing or the deliberation on a matter for decision, the Chief of Board Proceedings shall ask the Board Members whether they have received any communications that are required to be placed in the public record, but which have not previously been disclosed on the record of the appeal.

(5) Information incorporated into the public record of an oral hearing pursuant to this section shall be made available to the public upon request, unless exempted from disclosure by federal or state law.

(6) For purposes of this subdivision:

(A) The term "communication" includes communications made in any manner, but does not include briefs filed pursuant to chapters 4 or 5, or any communications regarding procedural matters that are not at issue in the appeal;

(B) The Franchise Tax Board is a party to an appeal from an action of the Franchise Tax Board;

(C) An appeal from an action of the Franchise Tax Board is pending from the date the Board receives an appeal filed pursuant to chapter 4, until such time as the Board's decision regarding such appeal becomes final; and

(D) Information is included in or disclosed on the public record if it is incorporated into the minutes of an oral hearing, recorded on the transcript of an oral hearing, or added to the official files maintained by the Board Proceedings Division.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15609.5, 15610, 15623; Revenue and Taxation Code section 7081.

Alternative 3: Recommendation from Lenny Goldberg, California Tax Reform Association

5000.5015.1 Communications with Board Members.

The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties. However, in adjudication of tax disputes, they shall refrain from private

discussions with the parties in the case about matters pertaining to the case, and endeavor to make sure that all information and issues under adjudication are a matter of public record and subject to public scrutiny.

All taxpayer appeals shall be on the record, and held in open hearing process in front of the Board. Information and evidence presented as part of the case will be a matter of public record. The Board shall provide sufficient time in all cases for both sides to make their cases.

The Board shall schedule sufficient meetings during the course of a month to provide the time for an appellant to deliver a fully substantiated case, with all information on the record and with sufficient time for clarification of issues by the Board members.

Article 3: Public Notification of Board Meeting

5000.5017 Public Agenda Notice.

5000.5017 Public Agenda Notice.

(a) Board Proceedings Staff shall mail a Public Agenda Notice showing the matters and other items of business scheduled to be conducted at an upcoming Board meeting to those interested parties who have requested such notice in writing. The Public Agenda Notice may be mailed via electronic mail or the U.S. Postal Service, and shall be mailed at least 10 days prior to the scheduled Board meeting to which it relates. The Public Agenda Notice shall also be available for public viewing on the Internet at www.boe.ca.gov.

(b) The Public Agenda Notice shall include:

(1) The name, address, and telephone number of Board Proceedings Staff who can provide further information prior to the meeting;

(2) The address of the Internet site where notices are made available; and

(3) A specific agenda for the meeting, containing a brief description of the matters and other items of business to be conducted or discussed in either open or closed session. A description of a matter or other item of business to be conducted or discussed in closed session shall include a citation to the specific statutory authority under which a closed session is being held.

(c) A Public Agenda Notice may contain additional information that is not described in subdivision (b).

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 11125.

Article 4: Conduct of the Board Meeting and Burden of Proof

5000.5020 Conduct of the Board Meeting.
5000.5022.2 Burden of Proof.

5000.5020 Conduct of the Board Meeting.

(a) Board meetings are conducted in accordance with the following laws:

(1) Bagley-Keene Open Meeting Act (Govt. Code, §§ 11120-11132), which requires the Board to hold public meetings;

(2) Government Code section 15625, which prohibits Board Members and Board employees from engaging in certain economic activities that are incompatible with their duties to the Board and create a conflict of interest;

(3) The Quentin L. Kopp Conflict of Interest Act of 1990 (Govt., Code § 15626), as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings; and

(4) The Political Reform Act (Govt. Code, § 81000, et seq.), which requires Board Members and Board employees to disclose certain financial interests that may create a conflict of interest, and prohibits Board Members and Board employees from making, participating in making, or in any way using their official position to influence a decision in which they know or should know that they have a financial interest.

(b) The public may attend those portions of Board meetings that are conducted during open session. If a person or persons, including a party or parties to a matter, willfully interrupt any portion of a Board meeting, the Board Chair may order the removal of such person or persons from the meeting.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 11120-11132, 15609, 15625, 15626, 81000-91014.

5000.5022.3 Burden of Proof.

(a) Except as otherwise specifically provided by law, the burden of proof shall be upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087,

19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352. History: California Code of Regulations, title 18, section 5080.

Article 5: Voting and Decisions

5000.5023 Quorum.
5000.5024 Voting and Decisions.

5000.5023 Quorum.

A quorum must be present for the Board to take any action.

(a) Any three Board Members present at a meeting shall constitute a quorum. For purposes of this chapter, a Board Member is present at a meeting, if the Board Member is participating in the meeting via teleconference pursuant to section 5000.5003.

(b) When a Board Member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the Political Reform Act (Government Code Section 81000, et seq.), that Board Member is no counted for purposes of a quorum.

(c) If a deputy designated by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General) is not authorized to participate in a decision because the matter before the Board is a constitutional matter, the deputy is not counted for purposes of a quorum.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 17; Government Code sections 7.9, 11122.5, 15626, 81000-91014. History: California Code of Regulations, title 18, section 5072.

5000.5024 Voting and Decisions.

(a) At the conclusion of an oral hearing, the Board may vote to decide the matter, take it under submission and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date. The Board may also adopt a Memorandum Opinion in a matter subject to the provisions of chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to the provisions of chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.

(b) Dissenting and Concurring Opinions.

(1) If a Memorandum Opinion or Formal Opinion is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion or Formal Opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the decision, if different than the rationale set forth in the Memorandum Opinion or Formal Opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted pursuant to paragraph (1) of this subdivision shall be deemed to be adopted on the same date as the Memorandum Opinion or Formal Opinion to which it relates is adopted, and shall be publishable as a supplement to the Memorandum Opinion or Formal Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal.

(c) Reopening a Vote During the Same Meeting: A previously recorded vote may be reopened at the same meeting or a subsequent meeting provided:

(1) The decision is not final;

(2) A motion to reopen is made by a Board Member who voted with the majority on the previously recorded vote; and

(3) A majority of the Board Members present vote affirmatively on the motion to reopen.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 17; Government Code sections 7.9, 11122.5, 11125, 15606. History: California Code of Regulations, title 18, section 5081.

Article 6: Post Hearing Notices and Petitions for Rehearing

5000.5026	Notice of Board Decision.
5000.5027	Petition for Rehearing.
5000.5028	Recommendation on Petition for Rehearing.
5000.5029	Rehearings.

5000.5026 Notice of Board Decision.

(a) Generally. All parties to a proceeding shall be notified in writing of the Board's decision. The notice shall contain the determined value, tax, fee, penalty or interest owed.

(1) Business Taxes: In general, notice of the Board's decision will be mailed to all parties within 45 days from the date of the Board's decision. Notice of a decision denying a claim for refund shall be mailed to all parties within 30 days from the date of the Board decision.

(2) Appeals from actions of the Franchise Tax Board: In general, a copy of the decision or opinion prepared pursuant to article 5 of chapter 4 will be mailed to all parties within 3 business days from the date of the Board's decision.

(3) Property Tax: In general, a Notice of Decision will be mailed within 30 days from the date of the Board's decision.

(b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to the provisions of chapter 2 of this division shall become final 30 days after notice of the Board's decision is mailed to the taxpayer unless, within that 30-day period, one of the following occurs:

(1) A party to the petition or appeal files a Petition for Rehearing.

(2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.

(c) Finality of Property Tax Decisions. Decisions on property tax matters subject to the provisions of chapter 3 of this division, including petitions filed for State Assessees and Private Railroad Car Companies, Taxable Property of a County, City, or Municipal Corporation, and Property Tax Welfare Exemptions, are final. The Board shall not reconsider or rehear a decision on a property tax matter subject to the provisions of chapter 3 of this division, and may modify such a decision only to correct a clerical error.

(d) Appeals from the Franchise Tax Board. The provisions of chapter 4 of this division apply to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 254.5, 254.6, 744, 749, 1842, 5148, 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4,

50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5081.2, 5082.

5000.5027 Petition for Rehearing.

(a) Generally. A taxpayer with a matter subject to the provisions of chapter 2 of this division may file a Petition for Rehearing within 30 days of the date notice of the Board's decision is mailed to the taxpayer. The petition shall:

(1) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the matter;

(2) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;

(3) Identify newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or

(4) Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.

(b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of Petitions for Rehearing and related documents. A Petition for Rehearing or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

A Petition for Rehearing or related document may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

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

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings shall determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.

(2) If the Petition for Rehearing is found to be timely, the Chief of Board Proceedings shall accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance.

(3) If the Chief of Board Proceedings determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings shall reject the Petition for Rehearing and advise the taxpayer regarding alternative rights or remedies.

(d) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5082, 5082.1.

5000.5028 Recommendation on Petition for Rehearing.

(a) In general, the Appeals Division should prepare and submit a recommendation to grant or deny a Petition for Rehearing to the Chief of Board Proceedings and parties to the matter at issue generally within 90 days from the date of the letter accepting the Petition for Rehearing.

(b) The recommendation on Petition for Rehearing shall be submitted to the Board for consideration as a non-appearance matter.

(c) The Chief of Board Proceedings shall notify all the parties to the matter at issue of the Board's decision.

(1) If the Board grants a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision shall be held in abeyance pending the resolution of the rehearing.

(2) If the Board denies a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision shall become final 30 days from the date the Chief of Board Proceedings mails the notice of the denial of the Petition for Rehearing.

(d) Chapter 4 of this division applies to Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5082.1.

5000.5029 Rehearings.

(a) If the Board grants a rehearing in a matter subject to the provisions of chapter 2 of this division, the Chief of Board Proceedings shall:

(1) Consult with the Appeals Staff to determine a briefing schedule appropriate for the rehearing; and

(2) Inform all parties regarding such briefing schedule in writing.

(b) The provisions of chapter 4 of this division shall apply to rehearings granted in appeals from actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501,

46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

Article 7: Correspondence, Public Hearing Records, and Copies

5000.5031 Mailing Address.
5000.5032 Timeliness of Documents.
5000.5033 Hearing Record.
5000.5033.1 Waiver of Confidentiality.

Three Alternatives for 5000.5033.2

5000.5033.2 Request for Portion of Oral Hearing Conducted During Closed Session.
5000.5033.2 Request for Portion of Oral Hearing Conducted During Closed Session to Protect Trade Secret Privilege.
5000.5033.2 Request for Portion of Oral Hearing Conducted During Closed Session to Hear Identifiable Trade Secret.

5000.5033.3 Privilege.
5000.5034 Fees: Filing, Transcripts, and Copies.

5000.5031 Mailing Address.

The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of all correspondence during the hearing process. Correspondence may be filed electronically pursuant to this section if an electronic copy of such correspondence is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

Correspondence during the hearing process may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: : California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, section 5071.

5000.5032 Timeliness of Documents.

(a) A document or other correspondence shall be timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.

(b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 5000.5002 of this chapter, shall be considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document shall be extended to the next business day.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code section 254.5, 270, 724, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352. History: California Code of Regulations, title 18, section 5074.5.

5000.5033 Hearing Record.

(a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of oral hearings conducted during open session at public meetings are public records and open to public inspection. Documents to which a waiver described in section 5000.5033.1 applies are also disclosable public records.

(b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted on the Internet at www.boe.ca.gov and a complete set of approved minutes are bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(c) Transcripts.

(1) In general, the Board records its oral hearings. However, the recordings are not generally transcribed. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.

(2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision. Such requests shall specifically identify the matters to be transcribed.

(3) If Board Staff is able to prepare a transcript of a recorded hearing, the Board will charge a fee to prepare the requested transcript in accordance with section 5000.5034.

(4) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of requests for transcripts. A request for a transcript may be

filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Written requests for transcripts may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC: 80
P. O. Box 942879
Sacramento, CA 94279-0081

(5) A transcript prepared pursuant to this section is a public record and subject to disclosure.

(6) Completed transcripts, untranscribed shorthand notes, and recordings are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (4) of this subdivision. The Board shall charge a fee in accordance with section 5000.5034 for copying a completed transcript.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

5000.5033.1 Waiver of Confidentiality.

Oral hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal pursuant to chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including information contained in a hearing summary prepared in accordance with section 5000.4043.

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for an oral hearing before the Board pursuant to chapter 2 shall constitute a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board or included in the hearing summary prepared for the taxpayer's oral hearing before the Board.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality when the taxpayer:

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

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

(2) The waiver described in paragraph (1) of this subdivision shall only apply to:

(A) The taxpayer's petition or application filed pursuant to chapter 3 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The hearing summary or summary decision prepared for the taxpayer's oral hearing before the Board; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board.

(d) Effective Date of Waiver.

(1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's oral hearing to which the waiver applies.

(2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its oral hearing before the Board. At the time a taxpayer waives an oral hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's matter on the basis of the written record on file without an oral hearing or dismiss the taxpayer's matter.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph shall prohibit any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed pursuant to this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at an oral hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of an oral hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5000.5033.2; and

(B) The portion of a hearing summary, if any, containing information that is only scheduled to be discussed during a closed session.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

Note: There are three alternative versions of section 5000.5033.2. The first alternative is staff's recommendation. The second alternative was prepared for Board Member Yee. The third alternative was suggested by Lenny Goldberg of the California Tax Reform Association.

Alternative 1: Staff Recommendation

5000.5033.2 <u>Request for Portion of Oral Hearing Conducted During Closed Session.</u>

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct portions of oral hearings requested pursuant to chapter 2 or chapter 3 of this division during a closed session held pursuant to Government Code section 11126.

(2) The Board may not conduct oral hearings requested pursuant to the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of an oral hearing requested pursuant to chapter 2 or chapter 3 during a closed session. Such a request shall be in writing, specifically identify the matter for which the taxpayer's oral hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's oral hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) shall be filed with the Chief of Board Proceedings in the manner provided in section 5000.5027, subdivision (a) no later than the due date of the Response to Notice of Board Hearing provided in section 5000.5006.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session, the Chief Counsel shall:

(A) Review the request to determine whether the matter for which the taxpayer's oral hearing was requested involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session and the Chief Counsel's recommendation, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's oral hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The matter for which the taxpayer's oral hearing was requested involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's oral hearing is conducted solely during an open session at a public meeting.

(3) If a portion of an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (3) of this subdivision, the portion of the oral hearing during which information described in paragraph (3)(A) of this subdivision is discussed shall be so conducted unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire oral hearing during an open session.

(4) If a motion is passed in accordance with paragraph (4) of this subdivision, the taxpayer's oral hearing shall be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5000.5006.

(A) The waivers described in subdivision (b) or (c) of section 5000.5033.1 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled oral hearing.

(B) The waivers described in subdivision (b) or (c) of section 5000.5033.1 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its oral hearing before the Board.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings shall notify the taxpayer of the Board Chair's decision on a request to conduct a portion of an oral hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5000.5033.1, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" shall be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

Alternative 2: Prepared for Board Member Yee

5000.5033.2 <u>Request for Portion of Oral Hearing Conducted During Closed Session to Protect Trade Secret Privilege.</u>

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct portions of oral hearings requested pursuant to chapter 2 or chapter 3 of this division during a closed session held pursuant to Government Code section 11126.

(2) The Board may not conduct oral hearings requested pursuant to the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Purpose for and Contents of Requests. Taxpayers may request that the Board conduct a portion of an oral hearing requested pursuant to chapter 2 or chapter 3 during a closed session in order to discuss a trade secret (as defined in the Uniform Trade Secrets Act (Civ. Code, §§ 3426 et seq.)) while preserving the trade secret privilege provided by Evidence Code section 1060. Such a request shall be in writing, and:

(1) Identify the matter for which the taxpayer's oral hearing was requested;

(2) Describe the trade secret to which the request applies;

(3) Explain why the Board cannot consider the taxpayer's entire matter during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123 without revealing the trade secret;

(4) Describe those portions of the taxpayer's matter that the Board may consider and discuss during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123, without disclosing the trade secret; and

(5) Explain why protecting the trade secret from disclosure would not tend to conceal a fraud or otherwise work an injustice.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) shall be filed with the Chief of Board Proceedings in the manner provided in section 5000.5027, subdivision (a) no later than the due date of the Response to Notice of Board Hearing provided in section 5000.5006.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session, the Chief Counsel shall:

(A) Review the request to determine whether the taxpayer's matter involves a trade secrets as defined in the Uniform Trade Secrets Act

(Civ. Code, §§ 3426 et seq.), whether the Board can adequately consider the taxpayer's matter during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123 without revealing the trade secret, identify those portions of the taxpayer's matter that the Board may discuss during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123 without disclosing the trade secret, and whether protecting the trade secret from disclosure would tend to conceal a fraud or otherwise work an injustice;

(B) Prepare a written recommendation to grant or deny the request in whole or in part; and

(C) Submit the taxpayer's request along with the recommendation to the Board Proceedings Staff who shall schedule the request for consideration by the Board during a closed session conducted pursuant to Government Code section 11126 at the next regularly scheduled Board meeting, unless the Chief Counsel determines that the Board is prohibited from hearing the request during a closed session.

(D) If the Chief Counsel determines that the Board is prohibited from hearing the request during a closed session, the Chief Counsel shall deny the request.

(2) Board's Discretion. The Board may grant a request in whole or in part and the Chief of Board Proceedings shall promptly provide the taxpayer with notice of the Board's decision.

(A) If the Board denies a request in its entirety, the taxpayer's entire oral hearing will be conduct during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123, unless the oral hearing is waived.

(B) If the Board grants a request in whole or in part, the Board shall conduct a portion of the taxpayer's oral hearing during a closed session held pursuant to Government Code section 11126 in order to hear information pertaining to trade secrets that the Board determines must be discussed during a closed session to protect the taxpayer's trade secret privilege, but the protection of which will not tend to conceal a fraud or otherwise work an injustice.

(C) If the Board grants a request in whole or in part, the Board shall hear any information that is not described in paragraph (2)(B) during an oral hearing conducted during an open session at a public meeting held in accordance with Government Code sections 11120 and 11123, unless the oral hearing is waived.

(e) Scheduling of Oral Hearing During Open Session. An oral hearing conducted pursuant to subdivision (d)(2)(A) or portion of an oral hearing conducted pursuant to subdivision (d)(2)(C) shall not appear on a Public Agenda Notice until the Board has

decided the taxpayer's request. If a taxpayer's oral hearing conducted pursuant to subdivision (d)(2)(A) or portion of an oral hearing conducted pursuant to subdivision (d)(2)(C) is scheduled to be heard less than 15 days before the Board decides the taxpayer's request, the oral hearing shall be postponed until the next regularly scheduled Board meeting.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

Alternative 3: Recommendation from Lenny Goldberg, California Tax Reform Association

5000.5033.2 Request for Portion of Oral Hearing Conducted During Closed Session to Hear Identifiable Trade Secret.

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct portions of oral hearings requested pursuant to chapter 2 or chapter 3 of this division during a closed session held pursuant to Government Code section 11126 only to hear an identifiable trade secret which is maintained by the taxpayer as a proprietary secret in all business practices engaged in by the taxpayer, which must be disclosed in the course of the appeal and cannot otherwise be referred to as a trade secret during the conduct of the hearing, and the disclosure of which, as determined by the Board, would reveal a trade secret that would not otherwise be available to anyone other than the taxpayer.

(A) A trade secret does not include any financial information revealed in the course of an appeal, nor any annoyance or other embarrassment that the exposure of such information would reveal, nor any other confidential information which is necessary to the adjudication of the case.

(B) The Board shall make every effort to keep appeals in open session, shall take the narrowest possible interpretation of "trade secret," and to therefore encourage reference to the trade secret in question rather than to close the appeal session.

(2) The Board may not conduct oral hearings requested pursuant to the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of an oral hearing requested pursuant to chapter 2 or chapter 3 during a closed session. Such a request shall be in writing, specifically identify the matter for which the taxpayer's oral hearing was requested, and describe the trade secrets to be protected from disclosure.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) shall be filed with the Chief of Board Proceedings in the manner provided in section 5000.5027, subdivision (a) no later than the due date of the Response to Notice of Board Hearing provided in section 5000.5006.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session, the Chief Counsel shall:

(A) Review the request to determine whether the matter for which the taxpayer's oral hearing was requested involves trade secrets;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session and the Chief Counsel's recommendation, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's oral hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that the oral hearing involves a trade secret, which must be disclosed in the course of the appeal and cannot be referred to as a trade secret.

(3) If a portion of an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (3) of this subdivision, the portion of the oral hearing during which information described in paragraph (3)(A) of this subdivision is discussed shall be so conducted unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire oral hearing during an open session.

(4) If a motion is passed in accordance with paragraph (4) of this subdivision, the taxpayer's oral hearing shall be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5000.5006.

(A) The waivers described in subdivision (b) or (c) of section 5000.5033.1 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled oral hearing.

(B) The waivers described in subdivision (b) or (c) of section 5000.5033.1 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its oral hearing before the Board.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings shall notify the taxpayer of the Board Chair's decision on a request to conduct a portion of an oral hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5000.5033.1, subdivision (d).

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609, 42475, 42881; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

5000.5033.3 Privilege.

The waivers provided for in section 5000.5033.1 do not abrogate the Board's privileges with regard to memoranda from attorneys in the Board's Legal Department and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 6254; Evidence Code section 954. History: California Code of Regulations, title 18, sections 5083, 5085.

5000.5034 Fees: Filing, Transcripts, and Copies.

(a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena.

(b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code.

(c) Copies, including certified copies, of records that the Board is permitted by law to divulge shall be furnished to taxpayers and other interested persons at cost as specified in Section 6253 of the Government Code and Section 1798.33 of the Civil Code.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Civil Code section 1798.33; Government Code section 15613.