Chapter 4: Appeals from Actions of the Franchise Tax Board

Article 1: Application, Definitions, and Jurisdiction

5000.4010. Application of Chapter.

(a) This chapter applies to appeals and petitions for rehearing filed with the Board pursuant to the:

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

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

(b) To the extent this chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 will apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5071.

5000.4011. Definitions.

The definitions contained in section 5000.5002 of chapter 5 apply to this chapter. In addition, the following definitions apply to this chapter and to any documents prepared pursuant to this chapter:

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

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

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5070.

5000.4012. Jurisdiction.

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

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

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

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

(4) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months after the claim is perfected with the Franchise Tax Board.

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

(6) The Franchise Tax Board fails to act on a request for abatement of interest within six months after the request is filed with the Franchise Tax Board under Revenue and Taxation Code section 19104. This paragraph does not apply to requests for interest abatement made in connection with a protest or an appeal from a *Notice of Action* on a protest.

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

(8) The Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief under Revenue and Taxation Code section 18533, subdivision (b) or (c), or section 19006, subdivision (c).

(9) The Franchise Tax Board mails a notice of determination, or fails to act within 90 days, on a petition for review of the Franchise Tax Board's finding of jeopardy.

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

This subdivision contains general rules governing the Board's jurisdiction to hear appeals, and the Board's jurisdiction may be expanded or limited due to changes in the law.

(b) Issues that will not be considered. The Board's jurisdiction is limited to determining the correct amount owed by, or due to, the appellant for the year or years at issue in the appeal. The Board has determined that it does not have jurisdiction to consider the following issues:

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

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

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

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

(5) Whether the appellant is entitled to a remedy for the Franchise Tax Board's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.

Note: Authority: Government Code section 15606; Revenue and Taxation Code section 19570; Article III, section 3.5 of the California Constitution. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5011.

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

5000.4020. Appeal Filing Requirements.

(a) Franchise and Income Tax Appeals. Every appeal from an action of the Franchise Tax Board made under the circumstances listed in paragraphs (1) through (9) of subdivision (b) of section 5000.4012 must be in writing, must meet the formatting requirements of subdivision (e) of section 5000.4030, and must contain the following:

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

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

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

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

(5) The year(s) involved;

(6) A copy of the Franchise Tax Board's notice from which the appeal is made, unless the Franchise Tax Board has failed to act on a claim for refund or a request for interest abatement, in which case the appellant must provide a copy of the claim for refund or request for interest abatement;

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

(8) Any portion of the amount at issue conceded by the appellant; and

(9) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.

(b) Senior Citizens Homeowners and Renters Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board's denial, in whole or in part, of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law must be in writing, must meet the formatting requirements of subdivision (e) of section 5000.4030, and must contain the following:

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

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

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

(4) The amount of property tax assistance claimed;

(5) The claim year(s) involved;

(6) A copy of the Franchise Tax Board's notice from which the appeal is made;

(7) The reasons the appellant is entitled to property tax assistance; and

(8) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5012.

5000.4025.5. Methods for Delivery of Written Documents and Correspondence.

(a) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of appeals, petitions for rehearing, briefs, and related documents and correspondence. Any 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.

(b) Appeals, petitions for rehearing, briefs, and related documents and correspondence may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to:

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

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

5000.4021. Time for Filing an Appeal.

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

(a) Statutory Deadlines. The Revenue and Taxation Code requires that any appeal must be filed:

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

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

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

(4) At any time, if the Franchise Tax Board failed to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim was perfected. However, if the Franchise Tax Board denies the claim for refund in writing, the

appeal must be filed not later than 90 days from the date the Franchise Tax Board mails the notice of denial.

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

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

(7) At any time, if the Franchise Tax Board failed to act on a request to abate interest within six months after the request was filed. However, if the Franchise Tax Board denies a request to abate interest in writing, the appeal must be filed within the time period specified in paragraph (5) in the case of unpaid interest, or within the time period specified in paragraph (6) in the case of paid interest.

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

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

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

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

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

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

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

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

(c) Date of Mailing. In the absence of other evidence, the filing date is the post-mark date, the date of delivery to a "delivery service" as defined in section 5000.5002, or the date of receipt if the document is filed pursuant to subdivision (a) of section 5000.4020.5. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline is extended to the next business day.

Note: Authority: Government Code section 15606; Code of Civil Procedure section 1013. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5011.

5000.4022. Accepting or Rejecting an Appeal.

(a) Determination of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings must determine whether the Board has jurisdiction to hear the appeal under subdivision (b) of section 5000.4012, including whether the appeal is timely under the provisions of section 5000.4021. If any question arises as to the timeliness of an appeal or the Board's jurisdiction to hear an appeal, the Chief of Board Proceedings will refer the appeal to the Chief Counsel. The Chief of Board Proceedings and the Chief Counsel may request any relevant information from the Franchise Tax Board in order to perform their duties under this section.

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

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

(d) Rejecting the Appeal. If the Chief of Board Proceedings or the Chief Counsel determine that the Board does not have jurisdiction to hear the appeal or that the appeal is not timely, and that there is no genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings must reject the appeal. The Chief of Board Proceedings then will notify the appellant and the Franchise Tax Board in writing of the rejection and the reasons therefor.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, sections 5011 and 5075.1.

5000.4023. Perfecting an Appeal.

(a) Generally. The briefing and resolution of an appeal cannot begin until the appeal is perfected. For purposes of this chapter, an appeal is "perfected" if it contains substantially all of the information required by section 5000.4020. In addition, an appeal is not "perfected" until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant or authorized representative.

(b) Time to Perfect the Appeal. If the Chief of Board Proceedings accepts an appeal, and such appeal is not perfected, the Chief of Board Proceedings will notify the appellant in writing of the need to perfect the appeal. The notice will explain what information is necessary to perfect the appeal.

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

(2) Perfecting the appeal is accomplished by submitting the information necessary to perfect the appeal to the Chief of Board Proceedings.

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

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, sections 5012 and 5075.1.

Article 3: Briefing Schedules and Procedures

5000.4030. General Requirements.

(a) Generally. Submissions in the forms of briefs are required in all appeals from actions of the Franchise Tax Board. The parties to an appeal must adhere to the briefing schedules and other requirements set forth in this article. Unless otherwise provided, the rules contained in this section apply to all briefs and briefing schedules.

(b) Determining the briefing schedule; notification. Upon receipt of a perfected appeal, the Chief of Board Proceedings will provide written notification to each party that a perfected appeal has been filed and that briefing will begin under section 5000.4031or section 5000.4032, whichever is applicable.

(1) If an appeal involves a jeopardy determination, the Chief Counsel will compose a suitable briefing schedule after due consideration of all the facts and circumstances of that appeal.

(2) The notification issued under this section may be included, if appropriate, in the acknowledgment letter issued pursuant to section 5000.4022.

(3) Throughout the briefing schedule, the Chief of Board Proceedings will keep the parties apprised of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.

(c) Extensions. Any request to extend the period for filing a brief must be in writing and must be made prior to the scheduled due date for that brief. Extensions and deferrals of briefing may be granted pursuant to the provisions of section 5000.5007.

(d) Submission and acknowledgment. The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and will provide each opposing party with a copy of the brief and any supporting exhibits.

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

(f) Failure to file a brief. The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, that waiver will conclude the briefing schedule. However, the Board, in its discretion, may accept any documentary evidence and related arguments submitted at a hearing pursuant to section 5000.5014.

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

(1) Any individual or entity may file a Non-Party Brief, whether unsolicited or upon request of the Appeals Division. No individual or entity may file more than one Non-Party Brief, unless the Appeals Division specifically allows otherwise.

(2) Unless the Appeals Division specifically allows otherwise, all Non-Party Briefs must be filed prior to the conclusion of briefing under section 5000.4031 or section 5000.4032, whichever is applicable.

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

(4) For purposes of articles 4 and 5 of this chapter, briefing is considered concluded when the deadline for replying to all unsolicited Non-Party Briefs has passed.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5075.1.

5000.4031. General Briefing Schedule.

(a) Application. The briefing schedule in this section applies to all appeals from actions of the Franchise Tax Board, unless the appeal involves an innocent spouse determination or a jeopardy determination.

(b) Opening Briefs.

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

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

(c) Reply Briefs.

(1) Appellant's Reply Brief. The appellant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Appellant's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief. Except as provided in paragraph (2), the filing of the Appellant's Reply Brief concludes the briefing schedule.

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

(A) The Franchise Tax Board has 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appellant's Reply Brief in which to file a written request to file its Reply Brief.

(B) Upon receipt of the Franchise Tax Board's written request, the Chief Counsel will determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

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

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

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

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

(D) If the Chief Counsel determines that additional briefing is not necessary, he or she will deny the Franchise Tax Board's request to file a Reply Brief. That denial concludes the briefing schedule.

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

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5075.1.

5000.4032. Briefing Schedule for Innocent Spouse Appeals.

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

(b) Definitions. For purposes of this section:

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

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

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

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

(c) Special Rules and Procedures.

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

(2) If only one spouse files a timely appeal, then upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings will provide one copy of the perfected appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her right to participate in the appeal.

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

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

(e) Opening Briefs.

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

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

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

(f) Reply Briefs.

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

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

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Opening Brief, if one is filed; or

(C) The date on which it becomes known that the Non-Appealing Spouse will not file an Opening Brief.

The Appealing Spouse's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief and the Non-Appealing Spouse's Opening Brief. Except as provided in paragraphs (2) and (3), the filing of the Appealing Spouse's Reply brief concludes the briefing schedule.

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

(3) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, may only address only points of disagreement with the Appealing Spouse's Reply Brief and the Non-Appealing Spouse's Opening and Reply Briefs. The rules in paragraph (c)(2) of section 5000.4031 apply to this paragraph. However, the 15-day period described in subparagraph (c)(2)(A) of section 5000.4031 begins on the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief;

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief, if one is filed; or

(C) The date on which it becomes known that the Non-Appealing Spouse will not file a Reply Brief.

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

(5) Appealing Spouse's Supplemental Brief. If the Franchise Tax Board or the Non-Appealing Spouse file a Reply Brief, the Appealing Spouse may file a Supplemental Brief not later than 30 days from the later of:

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

(B) The date the Chief of Board Proceedings acknowledges receipt of the Respondent's Reply Brief; or

(C) The date on which it becomes known that the Franchise Tax Board will not file a Reply Brief.

The Appealing Spouse's Supplemental Brief, if filed, may only address points of disagreement with the Respondent's Reply Brief and the Non-Appealing Spouse's Reply Brief. The filing of the Appealing Spouse's Supplemental Brief concludes the briefing schedule.

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

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

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

(3) If the Franchise Tax Board and/or the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse may file

an additional brief. If the Franchise Tax Board did not provide information as permitted by paragraph (2), it may also file an additional brief. Additional briefs must be filed not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief filed pursuant to this paragraph may only address points of disagreement with the information described in paragraph (2) of this subdivision.

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

(5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule will not be concluded until the requirements of this subdivision are satisfied.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5075.1.

5000.4035. Discretionary Supplemental Briefing.

(a) Staff Requests for Supplemental Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(b) Individual Board Member's Request for Supplemental Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(c) Board Requests for Supplemental Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

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

(e) Notification of Board Chair. The Board Chair must be notified promptly of any request made pursuant to this section and may postpone the hearing, briefing, or scheduling of an appeal.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5075.1.

Article 4: Requesting and Scheduling Oral Hearings

5000.4040. Right to Request an Oral Hearing.

(a) Written Request Required. Except as otherwise provided in any statute or regulation, every appellant has the right to an oral hearing before the Board upon written request.

(1) In order to obtain an oral hearing, the appellant must file a written request not later than 30 days from the conclusion of briefing.

(2) Upon receipt of a timely request, the Chief of Board Proceedings will send written acknowledgment of the request to all parties pursuant to section 5000.5005.1.

(3) An untimely request may be accepted and acknowledged if the Chief Counsel determines that the failure to make a timely request was due to reasonable cause.

(b) Innocent Spouse Appeals. Both the Appealing Spouse and the Non-Appealing Spouse, as those terms are defined in subdivision (b) of section 5000.4032, may request an oral hearing pursuant to subdivision (a) of this section. The Non-Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, the Board typically will conduct one oral hearing and invite both spouses to appear. However, the Board will conduct separate oral hearings if:

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

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

If the Board conducts separate oral hearings, the Board will not decide the appeal until both hearings have concluded.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4041. Submission for Decision Without Oral Hearing.

(a) Generally. If the appellant does not request an oral hearing under section 5000.4040, or if the appellant does not respond to a Notice of Hearing under section 5000.5006, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.

(b) Innocent Spouse Appeals. If neither the Appealing Spouse nor the Non-Appealing Spouse request an oral hearing under section 5000.4040, or neither spouse responds to their Notice of Hearing under section 5000.5006, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4042. Appeals Review; Scheduling the Oral Hearing

(a) If an oral hearing is granted under section 5000.4040, the Appeals Division will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request supplemental briefing pursuant to section 5000.4035, or may order a pre-hearing conference pursuant to section 5000.4042.5, or both. When the Appeals Division determines that all relevant factual and legal issues have been addressed, then the Appeals Division will notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.

(b) Upon notification from the Appeals Division that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing pursuant to section 5000.5006.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4042.5. Pre-hearing Conference.

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

(b) When to Hold a Pre-hearing Conference. A pre-hearing conference may be held only when an oral hearing has been granted under section 5000.4040, and after the conclusion of briefing.

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

(2) Any party may make a written request for a pre-hearing conference. The request must be made not later than 15 days from the date on which the Chief of Board Proceedings acknowledges the request for an oral hearing. The Appeals Division may deny the request, with the approval of the Chief Counsel, if the Appeals Division determines that a pre-hearing conference is likely to be unproductive and a misuse of administrative resources.

(3) The Board, at the oral hearing on the appeal, may order that a pre-hearing conference be held. In that circumstance, the hearing will be postponed until the conclusion of the pre-hearing conference.

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

(d) Notice and Scheduling. The Board Proceedings Division will schedule the pre-hearing conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties. The parties will receive no less than 15 days notice prior to the date of the pre-hearing conference, provided that the notice period may be waived upon agreement by all parties.

(e) Conduct and Nature of the Pre-hearing Conference. An employee of the Appeals Division will conduct the pre-hearing conference. To the extent possible, the conference holder will ensure that the pre-hearing conference is informal and non-adversarial. However, if the conference holder determines that the pre-hearing conference is unproductive or that a party is uncooperative, the conference holder may terminate the pre-hearing conference.

(f) Recording or Transcription. The conference holder will not record, videotape, or transcribe the pre-hearing conference. Any party may arrange for the pre-hearing conference to be recorded or transcribed, at that party's expense. If a transcript is made, the transcript must be made available to all participants and it will become a public record. However, in all cases, statements made by participants during the pre-hearing conference are not binding upon the Board.

(g) Additional Briefing and Evidence. The holding of a pre-hearing conference does not prevent the Appeals Division from requesting additional briefing or evidence under section 5000.4035.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4043. Hearing Summary.

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

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

(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5000.4052, if the Appeals Division determines that such a recommendation is appropriate;

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

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

(b) Preparing the Hearing Summary. Upon the scheduling and noticing of an oral hearing pursuant to section 5000.5006, the Appeals Division will prepare a Hearing Summary and submit the Hearing Summary to the Chief of Board Proceedings. Except in the case of an appeal that involves a jeopardy determination, the Appeals Division must have at least 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

5000.4050. Letter Decisions.

(a) Definitions. A "Letter Decision" is a written decision that contains a short explanation of the reasons for the Board's decision on an appeal.

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

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

(d) Citation prohibited. Letter Decisions may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4051. Summary Decisions.

(a) Definition. A "Summary Decision" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal. The Summary Decision does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

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

(1) An appeal is submitted for decision under section 5000.4041; or

(2) At the conclusion of an oral hearing, the Board orders the preparation of a Summary Decision or staff recommendation.

The Appeals Division must submit the Summary Decision to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. When the appeals Division prepares a Summary Decision, the Decision will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Summary Decision, or votes to decide the appeal without adopting the Summary Decision, is the date of the Board's decision for purposes of this chapter.

(d) Citation prohibited. Summary Decisions may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5076.1.

5000.4052. Formal Opinions.

(a) Definition. A "Formal Opinion" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is intended to set precedent. The Formal Opinion does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

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

(1) An appeal is submitted for decision under section 5000.4041 and the Appeals Division determines, in its discretion, that a Formal Opinion is appropriate; or

(2) At the conclusion of an oral hearing, the Board determines that a Formal Opinion is appropriate and orders the preparation of a Formal Opinion.

The Appeals Division must submit the Formal Opinion to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. When the Appeals Division prepares a Formal Opinion, the Opinion will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, is the date of the Board's decision for purposes of this chapter.

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

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

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

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

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

The list of factors in this subdivision is not intended to be exclusive. The Board and Board Staff may consider other relevant factors.

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

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4054. Frivolous Appeal Penalty.

(a) Generally. If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, under Revenue and Taxation Code section 19714, on the appellant or appellants that filed the appeal. The Board may impose a frivolous appeal penalty on its own or upon the recommendation of Board Staff.

(b) Factors Considered. The following factors are considered in determining whether, and in what amount, to impose a frivolous appeal penalty:

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

(2) Whether the appellant is making the same arguments that the same appellant made in prior appeals;

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

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

The list of factors in this subdivision is not intended to be exclusive. The Board and Board Staff may consider other relevant factors.

Note: Authority: Government Code section 15606; Revenue and Taxation Code section 19714. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Article 6: Petitions for Rehearing and Rehearings

5000.4060. Finality of Decision.

(a) Finality. The Board's decision under article 5 of this chapter becomes final 30 days from the date of the decision unless, within that 30-day period, a party to the appeal files a Petition for Rehearing.

(b) Finality Independent of Notice. The finality of the Board's decision is not dependent upon the date of any notice of the decision. In addition, the decision may become

final even though Board Staff fails to send, or a party fails to receive, notice of the decision.

(c) Number of Filings. The filing of a Petition for Rehearing by one party does not prevent the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed on time. However, no party may file more than one Petition for Rehearing.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4061. Petitions for Rehearing.

(a) Definitions. For purposes of this article:

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

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

(b) Time for Filing. A Petition for Rehearing is timely if it is mailed within the 30-day period described in subdivision (a) of section 5000.4060. The date of mailing is determined under subdivision (c) of section 5000.4021.

(c) Format and Contents of the Petition for Rehearing. Every Petition for Rehearing must be in writing, must meet the formatting requirements of subdivision (e) of section 5000.4030, and must contain the following:

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

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

(3) The facts involved and the legal authorities upon which the party relies, including any relevant statutes, regulations, and judicial and administrative decisions, which form potential bases for granting a rehearing under subdivision (d) of section 5000.4063;

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

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

(d) Accepting or Rejecting the Petition for Rehearing.

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings must determine whether the Petition for Rehearing is timely. If any question arises as

to the timelines of a Petition for Rehearing, the Chief of Board Proceedings will refer the Petition to the Chief Counsel.

(2) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is timely, the Chief of Board Proceedings must accept the Petition for Rehearing. The Chief of Board Proceedings then will notify all parties in writing of the acceptance. The notice will explain each party's rights and obligations under this article. The Chief of Board Proceedings will provide one copy of the Petition for Rehearing and any supporting documents to the Non-Filing Party.

(3) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings must reject the Petition for Rehearing. The Chief of Board Proceedings then will notify all parties in writing of the rejection and the reasons therefor.

(e) Perfecting the Petition for Rehearing.

(1) The briefing and resolution of a Petition for Rehearing cannot begin until the Petition for Rehearing is perfected. A Petition for Rehearing is "perfected" if it contains substantially all of the information required by subdivision (c). A Petition for Rehearing is not perfected until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant or authorized representative.

(2) If a timely Petition for Rehearing is not perfected, the Chief of Board Proceedings will notify the Filing Party in writing of the need to perfect the Petition for Rehearing. That notice will explain what information is necessary to perfect the Petition for Rehearing.

(A) The Filing Party must perfect the Petition for Rehearing not later than 30 days from the date of the notice. The Chief of Board Proceedings may extend the deadline for perfecting a Petition for Rehearing upon a showing of extreme hardship or upon written agreement by the parties. All parties will be notified in writing of any extension.

(B) Perfecting the Petition for Rehearing is accomplished by submitting the information necessary to perfect the Petition for Rehearing to the Chief of Board Proceedings.

(C) If the Filing Party fails to perfect the Petition for Rehearing within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the Petition for Rehearing will be rejected. All parties will be notified in writing of the rejection.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4062. Briefing on Petition for Rehearing.

(a) Subdivisions (b)(3), (c), (d), (e), (f), and (g) of section 5000.4030 apply to the administration of this section and to any documents filed under this section. When applied to this section, provisions of section 5000.4030 must be interpreted within the context of this section.

(b) Briefing Schedule.

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

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

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

(c) Supplemental Briefing. This section does not prevent a request for supplemental briefing under section 5000.4035.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4063. Decisions on Petitions for Rehearing.

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

(b) Preparing the Decision on Petition for Rehearing. Upon the conclusion of briefing under section 5000.4062, the Appeals Division will prepare a Decision on Petition for Rehearing. Upon completion, the Appeals Division will submit the Decision on Petition for Rehearing to the Chief of Board Proceedings.

(c) Adoption; Date of Decision. The Decision on Petition for Rehearing will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board.

(1) If the Board grants a Petition for Rehearing, then the Board's decision under article 5 of this chapter will be held in abeyance pending resolution of the rehearing. The Board, in its discretion, may limit the scope of the rehearing.

(2) If the Board denies a Petition for Rehearing, then the Board's decision to deny the petition becomes final 30 days from the date on which the Board voted to deny the rehearing.

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

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

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

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

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

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

(e) Citation. Decisions on Petition for Rehearing may not be cited as precedent in any appeal or other proceeding before the Board, unless the Board adopts the Decision on Petition for Rehearing as a Formal Opinion.

Note: Authority: Government Code section 15606. Reference: Code of Civil Procedure section 657; Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4064. Briefing on Rehearing.

(a) Subdivisions (b)(3), (c), (d), (e), (f), and (g) of section 5000.4030 apply to the administration of this section and to any documents filed under this section. When applied to this section, provisions of section 5000.4030 must be interpreted within the context of this section.

(b) Briefing Schedule; Single Petition Granted. If the Board grants a single Petition for Rehearing, the following briefing schedule applies:

(1) Filing Party's Opening Brief. The Filing Party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petition for Rehearing.

(2) Non-Filing Party's Reply Brief. The Non-Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Filing Party's Opening Brief.

(3) Filing Party's Reply Brief. The Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Non-Filing Party's Reply Brief.

(c) Briefing Schedule; Multiple Petitions Granted. If there is more than one Filing Party and the Board grants more than one Petition for Rehearing, the following briefing schedule applies:

(1) Opening Briefs. Each party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petitions for Rehearing.

(2) Reply Briefs. Each party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the last brief filed pursuant to paragraph (1).

(d) Supplemental Briefing. This section does not prevent a request for supplemental briefing under section 5000.4035.

(e) Alternate Briefing Schedule on Rehearing. Notwithstanding subdivisions (b) and (c), the Board may order any briefing schedule that it deems appropriate.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.

5000.4065. <u>Decision on Rehearing.</u>

(a) Hearing and Decision. At the conclusion of briefing under section 5000.4064, the provisions of articles 4 and 5 of this chapter will apply, except that any reference to a "decision" or "opinion" is deemed a reference to a decision or opinion on rehearing, and any reference to the briefing schedule is deemed a reference to the briefing schedule under section 5000.4063.

(b) Finality of Decision. The Board's decision on rehearing is the Board's decision on the appeal and becomes final 30 days from the date of the decision.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645. History: California Code of Regulations, title 18, section 5082.1.